

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63595; File No. SR-Phlx-2010-179)

December 22, 2010

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Cancellation Fee

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 16, 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 Fee Schedule to eliminate the Cancellation Fee for electronically delivered customer orders from Section II, Equity Options Fees, of the Fee Schedule.

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 occurring on and after January 3, 2011.

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, and at the Commission's Public Reference Room.

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 amend the Exchange's Fee Schedule, specifically Section II, Equity Options Fees, to eliminate the Cancellation Fee for electronically delivered customer orders.

Currently, the Exchange assesses a Cancellation Fee on electronically delivered Customer order for symbols other than the select symbols in Section I of the Fee Schedule³ and Professional All-or-None ("AON") orders that are submitted by a member. The Exchange assesses \$2.10 per order for each cancelled electronically delivered customer order and \$1.10 per order for each cancelled electronically delivered AON order submitted by a Professional in excess of the number of AON orders submitted by a Professional executed on the Exchange by a member organization in a given month.⁴ A Cancellation Fee is not assessed in a month in which

³ Section I of the Fee Schedule titled Rebates and Fees for Adding and Removing Liquidity in Select Symbols contains a list of symbols which apply to Section I of the Fee Schedule ("Select Symbols").

⁴ All customer or AON orders submitted by a Professional 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 are aggregated and counted as one executed customer or AON option order submitted by a Professional.

fewer than 500 electronically delivered customer or AON orders submitted by a Professional, respectively, are cancelled.⁵

The Exchange is proposing to amend the Cancellation Fee in Section II so that the Cancellation Fee would not apply to customer orders. The Cancellation Fee would continue to apply to Professional AON orders in all symbols, both Select Symbols and non-Select Symbols, and it would continue to not apply to any other type of Professional order.

The Exchange recently amended the Fee Schedule to remove the Cancellation Fee for customer orders in the Select Symbols.⁶ The Exchange believes the Cancellation Fee is no longer required for customers to cover the cost of system utilization. In addition, the requirement to mark Professional orders has also alleviated some of the capacity issues that resulted from customer cancel orders.⁷ The Exchange believes that removing the Cancellation Fee for customer orders is appropriate because the concerns with system congestion have been alleviated by the requirement to mark Professional 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 operative for trades occurring on or after January 3, 2011.

⁵ A Cancellation Fee does not apply to pre-market cancellations, Complex Orders that are submitted electronically, unexecuted Immediate-or-Cancel ("IOC") customer orders or cancelled customer orders that improved the Exchange's prevailing bid or offer ("PBBO") market at the time the customer orders were received by the Exchange.

⁶ See Securities Exchange Act Release No. 63252 (November 5, 2010), 75 FR 69486 (November 12, 2010) (SR-Phlx-2010-150).

⁷ See Securities Exchange Act Release No. 61802 (April 5, 2010), 75 FR 17193 (March 30, 2010) (SR-Phlx-2010-05).

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(4) of the Act⁹ 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 proposed amendments to the customer Cancellation Fee are reasonable because they are no longer required to recover costs associated with excessive order cancellation activity. The Exchange believes that there should not be increased system congestion as a result of removing the customer Cancellation Fee.

The Exchange believes that the Cancellation Fee is still necessary with respect to Professional AON orders because those orders are treated as customer orders for purposes of priority. Member organizations must indicate whether orders are for Professionals. The Exchange believes that this requirement to mark an order as Professional has shifted the source of the system congestion from customer orders to Professional AON orders. Continuing to assess a Cancellation Fee for Professional AON orders in all symbols should continue to ease system congestion and allow the Exchange to recover costs associated with excessive order cancellation activity.

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.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

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 Act¹⁰ and paragraph (f)(2) of Rule 19b-4¹¹ thereunder. 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.

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-2010-179 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.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

All submissions should refer to File Number SR-Phlx-2010-179. 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,¹² 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 the 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

¹² The text of the proposed rule change is available on Exchange's website at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, on the Commission's website at <http://www.sec.gov>, at Phlx, and at the Commission's Public Reference Room.

to File Number SR-Phlx-2010-179 and should be submitted on or before [insert date 21 days after publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).