

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63070; File No. SR-Phlx-2010-129)

October 8, 2010

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rebates and Fees for Adding and 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 September 27, 2010, NASDAQ OMX PHLX LLC (“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 Rebates and Fees for Adding and Removing Liquidity in Select Symbols to amend its current fees for removing liquidity and also add certain fees to apply to Complex Orders.

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 October 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.

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 to incentivize Broker-Dealers that route Customer orders to use the Exchange's enhanced automated opening system³ as well as to route Complex Order volume to the Exchange. The increased Customer volume should benefit market makers⁴ and other Broker-Dealers engaged in proprietary trading.

The Exchange is proposing to amend its current Rebates and Fees for Adding and Removing Liquidity in Select Symbols to apply only to single contra-side orders, which will now be part A of Section I of the Fee Schedule. The Select Symbols currently listed on the Fee Schedule will remain the same.⁵ The Exchange is proposing to increase the Directed Participant and Specialist, ROT, SQT and RSQT Fee for Removing Liquidity to \$0.33 per contract. Currently, Directed Participants are assessed a \$0.30 per contract Fee for Removing Liquidity

³ See Exchange Rule 1017(l).

⁴ The Exchange market maker category includes Specialists (see Rule 1020) and Registered Options Traders (Rule 1014(b)(i) and (ii), which includes Streaming Quote Traders or SQTs (see Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders or RSQTs (see Rule 1014(b)(ii)(B)).

⁵ The Rebates and Fees for Adding and Removing Liquidity in Select Symbols will continue to apply only to electronic orders.

and Specialists, ROTs, SQTs and RSQTs are assessed a \$0.32 per contract Fee for Removing Liquidity.

The Exchange is also proposing to add separate Rebates and Fees for Adding and Removing Liquidity in Select Symbols for the electronically executed Complex Order⁶ side of any transaction as a new part B of Section I of the Fee Schedule. The Exchange is proposing to pay a Rebate for Adding Liquidity and assess a Fee for Removing Liquidity, which would apply only to the Complex Order side of a transaction. For example, one component of a Complex Order is a buy order that trades with a “simple” or non-Complex Order sell order, the sell order is subject to the fees in part A of Section I of the Fee Schedule and the buy order is subject to the fees in new part B of Section I of the Fee Schedule.

The proposed fees are as follows:

	Customer	Directed Participant	Specialist, ROT, SQT and RSQT	Firm	Broker-Dealer	Professional
Rebate for Adding Liquidity	\$0.22	\$0.25	\$0.23	\$0.10	\$0.10	\$0.20
Fee for Removing Liquidity	\$0.25	\$0.25	\$0.27	\$0.27	\$0.35	\$0.27

The Exchange also proposes to apply these fees above as follows:

⁶ A complex order strategy means any Complex Order involving any option series which is priced at a net debit or credit (based on the relative prices of each component). The Exchange will calculate both a bid price and an offer price for each complex order strategy based on the current PBBO (as defined below) for each component of the Complex Order and the bid/ask differential for each component. See Exchange Rule 1080, Commentary .08(a)(ii).

- Customer Complex Orders would receive the Rebate for Adding Liquidity when those orders are electronically executed against a [sic]⁷ Customer contra-side order with the same Complex Order strategy.
- Customer Complex Orders that are executed against a Customer contra-side order with the same Complex Order strategy would not be assessed the Fee for Removing Liquidity.
- A Professional, Directed Participant, Firm, Broker-Dealer and Specialist, ROT, SQT and RSQT would be assessed the Fees for Removing Liquidity when those orders are executed against a contra-side order with the same Complex Order strategy.
- A single contra-side order that is executed against the individual components of a Complex Order would be assessed the fees in Part A of this Section.
- The individual components of a Complex Order would be assessed the fees in Part B of this Section

The following would continue to apply to the fees designated as Parts A and B:

- The Monthly Cap on transaction fees that are currently applicable to ROTs and Specialists transacting equity options will not be applicable to the Select Symbols.
- The Firm Related Equity Option Cap will not be applicable to the Select Symbols.
- The Market Access Provider (“MAP”) Subsidy will not apply to electronic transactions in the Select Symbols.
- Payment for Order Flow fees will not be collected on transactions in the Select Symbols.
- The Options Floor Broker Subsidy will be applicable to qualifying transactions in the Select Symbols (see Options Floor Broker Subsidy Fees).
- The Cancellation Fee will continue to apply to the Select Symbols.
- Transactions in the Select Symbols executed via open outcry will be subject to the Equity Options Fees (see Equity Options Fees in Section II). However, if one side of the transaction is executed using the Options Floor Broker Management System and any other side of the trade was the result of an electronically submitted order or a quote, then these fees will apply to the FBMS contracts and contracts that are executed electronically on all sides of the transaction.

