

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65312; File No. SR-Phlx-2011-126)

September 9, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rebates and 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 September 1, 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 its Complex Order Fees in Section I of its Fee Schedule titled "Rebates and Fees for Adding and Removing Liquidity in Select Symbols."

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on September 1, 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 Section I, Part B of the Exchange's Fee Schedule for Complex Orders. 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).³

The Exchange proposes to increase the current Customer Complex Order Rebate for Adding Liquidity in Designated Options⁴ from \$0.26 per contract to \$0.27 per contract. The Exchange also proposes to increase the current Complex Order Fee for

³ See Exchange Rule 1080, Commentary .08(a)(i).

⁴ The Designated Options are defined in Section I of the Fee Schedule and include AAPL, BAC, C, F, GLD, INTC, IWM, JPM, QQQ, SLV, SPY, and XLF.

Removing Liquidity in Designated Options for Directed Participants⁵ from \$0.27 per contract to \$0.28 per contract. The Exchange believes that increasing the Customer Complex Order Rebate for Adding Liquidity in the Designated Options will incentivize members to direct customer order flow to the Exchange. The Exchange also believes that increasing the Complex Order Fee for Removing Liquidity for Directed Participants will still continue to draw order flow to the Exchange as well, as that fee is within the range of fees assessed by other exchanges. The Exchange is not proposing any change to fees for Select Symbols.⁶

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on September 1, 2011.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(4) of the Act⁸ 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.

⁵ See Exchange Rule 1080(l), "...The term 'Directed Specialist, RSQT, or SQT' means a specialist, RSQT, or SQT that receives a Directed Order." A Directed Participant has a higher quoting requirement as compared with a specialist, SQT or RSQT who is not acting as a Directed Participant. See Exchange Rule 1014.

⁶ Select Symbols are defined in Section I of the Exchange's Fee Schedule.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

The Exchange believes that it is reasonable and equitable to only pay a Complex Order Rebate for Adding Liquidity to Customers, as compared to other market participants, and increase the Customer Complex Order Rebate for Adding Liquidity in Designated Options because this will incentivize members to direct Customer order flow to the Exchange in these Designated Options.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to increase the Complex Order Fee for Removing Liquidity in Designated Options for Directed Participants because the proposed fee for options overlying the Designated Options remains competitive with fees charged by other exchanges and is reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than to a competing exchange. The proposed fee is within the range of fees assessed by other exchanges employing similar pricing schemes. For example, the International Securities Exchange, LLC (“ISE”) provides its market makers a \$0.02 reduction off the taker fee for removing liquidity in its Select Symbols from the complex order book by trading with orders that are preferenced to them.⁹ The Exchange’s proposal to increase the Directed Participant’s Fee for Removing Liquidity for Complex Orders from \$0.27 per contract to \$0.28 per contract is reasonable because the Exchange is continuing to assess Directed Participants the lowest fee as compared to other market participants and reflects the fact that these market makers have higher quoting requirements as compared to Specialists, ROTs, SQTs and RSQTs who do not receive directed orders.¹⁰ In addition, the Exchange believes the proposed fee is equitable and not

⁹ See ISE’s Schedule of Fees.

¹⁰ Currently, a Directed Participant is assessed a Complex Order Fee For Removing Liquidity in Designated Options of \$0.27 per contract, a Specialist, Registered Options

unfairly discriminatory in that it will apply equally to all market participants that were previously subject to this fee.

With respect to the Customer Complex Order Rebate for Adding Liquidity the Exchange believes that it is reasonable to pay a different rebate for transacting equity options in Designated Options, and with respect to the Directed Participant Complex Order Fee for Removing Liquidity the Exchange believes that it is reasonable to assess a different Fee for Removing Liquidity in the Designated Options. The Exchange currently pays a different Customer Complex Order Rebate for Adding Liquidity and assesses a different Directed Participant Complex Order Fee for Removing Liquidity in Designated Options as compared to other Select Symbols. Trading in Designated Options is different from trading in other symbols in that they are more liquid, have higher volume and competition for executions is more intense. The Exchange believes that paying different rebates and assessing different fees for Designated Options as compared to Select Symbols will incentivize trading in Designated Options and increase liquidity in the Designated Options, which in turn will benefit all market participants. With respect to the increased Directed Participant Complex Order Fee for Removing Liquidity in Designated Options, the Exchange is increasing this fee to cover costs. Notwithstanding the increase in the fee, the Exchange believes that Directed Participants will continue to send order flow to the Exchange in Designated Options because the fee is within the range of fees assessed by other exchanges.

Trader (“ROT”), Streaming Quote Trader (“SQT”) and Remote Streaming Quote Trader (“RSQT”) is assessed \$0.29 per contract, a Firm is assessed \$0.30 per contract; a Broker-Dealers is assessed \$0.35 per contract and a Professional is assessed \$0.30 per contract.

In addition, the Exchange believes that it is equitable and not unfairly discriminatory to pay a different Customer Complex Order Rebate for Adding Liquidity for transacting equity options in certain symbols and with respect to the Directed Participant Complex Order Fee for Removing Liquidity the Exchange believes that it is equitable and not unfairly discriminatory to assess a different Fee for Removing Liquidity in certain symbols because the Exchange uniformly pays the same Customer Complex Order Rebate for Adding Liquidity for all Customer Complex Orders in all Designated Options and the Exchange uniformly assesses the same Fee for Removing Liquidity to all Directed Participants Complex Orders in all Designated Options.

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 and rebates it pays/assesses must be competitive with fees and rebates in place on other exchanges. The Exchange believes that this competitive marketplace impacts the fees and rebates present on the Exchange today and influences the proposals set forth above.

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.¹¹ 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-2011-126 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.

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-Phlx-2011-126. 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-2011-126 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.¹²

Elizabeth M. Murphy
Secretary

¹² 17 CFR 200.30-3(a)(12).