

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63880; File No. SR-Phlx-2011-12)

February 9, 2011

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Fees for Complex Orders

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 February 7, 2011, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“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 Complex Order³ Fees in Section I of its Fee Schedule titled Rebates and Fees for Adding and Removing Liquidity in Select Symbols.

This filing is effective on February 7, 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, 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.

³ A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or ETF coupled with the purchase or sale of options contract(s). See Exchange Rule 1080, Commentary .08(a)(i).

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 modify the Exchange's Fee Schedule to support the enhanced Complex Order System.⁴

Changes to the Fees in Part B, Complex Orders

Specifically, the Exchange is proposing to amend the Rebates for Adding Liquidity, create Fees for Adding Liquidity and amend Fees for Removing Liquidity. With respect to the Rebate for Adding Liquidity, the Exchange proposes to increase the Customer rebate to \$0.24 and not pay other market participants a rebate. With respect to the Fees for Adding Liquidity, the Exchange proposes to not assess Customers any fees and assess market makers \$0.10 per contract and Firms, Broker-Dealers and Professionals \$0.20 per contract. With respect to the Fees for Removing Liquidity, the Exchange proposes to increase Firms and Professionals to \$0.28 per contract (a \$0.01 increase).

A table displaying the proposed fees follows as well as a description of each proposed amendment.

⁴ See Securities Exchange Act Release No. 63777 (January 26, 2011), 76 FR 2733 (January 14, 2011) (SR-Phlx-2010-157).

	Customer	Directed Participant	Specialist, ROT, SQT and RSQT	Firm	Broker-Dealer	Professional
Rebate for Adding Liquidity	\$0.24	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Fee for Adding Liquidity	\$0.00	\$0.10	\$0.10	\$0.20	\$0.20	\$0.20
Fee for Removing Liquidity	\$0.25	\$0.25	\$0.27	\$0.28	\$0.35	\$0.28

First, the Exchange is proposing to amend the Rebates for Adding Liquidity applicable to Section I, Part B, Complex Orders. The Exchange currently pays the following Rebates for Adding Liquidity for Complex Orders: \$0.22 per contract for Customers; \$0.25 per contract for Directed Participants;⁵ \$0.23 per contract for Specialists,⁶ Registered Options Traders,⁷ SQT,⁸ and Remote Streaming Quote Traders;⁹ \$0.10 per contract for Firms and Broker-Dealers; and

⁵ The term “Directed Participant” applies to transactions for the account of a Specialist, Streaming Quote Trader or Remote Streaming Quote Trader resulting from a Customer order that is (1) directed to it by an order flow provider, and (2) executed by it electronically on Phlx XL II.

⁶ A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

⁷ A Registered Options Trader (“ROT”) includes a Streaming Quote Trader (“SQT”), a RSQT and a Non-SQT ROT, which by definition is neither a SQT or a RSQT. A ROT 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. See Exchange Rule 1014 (b)(i) and (ii).

⁸ An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

⁹ A Remote Streaming Quote Trader (“RSQT”) is defined Exchange Rule in 1014(b)(ii)(B) as 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

\$0.20 per contract for Professionals.¹⁰ The Exchange is proposing to increase the Rebate for Adding Liquidity for Customers to \$0.24 per contract and not pay a Rebate for Adding Liquidity to Directed Participants, Specialists, ROTs, SQTs, RSQTs, Firms, Broker-Dealers and Professionals, thereby reducing such rebate to \$0.00. The Exchange believes that it is necessary to continue to pay a rebate solely for Customer complex orders that add liquidity in order to continue to attract Customer complex order flow to the Exchange.

Second, the Exchange is proposing to assess new Fees for Adding Liquidity to Section I, Part B, Complex Orders. Specifically, the Exchange proposes to amend the fees in Part B to assess a Fee for Adding Liquidity for complex orders to all market participants, except for Customers. Customers would not pay a Fee for Adding Liquidity in complex orders. Directed Participants, Specialists, ROTs, SQTs, and RSQTs would be assessed a Fee for Adding Liquidity of \$0.10 per contract. Firms, Broker-Dealers, and Professionals would be assessed a Fee for Adding Liquidity of \$0.20 per contract. The Exchange believes that the increased Customer volume, from the proposed favorable Customer pricing, should benefit market makers¹¹ and other market participants engaged in proprietary trading.

Third, the Exchange proposes to amend the Fees for Removing Liquidity in Section I, Part B, Complex Orders. The Exchange currently assesses the following Fees for Removing Liquidity: \$0.25 per contract for Customers and Directed Participants; \$0.27 per contract for

quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

¹⁰ The term “professional” means 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 average during a calendar month for its own beneficial account(s). See Rule 1000(b)(14).

