

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61665; File No. SR-Phlx-2010-25)

March 5, 2010

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 2, Relating to Reestablishing Certain Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4 thereunder,² notice is hereby given that on February 22, 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. On March 3, 2010, the Exchange filed Amendment No. 1 to the proposed rule change, and on March 4, 2010, the Exchange withdrew Amendment No. 1 to the proposed rule change. On March 4, 2010, the Exchange filed Amendment No. 2 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons.

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

The Exchange proposes to: (i) decrease options transaction charges for ROTs to \$.21 per contract; (ii) eliminate the \$.05 per contract fee for Standard and Poor's Depository

Receipts/SPDRs ("SPY")⁴ equity options that are directed to specialists, Streaming Quote

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 2 updates the text of the proposed fee schedule to indicate certain text from a separate prior filing that was abrogated. See Securities Exchange Act Release No. 61547 (February 19, 2010), 75 FR 8762 (February 25, 2010) (concerning SR-Phlx-2009-104).

⁴ SPY options are based on the SPDR exchange-traded fund ("ETF"), which is designed to track the performance of the S&P 500 Index.

Traders (“SQTs”)⁵ and Remote Streaming Quote Traders (“RSQTs”)⁶ by a member or member organization and are executed electronically as well and the Directed Specialists, SQTs and RSQTs charge of \$0.01 per contract fee for Complex Orders in equity options that are directed to them by an Order Flow Provider and executed electronically; (iii) eliminate the monthly 4.5 million contracts (the "Volume Threshold") for ROTs and specialists; (iv) establish a \$750,000 monthly cap on equity options transactions executed by ROTs or specialists (“Monthly Cap”); (v) increase the Firm equity option transaction charge from \$.24 to \$.25 and increase the Firm Related Equity Option Cap from \$75,000 to \$85,000; (vi) increase Index Options transaction charges from \$.24 to \$.30; (vii) eliminate the SQT and RSQT permit credits; (viii) eliminate the permit fee structure and instead implement a \$1,000 permit fee, regardless of classification; (ix) eliminate the Other Permit Holders fee category; (x) increase the Trading Floor Personnel Registration Fee from \$50 to \$100; (xi) increase the Order Entry Port from \$250 to \$500 and only charge per mnemonic instead of per mnemonic per port; (xii) amend the SQF Port Fee to assess a \$500 per month per SQF port in lieu of the existing structure of \$250 for the first five ports and \$1000 for additional port thereafter and also rename the SQF Port Fee as the “Active SQF Port Fee”; (xiii) eliminate the \$0.02 per contract SQF Port Fee credit; (xiv) eliminate references to Pilot FCOs; and (xv) eliminate and amend corresponding endnotes related to amendments indicated herein and make other clarifying amendments.

⁵ An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. See Exchange Rule 1014(b)(ii)(A).

⁶ An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Exchange Rule 1014(b)(ii)(B).

The Exchange previously filed a proposed rule change that contained most of the fees mentioned herein.⁷ This proposed rule change, SR-Phlx-2009-104, was subsequently abrogated by the Commission on February 19, 2010.⁸ With respect to SR-Phlx-2009-104, the following fee was at issue and is abrogated pursuant to the Abrogation Order: a \$.05 per contract fee for equity options that are directed to specialists, \$.05 per contract fee for SPY equity options that are directed to specialists, SQTs, and RSQTs by a member or member organization and are executed electronically. The purpose of this filing is to reestablish the remainder of the fees contained in SR-Phlx-2009-104.

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.

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.

⁷ See Securities Exchange Act Release No. 61337 (January 12, 2010), 75 FR 2905 (January 19, 2010) (SR-Phlx-2009-104).

⁸ See Securities Exchange Release No. 61547 (February 19, 2010) ("Abrogation Order").

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 update the Exchange's fee schedules by adopting new fees, amending existing fees and deleting fees and text that are no longer deemed necessary. The Exchange previously filed a proposed rule change that contained most of the fees mentioned herein.⁹ This proposed rule change, SR-Phlx-2009-104, was subsequently abrogated by the Commission on February 19, 2010.¹⁰ With respect to SR-Phlx-2009-104, the following fee was at issue and is abrogated pursuant to the Abrogation Order: a \$.05 per contract fee for equity options that are directed to specialists, \$.05 per contract fee for SPY equity options that are directed to specialists, SQTs, and RSQTs by a member or member organization and are executed electronically. The purpose of this filing is to reestablish the remainder of the fees contained in SR-Phlx-2009-104.

