

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63495; File No. SR-Phlx-2010-171)

December 9, 2010

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Collection of Exchange 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 December 6, 2010, NASDAQ OMX PHLX LLC (“Phlx” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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, pursuant to Section 19(b)(1) of the Act³ and Rule 19b-4 thereunder,⁴ proposes to amend Exchange Rule 3202, Application of Other Rules of the Exchange, to add Exchange Rule 909, Collection of Exchange Fees and Other Claims, to the list of Rules which are applicable to PSX Participants.

The text of the proposed rule change is available on the Exchange’s Website at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(1).

⁴ 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to require PSX Participants to provide a clearing account number for an account at the National Securities Clearing Corporation ("NSCC") for purposes of permitting the Exchange to debit any undisputed or final fees, fines, charges and/or other monetary sanctions or other monies due and owing to the Exchange or other charges related to Rule 924. Currently, the Exchange requires all members of the Exchange trading options to provide such an NSCC account number. The Exchange believes that the proposed debiting process for PSX Participants would create an efficient method of collecting undisputed or final fees, fines, charges and/or other monetary sanctions or monies due and owing to the Exchange from those PSX Participants.⁵ Further, this proposal would provide a cost savings to the Exchange in that it would alleviate administrative processes related to the collection of monies owed to the Exchange for PSX Participants as it does today for members trading options. Collection matters divert staff resources away from the Exchange's regulatory

⁵ The Exchange will not debit accounts for fees that are unusually large or for special circumstances, unless such debiting is requested by the member.

and business purposes. In addition, the debiting process would prevent PSX Participant accounts from becoming overdue.

The Exchange proposes to require PSX Participants and applicants to provide a clearing account number for an account at NSCC in order to permit the Exchange to debit any undisputed or final fees, fines, charges and/or monetary sanctions or other monies due and owing to the Exchange or other charges related to Rule 924⁶. The Exchange would send a monthly invoice⁷ to each PSX Participant on approximately the 3th – 10th business day of the following month. The Exchange would also send a file to NSCC each month on approximately the 23rd of the following month to initiate the debit of the appropriate amount stated on the PSX Participant's invoice for the prior month. Because the PSX Participant would receive an invoice well before any monies are debited (normally within two weeks), the PSX Participant would have adequate time to contact the staff with any questions concerning their invoice.

If a PSX Participant disagrees with the invoice, the Exchange would not commence the debit until the dispute is resolved. Specifically, the Exchange will not include the disputed amount in the debit if the member has disputed the amount in writing to the Exchange's designated staff by the 15th of the month, or the following business day if the 15th is not a business day, and the amount in dispute is at least \$10,000 or greater. Once NSCC receives the file from the Exchange, NSCC would proceed to debit the amounts indicated from the clearing members' account. In the instance where the PSX Participant clears through an Exchange

⁶ Exchange Rule 924 entitled, Obligations of Members and Member Organizations to the Exchange, states, among other things, that members and member organizations shall be liable for such fees, fines, dues, penalties and other amounts imposed by the Exchange.

⁷ The monthly invoice will indicate that the amount on the invoice will be debited from the designated NSCC account. Each month, the Exchange will send a file to the member's clearing firm which will indicate the amounts to be debited from each member. If a member is "self-clearing", no such file would be sent as the member would receive the invoice, as noted above, which would indicate the amount to be debited.

clearing member, the estimated transactions fees owed to the Exchange are typically debited by the clearing member on a daily basis in order to ensure adequate funds have been escrowed. The Exchange would debit any monies owed including undisputed or final fees⁸, fines, charges and/or monetary sanctions or monies due and owed to the Exchange.⁹ The Exchange believes that the debit process would eliminate the risk of unpaid invoices because of the large amounts of capital held at NSCC by members.

The Exchange proposes to add Rule 909 to the list of Exchange Rules which are applicable to PSX Participants. The Exchange proposes this rule change become operative upon ten (10) days written notice to PSX Participants, upon the publication of this rule change in the federal register.¹⁰

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹² in particular, in that it is

⁸ Exchange fees are noted on the Exchange Fee Schedule.

⁹ This includes, among other things, fines which result from: violation of Rule 60, Order and Decorum; violations of the Minor Rule Plan pursuant to Rule 970; monetary sanctions imposed by the Business Conduct Committee relating to a Letter of Caution; and monetary sanctions imposed by a Hearing Panel in connection with Disciplinary Violations. With respect to disciplinary sanctions that are imposed by either the Business Conduct Committee or a Hearing Panel, the Exchange would not debit any monies until such action is final. The Exchange would not consider an action final until all appeal periods have run and/or all appeal timeframes are exhausted. With respect to non-disciplinary actions, the Exchange would similarly not take action to debit a member account until all appeal periods have run and/or all appeal timeframes are exhausted. Any uncontested disciplinary or non-disciplinary actions will be debited, and the amount due will appear on the members invoice prior to the actual NSCC debit.

¹⁰ The Exchange would also notify members by phone and through Equity Trader Alerts of this proposal prior to the approval of the proposal to prepare members for this rule change.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by providing PSX Participants with an efficient process to pay undisputed or final fees, fines, charges and/or monetary sanctions or monies dues and owing to the Exchange. The Exchange believes that this process of debiting NSCC accounts would ease the PSX Participant's administrative burden in paying monthly invoices, avoid overdue balances and provide same day collection from all PSX Participants, who owe monies to the Exchange, which results in equitable treatment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in 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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act¹³ and Rule 19b-4(f)(6)¹⁴ thereunder.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹⁵ However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.¹⁶ The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change to become operative upon ten days written notice to PSX Participants, upon this proposal's publication in the Federal Register.¹⁷ The Exchange proposes to uniformly apply Exchange Rule 909 to all members of NASDAQ OMX PHLX, options and equities. The Exchange currently requires members who transact options to comply with Rule 909 and provide the Exchange with an NSCC number for the purpose of direct debiting. The Exchange believes that expanding this Rule to apply to members transacting equities, PSX Participants, would allow the Exchange to alleviate administrative processes related to the collection of monies. The Exchange desires to provide PSX Participants adequate time to transition to direct debit and therefore requests the Commission waive the 30-day operative delay. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and hereby designates the proposal operative upon ten days written notice to PSX Participants, upon this proposal's publication in the Federal Register.¹⁸

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ Id.

¹⁷ The Exchange has stated that it will notify members by phone and through Equity Trader Alerts to prepare members for this rule change.

¹⁸ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2010-171 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-2010-171. 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 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 Number SR-Phlx-2010-171 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.¹⁹

Florence E. Harmon
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).