

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-64594; File No. SR-Phlx-2011-76)

June 3, 2011

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 26, 2011, 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 the Exchange's Fee Schedule to eliminate the Appeal Fee for appeals to the Board of Directors. 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.

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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 eliminate the Appeal Fee for appeals to the Board of Directors (“Appeal Fee”), in Section VI of the Exchange’s Fee Schedule entitled “Access Service, Cancellation, Membership, Regulatory and Other Fees.” The Exchange believes that recent amendments to the By-Laws and Rules render this Appeal Fee inapplicable.

Currently, the Exchange assesses a \$250 Appeal Fee for an appeal from a decision of a Standing Committee, with the exception of appeals from a decision of the Business Conduct Committee, Hearing Panels, Nominating Committee or Member Nominating Committee, to the Board of Directors.<sup>3</sup> In January 2007, when the Appeal Fee became effective, the Exchange noted that By-Law Article XI, Section 11-1 entitled “Appeals,” provided for appeals from decisions of Standing Committees to the Board.<sup>4</sup>

Since that time, the Exchange has amended its By-Laws to: (i) eliminate the Admissions Committee and Options Allocation, Evaluation and Securities Committee; (ii) consolidate the Options Committee and the Foreign Currency Options Committee into the Quality of Markets Committee; and (iii) eliminate By-Law Article XI, Section

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<sup>3</sup> The Appeal Fee is refunded to appellant in the event the Board of Directors overturns the decision of the Standing Committee.

<sup>4</sup> See Securities Exchange Act Release No. 55071 (January 9, 2007), 72 FR 2078 (January 17, 2007) (SR-Phlx-2006-84).

11-1 relating to appeals from Standing Committees.<sup>5</sup> The Appeal Fee is not applicable to the Business Conduct Committee, Nominating Committee and Member Nominating Committee. In addition, the Appeal Fee was originally filed to reduce frivolous appeals; such frivolous appeals are not an issue at this time.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>7</sup> 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 its proposal is reasonable because of the recent amendments to the Exchange's By-Laws, reduction in Standing Committees and reduction of frivolous claims. The Exchange also believes that its proposal is equitable because no member would be subject to an Appeal Fee.

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.

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<sup>5</sup> See Securities Exchange Act Release No. 59924 (May 14, 2009), 74 FR 23759 (May 20, 2009) (SR-Phlx-2009-23). See also Securities Exchange Act Release No. 64338 (April 25, 2011), 76 FR 24069 (April 29, 2011) (SR-Phlx-2011-13).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

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.<sup>8</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2011-76 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.

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-Phlx-2011-76. 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-2011-76 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.<sup>9</sup>

Cathy H. Ahn  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).