Equity Options, Sector Index Options Fees and U.S. Dollar-Settled Foreign Currency Option Fees

The Exchange proposes to amend the options transaction charge of \$.22 for ROTs and decrease that fee to \$.21 per contract side, similar to the rate charged to specialists. Also, the Exchange proposes to eliminate a \$.05 per contract fee for SPY equity options and the similar charge of \$0.01 per contract fee for Complex Orders in equity options that are directed to specialists, SQTs and RSQTs by a member or member organization and are executed electronically in lieu of the existing Registered Options Trader (on-floor) and specialist equity

⁹ See Securities Exchange Act Release No. 61337 (January 12, 2010), 75 FR 2905 (January 19, 2010) (SR-Phlx-2009-104).

¹⁰ See Securities Exchange Release No. 61547 (February 19, 2010) ("Abrogation Order").

options transaction fees.¹¹ With the elimination of this fee, specialists, SQTs and RSQTs that receive directed orders in SPY equity options will instead be assessed the above referenced \$.21 per contract side for ROTs and specialists. The Exchange believes the \$.05 per contract fee for SPY equity options that are directed to specialists, SQTs and RSQTs by a member or member organization and are executed electronically is no longer necessary to remain competitive for SPY options order flow.

The Exchange provides a discount for ROTs (on-floor) and specialists that exceed 4.5 million contracts in a given month (the "Volume Threshold") by assessing \$ 0.01 per contract on contract volume above the Volume Threshold instead of the applicable options transaction charges. The Exchange proposes to eliminate the Volume Threshold and instead establish a monthly cap for ROTs and specialists of \$750,000.¹² The Exchange believes that by eliminating the 4.5 million contracts Volume Threshold and instead proposing a Monthly Cap, a greater number of members will benefit from the Monthly Cap.

The Exchange also proposes to increase the Firm equity options transaction charge from \$.24 to \$.25 and increase the Firm Related Equity Option Cap from \$75,000 to \$85,000. Additionally, the Exchange proposes to increase the Sector Index Options Fees for ROTs, specialists and Firm from \$.24 to \$.30. The Exchange believes that these increases will be offset by other fee amendments that are proposed herein.

¹¹ See Securities and Exchange Release Act No. 60587 (August 28, 2009), 74 FR 46290 (September 8, 2009) (SR-Phlx-2009-73).

¹² The Exchange previously amended the Monthly Cap to \$750,000 and also amended the calculation of the Monthly Cap by aggregating the trading activity of separate ROTs and specialist member organizations if there is at least 75% common ownership between the member organizations as reflected on each member organizations' Form BD, Schedule A as of February 1, 2010. See Securities and Exchange Release No. 61558 (February 22, 2010) (SR-Phlx-2010-16).

In connection with these above-referenced proposals the Exchange proposes to delete endnotes A, B, D and 1 and amend endnote 5 in connection with the proposed amendments specified herein. Endnotes A, B, D and 1 are no longer necessary in light of the proposed amendments herein. Endnote 5 is being amended to correspond with the proposed amendments. The Exchange proposes to delete endnote 5 from the Sector Index Options Fees, specifically the Firm Proprietary fee, as that reference was inadvertently not removed at the time the Exchange filed a proposed rule change eliminating the options transaction charge associated with the sector index options in the \$75,000 Firm-Related Equity Option and Index Option Cap calculation.¹³ Also, the Exchange proposes to delete endnote 5 from the U.S. Dollar-Settled Foreign Currency Options Fees, specifically, the Firm Proprietary fee, as that reference was inadvertently not removed at the time the Exchange filed a proposed rule change redefining the firm proprietary order to exclude U.S. Dollar-Settled Foreign Currency Option Fees from the Firm-Related Cap.¹⁴

Permit Fees and Credits

The Exchange proposes to eliminate the permit credit associated with SQT and RSQT fees. A member organization is eligible to receive a monthly credit against the SQT fee for the number of actual permits issued to the member organization that are utilized by the SQT. Similarly, the RSQT member organizations' fees are subject to credits based on the number of permits applicable to such member organization, subject to the maximum allowable permit credit applicable to each RQST category. The Exchange is proposing to eliminate these credits. In connection with eliminating these credits the Exchange proposes to amend endnote 35 and eliminate endnote 40 to reflect the elimination of the credits. This proposal to eliminate the

¹³ See Securities Exchange Act Release No. 59545 (March 9, 2009), 74 FR 11158 (March 16, 2009) (SR-Phlx-2009-20).