⁷ The Commission notes that the Exhibit 5 attached to the form 19b-4 states that “Customer Complex Orders will receive the Rebate for Adding Liquidity when electronically executed against a non-Customer contra-side order with the same Complex Order Strategy.” (Emphasis added).

The Exchange is removing the following language, which previously related to Complex Orders for fees in Section I: “Regular Equity Option transaction fees will apply to Complex Orders that are electronically executed against a contra-side order with the same Complex Order Strategy.” Also, the following language is proposed to be deleted: “Single contra-side orders that are executed against the individual components of Complex Orders will be charged according to the above fees. The individual components of such a Complex Order will be charged according to the above fees.” Because Complex Orders are now part B of this Fee Schedule, this language is no longer necessary.

The Exchange is proposing to amend the application of the Rebates and Fees for Adding and Removing Liquidity in Select Symbols, Section I, to its opening and auction processes by adopting new part C. Currently, Section I does not apply to contracts executed during the Exchange’s opening process,⁸ except for the Firm and the Broker-Dealer Fee for Removing Liquidity. Also, currently, Customer, Professional, Directed Participant, and Specialist, ROT, SQT and RSQT Fees for Removing Liquidity do not apply to transactions resulting from electronic auctions.⁹ Firm and Broker-Dealer Fees for Removing Liquidity do apply to transactions resulting from electronic auctions. Customer, Professional, Directed Participant, and Specialist, ROT, SQT and RSQT Rebates for Adding Liquidity do not apply to transactions resulting from electronic auctions.

The Exchange is proposing to amend the fees that apply to all electronic auctions, including the Exchange’s opening process. The Exchange proposes that a Customer would receive a Rebate for Adding Liquidity in an electronic auction and during the Exchange’s

⁸ See Exchange Rule 1017, Openings in Options.

⁹ Electronic auctions include, without limitation, the Complex Order Live Auction (“COLA”), and Quote and Market Exhaust auctions.

opening process, except when such Customer order is contra to another Customer order. A Customer would not be assessed a Fee for Removing Liquidity in an electronic auction and during the Exchange's opening process. The Exchange also proposes that Professional, Directed Participant, Firm, Broker-Dealer and Specialist, ROT, SQT and RSQT Fees for Removing Liquidity would apply to transactions resulting from electronic auctions and the Exchange's opening process.

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 October 1, 2010.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act¹¹ 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's proposal to assess separate fees for Complex and non-Complex Orders in Section I of its Fee Schedule is consistent with industry fees that allow for different rates to be charged for different order types originated by dissimilarly classified market participants.¹² The Exchange believes that this amendment to the fees is both reasonable and equitable because the fees are within the range assessed other

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

¹² See Securities Exchange Act Release No. 62805 (August 31, 2010), 75 FR 54682 (September 8, 2010) (SR-ISE-2010-90).

market participants and are similar to fees being assessed by the International Securities Exchange, LLC (“ISE”) for complex order executions.¹³

The Exchange proposes to pay a Rebate for Adding Liquidity to Customers when such transaction is contra to a non-Customer order during an electronic auction and opening processes. Similarly, the Exchange proposes to not assess a fee to a Customer during such processes. The Exchange also proposes to apply the Fee for Removing Liquidity to all non-Customer market participants equally during electronic auction or opening processes. The Exchange believes that these proposals are both reasonable and equitable because they should incentivize Customer orders and attract additional order flow to the Exchange. Also, all other participants are equally assessed the applicable Fees for Removing Liquidity.

The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that the fees it charges for options overlying the various Select Symbols remain competitive with fees charged by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

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.

¹³ See ISE’s Schedule of Fees.

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.¹⁴ 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:

- 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-2010-129 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-2010-129. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<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-2010-129 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.¹⁵

Florence E. Harmon
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).