¹¹ The Exchange market maker category includes Specialists (see Rule 1020) and ROTs (Rule 1014(b)(i) and (ii)), which includes SQTs (see Rule 1014(b)(ii)(A)) and RSQTs (see Rule 1014(b)(ii)(B)).

Specialists, ROTs, SQTs, RSQTs, Firms, and Professionals; and \$0.35 per contract for Broker-Dealers. The Exchange is now proposing to amend the Fees for Removing Liquidity to assess Firms and Professionals a fee of \$0.28 per contract. All other Fees for Removing Liquidity would remain the same.

Changes to the Applicability of Fees in Part B, Complex Orders

Fourth, the Exchange proposes to amend the applicability of the fees in Section I, Part B, Complex Orders by removing limitations relating to the contra-side of a transaction. The individual components of such a Complex Order would continue to be assessed the fees in Part B.

The Exchange currently only pays a Rebate for Adding Liquidity to Customer complex orders when those orders are electronically executed against a non-Customer contra-side order with the same Complex Order Strategy.¹² The Exchange is proposing to delete this text from the Fee Schedule. The Exchange proposes to pay this rebate regardless of the contra-party, except for orders executed as part of the Complex Order Live Auction (“COLA”), the Exchange’s opening process, and other electronic auctions¹³ when such Customer order is contra to another Customer order.¹⁴ Accordingly, the rebate would be available to more complex orders executions, although as described above rebates would only be available to Customers.

¹² 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). See Exchange Rule 1080, Commentary .08(a)(ii).

¹³ Electronic auctions include, without limitation, COLA and the Quote and Market Exhaust auctions. See Exchange Rule 1017. This does not include Exchange’s price improvement mechanism known as Price Improvement XL or (PIXLSM) as described in Exchange Rule 1080(n).

¹⁴ See Part C of the Exchange’s Fee Schedule.

The Exchange currently does not assess a Fee for Removing Liquidity on Customer complex orders that are electronically executed against a Customer contra-side order with the same Complex Order Strategy. The Exchange is proposing to delete this text from the Fee Schedule. The Exchange would now assess a Fee for Removing Liquidity to all Customers regardless of the contra-party, except in an electronic auction and during the Exchange's opening process.¹⁵ Accordingly, this fee would become applicable to more complex orders executions.

The Exchange currently assesses Fees for Removing Liquidity to Directed Participants, Specialists, ROTs, SQTs, RSQTs, Firms, Broker-Dealers, and Professionals when those orders are electronically executed against a contra-side order with the same Complex Order Strategy. The Exchange is proposing to delete this text from the Fee Schedule. Directed Participants, Specialists, ROTs, SQTs, RSQTs, Firms, Broker-Dealers, and Professionals would be assessed a fee under Section I, Part B.¹⁶

Changes to Part C of Section I

Fifth, the Exchange is proposing to amend Section I, Part C of the Fee Schedule¹⁷ regarding electronic auctions and opening process. Currently, a Customer receives a Rebate for Adding Liquidity (as set forth in Part B) in an electronic auction and during the Exchange's opening process, except when such Customer order is contra to another Customer order. This would remain the same for Customer complex orders that are executed as part of an electronic auction¹⁸ and during the Exchange's opening process. The Exchange is proposing to add

¹⁵ See Part C of the Exchange's Fee Schedule.

¹⁶ This includes orders transacted in an electronic auction and the Exchange's opening process.

¹⁷ Part C applies to the fees in Parts A, single contra-side order, and B, complex orders.

¹⁸ In a Complex Order auction, the Customer would receive the proposed \$0.24 per contract Rebate for Adding Liquidity.

language to Part C to provide that for Customer orders that are not complex orders, the Rebate for Adding Liquidity would instead remain at the current rate of \$0.22 per contract, except when such Customer order is contra to another Customer order.

The Exchange is not amending the applicability of the fees in Section I, Part A, Single Contra-Side Order. Single contra-side orders that are executed against the individual components of complex orders will continue to be assessed the fees in Part A.

The Exchange also proposes to make minor, non-substantive, technical amendments to Section I of the Fee Schedule to amend the titles of the sections in Parts A and B.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act²⁰ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange also believes that there is an equitable allocation of reasonable rebates among Exchange members.

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants can readily send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the Complex Order Fees it assesses must be competitive with fees charged by other exchanges. The Exchange further believes that this competitive marketplace impacts the fees assessed by the Exchange today and influences the proposals set forth below. The Exchange believes that the proposed fees and rebates are reasonable and equitably allocated

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(4).

to those members that opt to direct complex orders to the Exchange rather than competing venues.

