

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62403; File No. SR-Phlx-2010-80)

June 30, 2010

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to the Options Floor Broker Subsidy

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 25, 2010 NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend: (i) the threshold volume requirements related to the Options Floor Broker Subsidy; and (ii) the Per Contract Average Daily Volume Subsidy Payment. The Exchange also proposes correcting a typographical error.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be effective for trades settling on or after July 1, 2010.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to decrease the threshold volume requirements related to the Options Floor Broker Subsidy and amend the per contract average daily volume subsidy payment fees. The Exchange believes that by eliminating certain threshold requirements additional members may be attracted to the Options Floor Broker Subsidy. Also, the Exchange believes that the proposed rate changes could provide enhanced benefits to current and future member organizations who participate in the Options Floor Broker Subsidy because the Exchange is increasing the per contract rate on the Tier II and Tier III levels. The Exchange still continues to afford the members [sic] organizations who transact volume in Tier I a benefit as well.

Amending the Thresholds

The Exchange currently pays an Options Floor Broker Subsidy to member organizations with Exchange registered floor brokers for eligible contracts that are entered into the Exchange's

Floor Broker Management System ("FBMS").<sup>3</sup> To qualify for the per contract subsidy, a member organization with Exchange registered floor brokers must have: (1) more than an average of 100,000 executed contracts per day in the applicable month; and (2) at least 40,000 executed contracts or more per day for at least eight trading days during that same month.<sup>4</sup> Only the floor broker volume from orders entered into FBMS and subsequently executed on the Exchange are counted. The 100,000 contract and 40,000 contract thresholds, as described above, are calculated per member organization floor brokerage unit. In the event that two or more member organizations with Exchange registered floor brokers each entered one side of a transaction into FBMS, then the executed contracts is [sic] divided among each qualifying member organization that participates in that transaction.<sup>5</sup>

The Exchange proposes amending the threshold volume requirements related to the Option Floor Broker Subsidy so that in order to qualify for the per contract subsidy a member organization with Exchange registered floor brokers would only require more than an average of 100,000 executed contracts per day in the applicable month. The Exchange is proposing to delete the second threshold requirement, "...at least 40,000 executed contracts or more per day for at least eight trading days during that same month."

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<sup>3</sup> FBMS is designed to enable floor brokers and/or their employees to enter, route, and report transactions stemming from options orders received on the Exchange. FBMS also is designed to establish an electronic audit trail for options orders represented and executed by floor brokers on the Exchange. See Exchange Rule 1080, commentary .06.

<sup>4</sup> For purposes of calculating the 100,000 and 40,000 thresholds, customer-to-customer transactions, customer-to-non-customer transactions, and non-customer-to-non-customer transactions would be included.

<sup>5</sup> When computing the threshold amounts, the Exchange would first count all customer-to-customer transactions and then all other customer-to-non-customer transactions. See also Securities Exchange Act Release No. 57253 (February 1, 2008), 73 FR 7352 (February 7, 2008) (SR-Phlx-2008-08)(adopting a tiered per contract floor broker options subsidy payable to member organization with Exchange registered floor brokers).

Customer-to-customer transactions would continue to count towards reaching the 100,000 contract thresholds, but a per contract subsidy would not be paid on any customer-to-customer transactions. Dividend, merger and short stock interest strategies would continue to be excluded from all threshold volume calculations, and no per contract subsidy would be paid on these transactions. The per contract subsidy would be paid based on the average daily contract volume for that month, which are customer-to-non-customer transactions and are in excess of 100,000 contracts. Payments would be made at the stated rate for each tier for those contracts that fall within that tier. These contracts may include customer-to-customer transactions for the purposes of reaching a tier, but as stated above, a per contract subsidy would not be paid on these executions.

In connection with amending the threshold volume requirements, the Exchange also proposes amending the corresponding eligible contract requirements to reflect the elimination of the second threshold.

Amending the Subsidy Payment

Additionally, the Exchange is proposing to amend the per contract average daily volume subsidy payment fees. Currently, in order to be eligible for the Options Floor Broker Subsidy, the member organization must have an average daily volume in a particular calendar month as follows:

**Per Contract Average Daily Volume Subsidy Payment:**

<b>Tier I</b>	<b>Tier II</b>	<b>Tier III</b>
100,001 to 200,000	200,001 to 300,000	300,001 and greater
\$0.04 per contract	\$0.05 per contract	\$0.06 per contract

The Exchange proposes amending the per contract fees as follows:

**Per Contract Average Daily Volume Subsidy Payment:**

<b>Tier I</b>	<b>Tier II</b>	<b>Tier III</b>
100,001 to 200,000	200,001 to 300,000	300,001 and greater
\$0.02 per contract	\$0.08 per contract	\$0.09 per contract

The Exchange is also proposing to correct a typographical error in the Fee Schedule.

Specifically, the spelling of the word facilitation is being corrected.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be effective for trades settling on or after July 1, 2010.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>7</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the proposed amendments to the Options Floor Broker Subsidy are equitable, fair and reasonable because member organizations with Exchange registered floor brokers are provided an equal opportunity to receive a subsidy and any member organization is free to establish floor brokerage operations on the floor of the Exchange, and, as such, would be eligible to receive the Options Floor Broker Subsidy. Further, the Exchange believes that the changes to the subsidy payments are reasonable because the Exchange is continuing to offer to all members the ability to earn the Options Floor Broker Subsidy.

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

Additionally, the Exchange is eliminating one of the two threshold volume requirements to receive the Options Floor Broker Subsidy and thereby creating additional opportunity for members to avail themselves of the subsidy. In summary, the Exchange is decreasing the payment for Tier I volumes and increasing the payments for Tier II and III volumes to create greater incentives and opportunities for member organizations with Exchange registered floor brokerage operations to earn additional payments for attracting additional order flow to the Exchange.

While the Exchange is decreasing the payments for Tier I volumes from \$0.04 to \$0.02, the Exchange believes this is reasonable because: (1) the Exchange is still continuing to pay members a subsidy for their volume; and (ii) the Exchange previously had a similar gap in its subsidy payment amounts.<sup>8</sup> The Exchange does not believe that this subsidy is unreasonable or discriminatory because any floor broker is capable of meeting the volume criteria.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

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<sup>8</sup> See Securities Exchange Act Release No. 57253 (February 1, 2008), 73 FR 7352 (February 7, 2008) (SR-Phlx-2008-08).

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and paragraph (f)(2) of Rule 19b-4<sup>10</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2010-80 on the subject line.

#### Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2010-80. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

of the submission,<sup>11</sup> all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2010-80 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>11</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov>.

<sup>12</sup> 17 CFR 200.30-3(a)(12).