

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64381; File No. SR-Phlx-2011-57)

May 3, 2011

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Active SQF Port 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 April 25, 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 Section VI of the Exchange’s Fee Schedule pertaining to the Active SQF Port Fee.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on May 2, 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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Exchange proposes to amend the Active SQF Port Fee in Section VI of the Exchange’s Fee Schedule, titled “Access Service, Cancellation, Membership, Regulatory and Other Fees,” in order that the Exchange may provide an equal opportunity to all members to access the Specialized Quote Feed (“SQF”) data at a lower cost. Specifically, the Exchange proposes to cap Active SQF Ports at \$500 per month for member organizations that meet the following criteria: (i) are not members of another national securities exchange (“Phlx Only Members”); and (ii) have 50 or less Streaming Quote Trader (“SQT”)³ assignments⁴ affiliated with the member organization.

SQF is an interface that enables specialists, SQTs and Remote Streaming Quote Traders (“RSQTs”)⁵ to connect and send quotes into Phlx XL.⁶ Active SQF ports are ports that receive

³ 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.

⁴ See Exchange Rules 1014(b) and 507 for qualifications relating to assignments.

⁵ A RSQT is defined in 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 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.

⁶ See Securities Exchange Act Release No. 63034 (October 4, 2010), 75 FR 62441 (October 8, 2010) (SR-Phlx-2010-124).

inbound quotes at any time within that month.⁷ The Exchange currently assesses the following Active SQF Port Fees:

Number of Active SQF Ports	Cost Per Port Per Month
0-4	\$350
5-18	\$1,250
19-40	\$2,350
41 and over	\$3,000

The Exchange currently caps the Active SQF Port Fees at \$40,000 per month.⁸ The Exchange proposes to cap the Active SQF Port Fee at \$500 per month for member organizations that: (i) are Phlx Only Members, as defined above; and (ii) have 50 or less SQT assignments affiliated with their member organization. All other member organizations would continue to be capped at \$40,000 per month. The Exchange proposes to add text to the Fee Schedule to define a Phlx Only Member and indicate which caps apply to which categories and member organizations.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on May 2, 2011.

⁷ The current version, SQF 6.0, allows member organizations to access, information such as execution reports, execution report messages, auction notifications, and administrative data through a single feed. Other data that is available on SQF 6.0 includes: (1) Options Auction Notifications (e.g., opening imbalance, market exhaust, PIXL or other information currently provided on SQF 5.0); (2) Options Symbol Directory Messages (currently provided on SQF 5.0); (3) System Event Messages (e.g., start of messages, start of system hours, start of quoting, start of opening); (4) Complex Order Strategy Auction Notifications (COLA); (5) Complex Order Strategy messages; (6) Option Trading Action Messages (e.g., trading halts, resumption of trading); and (7) Complex Strategy Trading Action Message (e.g., trading halts, resumption of trading).

⁸ This cap expires on November 30, 2011. See Securities Exchange Act Release Nos. 63619 (December 29, 2010), 76 FR 614 (January 5, 2011) (SR-Phlx-2010-181); and 63780 (January 26, 2011), 76 FR 5846 (February 2, 2011) (SR-Phlx-2011-07). Also, the Exchange does not assess the above fees to a member organization for the use of SQF 5.0 active ports to the extent that the member organization is paying for the same (or greater) number of SQF 6.0 active ports.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁰ 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 Active SQF Port Fees are equitable, reasonable and not unfairly discriminatory, because the Exchange's member organizations with significantly smaller operations are provided an equal opportunity to be subject to this fee cap. Today, all member organizations are able to cap fees at \$40,000, but this \$40,000 cap mostly benefits larger Exchange members with greater system usage. The Exchange believes that its proposal should enable smaller Exchange member organizations,¹¹ defined as Phlx Only Members with 50 or less SQT assignments, to take advantage of the proposed \$500 cap and thereby limit costs.

The Exchange believes that this proposal is equitable and reasonable because Phlx Only Members on the Exchange's trading floor are typically one to four person member organizations. Today, less than 3% of the Exchange's market making membership¹² are Phlx Only Members that stream less than 50 options classes. The Exchange believes that the Phlx Only Member qualifier is reasonable because it impacts the segment of the Exchange that is typically a small proprietary market maker doing business on the Exchange's trading floor. The Exchange

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ Typically, a smaller member organization currently has between one and six ports depending on certain technology factors.

¹² 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)).

believes that this qualifier is equitable and not unfairly discriminatory because, as explained below, this is directly related to the member's system usage that directly impacts Exchange costs.

The Exchange also believes that the second qualifier, that the member organization have 50 or less SQT assignments affiliated with their member organization, is equitable and not unfairly discriminatory because a smaller member organization, described above as a Phlx Only Member, typically quotes less than 50 symbols daily, in some cases less. Smaller member organizations generate significantly less quote traffic, as compared to larger, sophisticated member organizations with multiple memberships at other options exchanges and drastically more quote traffic.

The Exchange believes that this proposal is also reasonable because it is consistent with the system usage¹³ of smaller versus larger member organizations and therefore allows all member organizations the ability to cap and thereby reduce their Active SQF Port Fees. Smaller member organizations, that only transact business on the Exchange and quote less than 50 symbols, do not utilize system resources to the same extent as a larger member organization. This fee proposal should allow smaller member organizations the opportunity to limit costs by capping fees at \$500 and to maintain cost-effective business operations. The proposal is equitable and not unfairly discriminatory because the fees incurred by smaller member organizations would more closely reflect the expenses incurred by the Exchange for their system usage as compared to larger member organizations who use more system resources and are subject to a higher fee cap under the proposal.¹⁴

¹³ The Exchange notes that smaller member organizations generally have fewer Active SQF Ports, less robust technology and therefore less system usage. Larger member organizations, generally have multiple affiliations with several options exchanges and more than 50 SQT assignments.

¹⁴ The current cap is in effect until November 30, 2011.

The Exchange believes that the two qualifiers which determine the fee cap, (1) being a Phlx Only Member; and (2) quoting less than 50 symbols, are equitable and not unfairly discriminatory because the qualifiers serve to benefit the smaller member organization. The Exchange seeks to provide the smaller member organization an opportunity to take advantage of a fee cap, similar to a larger member organization, given that member organization's business model, which results in less system usage as compared to a larger member organization.

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.¹⁵ 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.

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2011-57 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-2011-57. 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-2011-57 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.¹⁶

Cathy H. Ahn
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).