¹⁴ See Securities Exchange Act Release No. 59393 (February 11, 2009), 74 FR 7721 (February 19, 2009) (SR-Phlx-2009-12).

credit is consistent with the Exchange's proposal to eliminate the existing permit fee structure wherein permit holders are categorized differently and assessed differently based on type of permit holder and number of permits held and instead propose one permit fee of \$1,000 for all permit holders. The Exchange would therefore propose removing all other categories and the tiered structure associated with the number of permits held and instead assess only one fee per permit holder. The Exchange believes that while some members may be assessed a higher fee, for example an Order Flow Provider will now be assessed \$1,000 as opposed to \$500, and others will be assessed a lower fee, Floor Brokers, Specialists, ROTs, Off-Floor Traders or Market Makers will be assessed \$1,000 instead of \$1,200 for the first permit and \$1,000 thereafter, overall members will be assessed equally for a permit and no distinction will be made by category or number of permits. The Exchange believes that this fee structure is more equitable and therefore the credit associated with SQT and RSQTs is no longer required. The Exchange believes that this proposal to institute a single permit fee is simpler and treats are members alike, regardless of classification.

Additionally, the Exchange proposes to eliminate the "Other Permit Holder" category. The Other Permit Holder category was adopted for billing purposes to address the limited situation where permit holders did not fall under one of the existing permit fee categories. Status as an Other Permit Holder requires that a permit holder or the member organization for which they solely qualify has no transaction activity for the applicable monthly billing period. Should a permit holder actively transact business during a particular month, the highest applicable monthly permit fee will apply to such permit holder and the member organization for that monthly period. The "other" status only applies to permit holders who solely qualify their member organization, or in other words there is just one permit holder in that member

organization. If there is more than one permit holder in a member organization and that permit holder does not fit within any of the existing permit fee categories, then this "other" category does not apply. Such permit holder or the member organization they solely qualify for must apply for such "other" status in writing to the Membership Department.¹⁵

The Exchange believes that this classification is no longer necessary and all members should be required to pay the same permit fee regardless of classification.¹⁶ Likewise the Exchange proposes to eliminate endnote 45(b), which endnote references the Other Permit Holder fee.

Other Access Service, Cancellation, Membership, Regulatory and Other Fees

The Exchange proposes to increase the Trading Floor Personnel Registration Fee from \$50 to \$100. This fee is imposed on member/participant organizations for individuals who are employed by such member/participant organizations and who work on the Exchange's trading floor, such as clerks, interns, stock execution clerks that handle equity orders that are part of an options contingency order and other associated persons, but who are not registered as members or participants. The Exchange is increasing this fee to keep pace with rising regulatory costs associated with its obligations to conduct oversight on on-floor trading activities. In connection with this proposal the Exchange proposes to amend endnote 55 to conform the language of the endnote to this proposed fee increase.

The Exchange proposes to amend its port fees. The Exchange assesses a monthly fee of \$250.00 for the Order Entry Port Fee.¹⁷ The \$250 monthly Order Entry Port Fee is assessed per

¹⁵ See Securities Exchange Act Release No. 59641 (March 27, 2009), 74 FR 15024 (April 2, 2009) (SR-Phlx-2009-26).

¹⁶ There are currently no members who are assessed the Other Permit Holder fee.

¹⁷ The Order Entry Port Fee is a connectivity fee assessed on members in connection with routing orders to the Exchange via an external order entry port. Members access the

member organization order entry mnemonic¹⁸. The Exchange assesses the \$250 monthly Order Flow Port Fee on members regardless of whether the order entry mnemonic is active¹⁹ during the billing month. The fee is assessed regardless of usage, and solely on the number of order entry ports assigned to each member organization. The Exchange proposes to increase the fee from \$250 to \$500 per month per mnemonic. Also, the Exchange proposed to modify the manner in which members are assessed the Order Entry Port Fee to assess the fee per mnemonic instead of per mnemonic and per the number of order entry ports. The Exchange proposes to amend the Fee Schedule to note that the fee is assessed per mnemonic.

Additionally, the Exchange proposes to amend the SQF Port Fee to change the name to the “Active SQF Port Fee” and also amend the fee structure to eliminate the tiered structure and instead propose a monthly fee of \$500 per port. “SQF” stands for specialized quote feed and is a proprietary quoting system that allows specialists, streaming quote traders and remote streaming quote traders to connect and send quotes into Phlx XL II, bypassing the Exchange's Auto-Quote System.²⁰ The SQF port fee is assessed in connection with sending quotes to the Exchange. The SQF port fee is assessed as follows: for the first 5 active SQF ports, a member organization would be charged \$250 per port per month and, for each additional active SQF port (over the first 5 active SQF ports), the member organization would be charged \$1,000 per port per month. Additionally, the same member organization would be credited \$0.02 per side for every option

Exchange's network through order entry ports. A member organization may have more than one order entry port.