The Exchange believes that it is reasonable to only pay a Rebate for Adding Liquidity to Customers and pay no rebate to all other market participants because this Customer rebate would attract Customer order flow to the Exchange for the benefit of all market participants. The Exchange believes that the proposal is equitable because by paying a Rebate for Adding Liquidity only to Customers, all market participants would benefit from the increased liquidity which increased Customer order flow would bring to the Exchange. In addition, the Exchange believes that by not assessing such a Fee for Adding Liquidity on Customers and providing Customers a \$0.24 per contract Rebate for Adding Liquidity further incentivizes Customer order flow to the Exchange for the benefit of all market participants.

The Exchange believes that creating a Fee for Adding Liquidity of \$0.10 for market makers and \$0.20 for all other market participants, except for Customers, is reasonable because the Exchange believes that the price differentiation between Firms and Brokers-Dealers and Specialists, ROTs, SQTs and RSQTs is justified in that the Specialists, ROTs, SQTs and RSQTs have obligations to the market, which do not apply to Firms and Broker-Dealers.²¹ Therefore, assessing market makers a lower fee to add liquidity as opposed to Firms, Broker-Dealers and Professionals is reasonable because of these obligations which only apply to market makers. Similarly, the Exchange believes that it is reasonable to assess a \$0.28 per contract Fee for Removing Liquidity on Firms, and by extension Professionals, who have no such quoting requirements as do market makers because market makers have quoting obligations that do not

²¹ See Exchange Rule 1014 titled “Obligations and Restrictions Applicable to Specialists and Registered Options Traders.”

apply to Firms and Professionals. The concept of incenting market makers, who have quoting obligations, by assessing a lower fee as compared with other market participants is not novel.²²

Moreover, the Exchange believes that the proposed Fees for Adding Liquidity and Removing Liquidity are equitable because the fees are consistent with price differentiation that exists today at all option exchanges. Specifically, the Exchange believes that the proposed fee amendments to Part B for complex orders are equitable, because, other than Customers, all market participants would be assessed Fees for Adding Liquidity that are similar to fees assessed by other exchanges for complex order executions.²³ In addition, the Fees for Removing Liquidity rates are similar to those assessed by ISE.²⁴

In addition, the Exchange also believes that these fees are equitable because the net differential between the proposed fees, for either adding or removing liquidity, is similar to the differential which exists on the NASDAQ Options Market (“NOM”) between Customers and Firms for adding liquidity. NOM currently has a differential of \$0.65 per contract between the Firm Fee for Adding Liquidity of \$0.45 per contract as compared to the Customer Rebate to Add Liquidity of \$0.20 per contract in the section titled “All Other Options”.²⁵

As stated above, the Exchange proposes to amend the applicability of the fees in Section I, Part B, Complex Orders by removing limitations relating to the contra-side of a transaction.

²² See Securities Exchange Act Release No. 62048 (May 6, 2010) 75 FR 26830 (May 12, 2010) (SR-ISE-2010-43) (a rule change to incentivize market makers with rebates in order to promote and encourage liquidity in options classes that were subject to the fees proposed).

²³ See The International Securities Exchange, LLC’s (“ISE”) Schedule of Fees, specifically ISE’s Select Symbols and the rates assessed on market makers, broker-dealers, firms and professionals.

²⁴ See ISE’s Schedule of Fees, specifically ISE’s Select Symbols and the rates assessed on market makers, broker-dealers, firms and professionals.

²⁵ See NOM Rule 7050.

The Exchange believes that this proposal related to the applicability of fees is reasonable, because it seeks to pay rebates and assess fees regardless of the contra-party. Additionally, the Exchange believes these amendments are equitable, because the proposal is consistent with the fees and rebates assessed pursuant to Section I, Part A of the current Fee Schedule and general industry fee assessments of members that allow for different rates to be charged for different order types originated by dissimilarly classified market participants. Further, the fee differentials between market participants are within existing industry standards.²⁶

Finally, as stated above, the Exchange is proposing to pay Customer orders that are not complex orders, a Rebate for Adding Liquidity of \$0.22 per contract, except when such Customer order is contra to another Customer order. The Exchange believes that its proposal to pay different rebates as between complex and non-complex orders transacted during certain auctions and the Exchange's opening process is reasonable because the Exchange is continuing to pay rebates to Customers depending on the transaction type as a means to compete for Customer order flow. The Exchange believes that the proposal is equitable because by paying a Rebate for Adding Liquidity only to Customers, the Exchange believes that all market participants would benefit from the increased liquidity which increased Customer order flow would bring to the Exchange.

The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, including its monthly volumes, the order types it uses, and the prices of its quotes and orders (i.e., its propensity to add or remove liquidity).

²⁶ See ISE's Schedule of Fees.

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.²⁷ 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-2011-12 on the subject line.

²⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2011-12. 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 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 to File Number SR-Phlx-2011-12 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.²⁸

Cathy H. Ahn
Deputy Secretary

²⁸ 17 CFR 200.30-3(a)(12).