

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62196; File No. SR-Phlx-2010-73)

June 1, 2010

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Rebates for Adding and Fees for Removing Liquidity

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 May 20, 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 the Exchange’s Fee Schedule to increase the number of options to be included in the Exchange’s current rebates for adding, and fees for removing, liquidity. In addition, the Exchange proposes to clarify its rebates for adding and fees for removing liquidity, specifically the applicability of fees to electronic auctions.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions settling on or after June 1, 2010.

The text of the proposed rule change is available on the Exchange’s Web site 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 www.sec.gov.

¹ 15 U.S.C. 78s(b)(1).

² 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 [sic] The Exchange proposes to increase liquidity and to attract order flow by increasing the number of options to be included in the Exchange’s current rebates for adding and fees for removing liquidity.

Specifically, the Exchange proposes to add the following twenty-five options: Ambac Financial Group, Inc. (“ABK”), Barrick Gold Corporation (“ABX”), Ariad Pharmaceuticals, Inc. (“ARIA”), American Express Company (“AXP”), Ciena Corp. (“CIEN”), Star Scientific, Inc. (“CIGX”), Dendreon Corp. (“DNDN”), eBay Inc. (“EBAY”), Corning Inc. (“GLW”), Halliburton Company (“HAL”), iShares Dow Jones US Real Estate (“IYR”), Motorola, Inc., (“MOT”), NVIDIA Corporation (“NVDA”), ON Semiconductor Corp. (“ONNN”), Oracle Corp. (“ORCL”), ProShares UltraShort, QQQ (“QID”), Transocean Ltd. (“RIG”), Rambus, Inc. (“RMBS”), ProShares UltraShort S&P500 (“SDS”), ProShares UltraShort 20+ Year Treasury (“TBT”), Visa, Inc. (“V”), Vale S.A. (“VALE”), SPDR S&P Homebuilders (“XHB”), Xerox Corp. (“XRX”), Yahoo! Inc. (“YHOO”) collectively (“the options”). The options would be subject to the rebates for adding and fees for removing liquidity.

The Exchange currently assesses a per-contract transaction charge in various select symbols³ (the “select Symbols”) on six different categories of market participants that submit orders and/or quotes that “take,” liquidity from the Exchange: (i) specialists, Registered Options Traders (“ROTs”)⁴, Streaming Quote Traders (“SQTs”)⁵ and Remote Streaming Quote Traders (“RSQTs”);⁶ (ii) customers;⁷ (iii) specialists, SQTs and RSQTs that receive Directed Orders (“Directed Participants”⁸ or “Directed Specialists, RSQTs, or SQTs”⁹); (iv) Firms; (v) broker-dealers; and (vi) Professionals.¹⁰ The current per-contract transaction charge depends on the

³ The fees and rebates for adding and removing liquidity are applicable to executions in options overlying AA, AAPL, AIG, ALL, AMD, AMR, AMZN, BAC, BRCD, C, CAT, CSCO, DELL, DIA, DRYS, EK, F, FAS, FAZ, GDX, GE, GLD, GS, IBM, INTC, IWM, JPM, LVS, MGM, MSFT, MU, NEM, NOK, PALM, PFE, POT, QCOM, QQQQ, RIMM, SBUX, SIRI, SKF, SLV, SMH, SNDK, SPY, T, TZA, UAUA, UNG, USO, UYG, VZ, WYNN, X and XLF (“Symbols”).

⁴ A ROT includes a SQT, a RSQT and a Non-SQT, which by definition is neither a SQT or a RSQT. See Exchange Rule 1014 (b)(i) and (ii).

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).

⁷ This applies to all customer orders, directed and non-directed.

⁸ For purposes of the fees and rebates related to adding and removing liquidity, a Directed Participant is a Specialist, SQT, or RSQT that executes a customer order that is directed to them by an Order Flow Provider and is executed electronically on PHLX XL II.

⁹ See Exchange Rule 1080(l), “...The term ‘Directed Specialist, RSQT, or SQT’ means a specialist, RSQT, or SQT that receives a Directed Order.” A Directed Participant has a higher quoting requirement as compared with a specialist, SQT or RSQT who is not acting as a Directed Participant. See Exchange Rule 1014.

¹⁰ 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

category of market participant submit orders and/or quotes that “take,” liquidity from the Exchange.

The Exchange also currently assesses a per-contract rebate of transaction charges for orders or quotations that add liquidity in the select Symbols. The amount of the rebate depends on the category of participant whose order or quote was executed as part of the Phlx Best Bid and Offer. The Exchange proposes to add the twenty-five additional options to the list of select Symbols applicable to the rebates for adding and fees for removing liquidity.

The Exchange also proposes to clarify its rebates for adding and fees for removing liquidity, specifically the applicability of fees to electronic auctions. Currently, the Exchange describes the applicability of rebates for adding liquidity and fees for removing liquidity, in an electronic auction, as follows: “Customer, Professional, Directed Participant and Specialist, ROT, SQT and RSQT fees for removing liquidity will not apply to transactions resulting from electronic auctions. Electronic auctions include, without limitation, the Complex Order Live Auction (“COLA”), and Quote and Market Exhaust auctions. Firm and Broker-Dealer fees for removing liquidity will, however apply to transactions resulting from electronic auctions.” The Exchange proposes to make clear that a Specialist, ROT, including an SQT and RSQT, would not receive a rebate for adding liquidity in an electronic auction.¹¹ The Exchange proposes to add language to the Fee Schedule to clarify the applicability of rebates for adding liquidity in an electronic auction.

average during a calendar month for its own beneficial account(s) (hereinafter “Professional”). See Exchange Rule 1000(b)(14).

¹¹ The Exchange is unable to calculate the rebates for Specialists, ROTs, including SQTs and RSQTs, in an electronic auction.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions settling on or after June 1, 2010.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹² in general, and furthers the objectives of Section 6(b)(4) of the Act¹³ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the addition of the options to the rebates for adding and fees for removing liquidity is reasonable and equitable in that it will apply to all categories of participants in the same manner. The fees which are currently applicable to each market participant will continue to apply to the select Symbols.

The Exchange believes that clarifying the applicability of the rebates for adding liquidity in an electronic auction is reasonable because it clearly states when the rebate is applicable to certain transactions. The Exchange also believes that the clarification is equitable because it makes clear what fees will be assessed to Specialists, ROTs, including SQTs and RSQTs, in an electronic auction. Currently, Specialists, ROTs, including SQTs and RSQTs, do not receive rebates for adding liquidity in an electronic auction. The Exchange's proposal would add language to the Fee Schedule to state that with respect to electronic auctions, Specialists and ROTs would not receive a rebate, which language is consistent with the Exchange's current practice.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

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 Act¹⁴ and paragraph (f)(2) of Rule 19b-4¹⁵ 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. Please include File Number SR-Phlx-2010-73 on the subject line.

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁵ 17 CFR 240.19b-4(f)(2).

Paper comments:

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

All submissions should refer to File Number SR-Phlx-2010-73. 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 publicly available. All submissions should refer

to File Number SR-Phlx-2010-73 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.¹⁶

Florence E. Harmon
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).