¹⁸ Order entry mnemonics are codes that identify member organization order entry ports.

¹⁹ An order entry mnemonic is considered active if a member organization sends at least one order to the Exchange using that order entry mnemonic during the applicable billing month. See Securities Exchange Act Release No. 58728 (October 3, 2008), 73 FR 59695 (October 9, 2008) (SR-Phlx-2008-70).

²⁰ See Exchange Rule 1080, Commentary .01(b).

contract executed on the Exchange in that same month (excluding executions resulting from dividend, merger and short stock interest strategies) up to the amount of the SQF port fees when the member organization or one of its employees is designated as a specialist, SQT or RSQT and the transaction is billed according to the specialist or ROT transaction and/or comparison rates.²¹ The SQF port fee and corresponding credit are applied per member organization.²²

In connection with this proposal a corresponding amendment is proposed to endnote 65 to clarify the endnote. The Exchange believes that by billing the Order Entry Port Fee per mnemonic instead of per mnemonic per port, member assessments will be reduced. The proposal to amend the SQF port fee is meant to simplify the fee structure. The Exchange believes that these increases in fees are necessary to keep pace with escalating technology costs.

Other Amendments

The Exchange proposes to eliminate endnote E which relates to a Pilot Program which is set to expire December 31, 2009 (“Pilot”). The Pilot is applicable to specialists and ROTs trading certain U.S. dollar-settled foreign currency options (“FCOs”), specifically the Mexican peso, Swedish krona, South African rand or the New Zealand dollar (“Pilot FCOs”). The Pilot Program allows the Exchange to waive the applicable specialist and ROT option transaction fees for specialists and ROTs trading Pilot FCOs.²³ The Exchange pays a \$1,700 monthly stipend (“Monthly Stipend”) per currency to each member organization acting as a specialist.²⁴ As the

²¹ The Exchange is proposing to eliminate the SQT and RSQT credits as proposed herein.

²² SQTs and RSQTs are assessed fees pursuant to the ROT rates as SQTs and RSQTs are deemed to be ROTs. See Exchange Rule 1014(b)(ii)(A) and (B).

²³ FCOs are currently traded on the Exchange under the name PHLX World Currency Options® (“WCOs”).

²⁴ See Securities Exchange Act Release No. 60392 (July 28, 2009), 74 FR 38477 (August 3, 2009) (SR-Phlx-2009-57).

Pilot is set to expire, the Exchange proposes to eliminate endnote E which makes reference to the Pilot.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act²⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act²⁶ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. Specifically, the Exchange believes that this proposal is equitable because it would apply evenly to ROTs and specialists transacting equity options contracts sent to the Exchange for execution, in that any SQT or RSQT or specialist may act as a Directed Participant and receive the \$.21 per contract equity options transaction fee. The Exchange believes that by eliminating the Volume Threshold and instead proposing a Monthly Cap of \$750,000 that members will benefit from such a cap and this would decrease fee assessments to member organizations and incentivize them to transact more business on the Exchange. This also applies to the decrease from \$.22 to \$.21 for ROTs in options transaction charges. The Exchange is also increasing certain fees including the Firm fee, the Sector Index options fees and the Trading Floor Personnel Registration fee and also increasing the Firm Related Equity Option Cap. The Exchange believes that other fee changes, which benefit members, will offset, to a certain degree, these proposed increases. Specifically, the Trading Floor Personnel Registration fee is tied to increase costs of regulating floor members. The proposed amendments to the permit fees will simplify the permit fee structure and assess one fee on all permit holders. The elimination of the Other Permit category should not impact members as this category is no longer applicable. Also, the proposed permit fee is equitable in that all members will be required to pay the same

²⁵ 15 U.S.C. 78f(b).

²⁶ 15 U.S.C. 78f(b)(4).

permit fee under the new structure. The elimination of the permit fee credit is encompassed in the overall proposal to amend the fee structure related to permit fees. The Exchange believes that the permit fee credit is no longer necessary under this new permit fee proposal. The proposed amendments to the Port fees should allow the Exchange to keep pace with increasing technology costs. Finally, other amendments are conforming and clarifying amendments to reflect the proposed amendments discussed herein with respect to the explanatory endnotes.

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.

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 Act²⁷ and paragraph (f)(2) of Rule 19b-4²⁸ 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:

²⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁸ 17 CFR 240.19b-4(f)(2).

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. Please include File Number SR-Phlx-2010-25 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-2010-25. 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 of the submission, 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such 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-2010-25 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.²⁹

Florence E. Harmon
Deputy Secretary

²⁹ 17 CFR 200.30-3(a)(12).