

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61905; File No. SR-Phlx-2010-55)

April 14, 2010

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a New Category of Fees for “Professionals”

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 March 31, 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 adopt fees for a new type of participant called “professional.”³

While changes to the Exchange’s Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be operative on April 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, at the Commission’s Public Reference Room, and on the Commission’s Web site at <http://www.sec.gov>.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 61802 (March 30, 2010), 75 FR 17193 (April 5, 2010) (SR-Phlx-2010-05).

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 adopt a new category of fees, “professional.” The Exchange believes that the proposed fees for professional orders will allow the Exchange to remain competitive with other options exchanges who apply fees to professional orders.

The Exchange defines a “professional” as any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s)⁴ (hereinafter “Professional”).

The Exchange proposes to add a “Professional” fee category to its transaction fees for equity options, index options and foreign currency options. The Exchange proposes to amend Categories II, III and IV of the Fee Schedule to assess a \$0.20 transaction fee on Professional orders in all equity option classes, a \$0.35 transaction fee on Professional orders in sector index

⁴ A Professional will be treated in the same manner as an off-floor broker-dealer for purposes of Rules 1014(g)(except with respect to all-or-none orders, which will be treated like customer orders), 1033(e), 1064.02 (except professional orders will be considered customer orders subject to facilitation), and 1080.08 as well as Options Floor Procedure Advices B-6, B-11 and F-5. Member organizations must indicate whether orders are for professionals.

options and a \$0.30 transaction fee on Professional orders in U.S. dollar-settled foreign currency options.

The Exchange is also proposing that Payment For Order Flow Fees⁵ not be assessed on Professional orders and is amending Category II of the Fee Schedule to reflect that. The Exchange would not assess a payment for order flow fee on professional orders, because the Exchange believes payment for order flow fees are not required to remain competitive with other options exchanges with respect to Professional orders.⁶

In Category V of the Fee Schedule, the Exchange is also proposing that Cancellation Fees⁷ not be assessed on Professional orders. The Exchange is excluding professional orders from the computation of the Cancellation Fee, because the Exchange does not believe that these orders raise the types of issues that the Cancellation Fee is intended to address.⁸

The Exchange also proposes to add a notation to the Routing Fees in Category IX to indicate that Professional orders will be subject to the Routing Fees.

⁵ The Exchange currently assesses \$.25 per contract for options that are executed in the penny pilot program and \$.70 for remaining equity options. These fees are assessed for trades resulting from either Directed or non-Directed Orders that are delivered electronically and executed on the Exchange: Assessed on ROTs, specialists and Directed ROTs on those trades when the specialist unit or Directed ROT elects to participate in the payment for order flow program.

⁶ See Securities Exchange Act Release No. 61693 (March 11, 2010), 75 FR 13175 (March 18, 2010) (SR-ISE-2010-16).

⁷ The Exchange currently assesses \$2.10 per order for each cancelled electronically delivered customer order in excess of the number of customer orders executed on the Exchange by a member organization in a given month. All customer orders from the same member organization that are executed in the same series on the same side of the market at the same price within a 300 second period will be aggregated and counted as one executed customer options order.

⁸ See Securities Exchange Act Release No. 60188 (June 29, 2009), 74 FR 32986 (July 9, 2009) (SR-Phlx-2009-48).

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁰ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that adding Professional fees to the fees applicable to the other equity options, sector index options and foreign currency options transaction fees is fair and reasonable, because the proposed fees are similar to the transaction fees applicable to broker-dealers trading on Phlx¹¹ as well as fees assessed by other options exchanges. For example, CBOE assesses a \$0.20 per contract fee for professional orders in equity options,¹² the same as the Exchange's proposed Category II fees.

With regard to the sector index options fees and foreign currency options fees proposed for Professionals, these charges are similar to the current transaction fees assessed on the Exchange's Registered Options Traders pursuant to Categories III and IV of the Exchange's Fee Schedule; and therefore, the Exchange believes the proposed fee is fair and reasonable.

The Exchange believes that excluding Professional orders from the computation of the Cancellation Fee will continue to fairly allocate costs among members according to system use, which is the purpose of cancellation fees. In addition, the Exchange will not assess specialists, SQTs, RSQTs and ROTs a payment for order flow fee on Professional orders, in order to compete with other options exchanges.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ The options transaction charge for firms is \$.25 per contract; see Category II of the Fee Schedule.

¹² See Securities Exchange Act Release No. 61329 (January 11, 2010), 75 FR 2901 (January 19, 2010) (SR-CBOE-2009-101).

The Exchange also proposes to specify that Routing Fees apply to Professional orders for purposes of clarity.

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 Act¹³ and paragraph (f)(2) of Rule 19b-4¹⁴ 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

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 240.19b-4(f)(2).

- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-Phlx-2010-55 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 No. SR-Phlx-2010-55. 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 Phlx. 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 No. SR-Phlx-2010-55 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.¹⁵

Florence E. Harmon
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).