

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62766; File No. SR-Phlx-2010-117)

August 25, 2010

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees, the Monthly Cap and Electronic Auctions

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 August 23, 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 its fees as follows: (i) amend the pricing for Exchange members using the Phlx XL II system,³ for routing standardized equity and index option customer and professional orders to away markets for execution; (ii) amend the Monthly Cap on equity option transaction fees; and (iii) clarify language relating to electronic auctions in the Rebates and Fees for Adding and Removing Liquidity in Select Symbols.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ For a complete description of Phlx XL II, see Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32). The instant proposed fees will apply only to option orders entered into, and routed by, the Phlx XL II system.

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 for trades settling on or after September 1, 2010.

The text of the proposed rule change is available on the Exchange's website at <http://www.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 website at www.sec.gov.

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 recoup costs that the Exchange incurs for routing and executing Customer⁴ and Professional⁵ orders in equity and index options to away markets, specifically the NASDAQ Options Market ("NOM").

⁴ The term Customer applies to a transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation which is not for the account of broker or dealer or for the account of a "Professional" as that term is defined in Rule 1000(b)(14).

⁵ 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

In May 2009, the Exchange adopted Rule 1080(m)(iii)(A) to establish Nasdaq Options Services LLC (“NOS”), a member of the Exchange, as the Exchange’s exclusive order router.⁶ NOS is utilized by the Phlx XL II system solely to route orders in options listed and open for trading on the Phlx XL II system to destination markets.

Currently, the Exchange’s Fee Schedule includes Routing Fees for both Customer and Professional orders. The Exchange currently assesses a Routing Fee of \$.46 per contract in all Customer and Professional option orders that are routed to NOM.

The Exchange proposes to amend the current fee of \$.46 per contract that is assessed for routing Customer and Professional orders to NOM in all options to \$.49 per contract. The Exchange is proposing this amendment in order to recoup clearing and transaction charges which are incurred by the Exchange when orders are routed to NOM. Each destination market’s transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange. The Exchange proposes this fee change to account for an increase in cost for routing to NOM.⁷

The Exchange also proposes to amend its Monthly Cap assessed on Registered Options Traders (“ROT”) and Specialists⁹ for equity options transactions. The Exchange currently

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

⁶ See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32).

⁷ See SR-NASDAQ-2010-105.

⁸ A Registered Option Trader is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. 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).

⁹ A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

provides ROTs and Specialists a Monthly Cap of \$650,000. The Exchange is proposing to reduce that Monthly Cap to \$600,000.¹⁰ The Exchange believes that by reducing the Monthly Cap, a greater number of members may benefit from the Monthly Cap and the Exchange will attract additional order flow.

Finally, the Exchange proposes to clarify certain language in the Rebates and Fees for Adding and Removing Liquidity in Select Symbols, which was added in a previous rule change that [sic] relating to electronic auctions.¹¹ The Exchange previously filed a rule change concerning the applicability of fees in electronic auctions.¹² These fees are contained in Section I of the Fee Schedule and titled Rebates and Fees for Adding and Removing Liquidity in Select Symbols. In that rule change, the Exchange specified that a Specialist and an ROT, including an SQT and RSQT, would not receive a rebate for adding liquidity in an electronic auction. In that filing the Exchange noted that it is unable to calculate the rebates for Specialists and ROTs, including SQTs and RSQTs, in an electronic auction. The Exchange proposes to further clarify that Customers, Professionals and Directed Participants¹³ would also not receive a rebate for adding liquidity in an electronic auction.

The Exchange inadvertently did not include Customers, Professionals and Directed Participants in that earlier amendment. As with the other market participants, the Exchange is

¹⁰ In calculating the Monthly Cap, the trading activity of separate ROTs and Specialist member organizations are aggregated if there is at least 75% common ownership between the member organizations.

¹¹ Electronic auctions include, without limitation, the Complex Order Live Auction (“COLA”), and Quote and Market Exhaust auctions.

¹² Electronic auctions include, without limitation, the Complex Order Live Auction (“COLA”), and Quote and Market Exhaust auctions.

¹³ 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.

currently unable to determine when a Customer, Professional or Directed Participant is adding liquidity in electronic auctions for purposes of applying the rebates. The Exchange proposes to clarify the language in the Fee Schedule to add Customers, Professionals and Directed Participants to the existing language. The Exchange's proposal would add language to the Fee Schedule to state that with respect to electronic auctions, Customers, Professionals and Directed Participants would not receive a rebate, which language is consistent with the Exchange's current practice.

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 for trades settling on or after September 1, 2010.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹⁴ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁵ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that the increase to the NOM Routing Fee is both equitable and reasonable because the Exchange is seeking to recoup the costs incurred by the Exchange to route Customer and Professional orders to NOM on behalf of its members.

The Exchange believes that it is both equitable and reasonable to lower the Monthly Cap. By lowering the Monthly Cap, the Exchange believes a greater number of ROTs and Specialists will benefit from such a Monthly Cap.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4).

Finally, the Exchange believes that clarifying the applicability of the rebates for adding liquidity in an electronic auction is equitable and reasonable because it clearly states when the rebate is applicable to certain transactions. Currently, Customers, Professionals and Directed Participants do not receive rebates for adding liquidity in an electronic auction.

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 Act.¹⁶ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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:

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

- 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-2010-117 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-2010-117. 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 website 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 No. SR-Phlx-2010-117 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Florence E. Harmon
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).