

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65574; File No. SR-Phlx-2011-134)

October 14, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Permit Fee and the Inactive Nominee 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 October 3, 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 applicability of the Permit Fee and also proposes to amend the Inactive Nominee 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 November 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, on the Commission's website at <http://www.sec.gov/> and at the Commission's Public Reference Room.

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

<sup>2</sup> 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to: (i) amend the applicability of the Permit Fee for members and member organizations transacting an options business; and (ii) amend the Inactive Nominee Fee. The Exchange desires to automate its billing processes further and therefore proposes to require members and member organizations to transact business using an assigned Phlx house account. In addition, the Exchange proposes to allow affiliated member organizations the opportunity to benefit from each other's transactions for purposes of assessing the Permit Fee. Also, the Exchange proposes to increase the Inactive Nominee Fee from \$500 each six months to \$100 a month for the applicable six month period. Assessing the Inactive Nominee Fee on a monthly basis enables member organizations the ability to terminate an Inactive Nominee prior to the six month period and avoid paying the \$100 for the remaining months.

Permit Fee

Currently, the Exchange assesses a Permit Fee of \$1,100 for members and member organizations who transact business on the Exchange and \$7,500 for members and member

organizations who do not transact business on the Exchange. Further, the \$7,500 Permit Fee is assessed only if that member is (i) not a PSX<sup>3</sup> Only Participant; or (ii) not engaged in an options business at Phlx in a particular month.<sup>4</sup>

The Exchange proposes two amendments to the eligibility of the \$1,100 Permit Fee for those members transacting an options business. First, the Exchange proposes to require that transaction(s) executed on the Exchange be transacted in a Phlx house account assigned to the member or member organization by the Exchange. The Exchange will use the member's house account in its automated billing process to confirm a member's options trading activity for purposes of assessing them a Permit Fee. Currently members utilize house accounts as well as other accounts, such as accounts in the name of the member's clearing firm, to transact their options business. The Exchange assesses members the \$1,100 Permit Fee today for transacting business in any of these accounts. This proposal will require members to transact business in a house account in order for the Exchange to identify the member's eligibility for the \$1,100 Permit Fee.<sup>5</sup> The Exchange's automated billing process will utilize the house account to determine the appropriate Permit Fee to be assessed each member. Members will be notified in

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<sup>3</sup> PSX is the Exchange's cash equities market electronic trading platform.

<sup>4</sup> A member or member organization will pay an additional permit fee for each sponsored options participant. See Exchange Rule 1094 titled Sponsored Participants. A Sponsored Participant may obtain authorized access to the Exchange only if such access is authorized in advance by one or more Sponsoring Member Organizations. Sponsored Participants must enter into and maintain participant agreements with one or more Sponsoring Member Organizations establishing a proper relationship(s) and account(s) through which the Sponsored Participant may trade on the Exchange.

<sup>5</sup> The Exchange will require at least one transaction occur in an assigned Phlx house account in order for the Exchange's automated billing system to identify that member's eligibility for the \$1,100 Permit Fee. If the member determines to transact some transactions in a non-Phlx house account, that will not impact the member's eligibility for the \$1,100 Permit Fee as long as one trade was transacted in the assigned Phlx house account.

advance in the form of an Options Trader Alert of the necessity to obtain a Phlx house account if they are not currently assigned such an account.<sup>6</sup> Members will need to obtain such an account prior to November 1, 2011. The Exchange intends to provide its members ample notice to obtain such an account.

Second, the Exchange is proposing to amend the applicability of the \$1,100 Permit Fee for members and member organizations transacting an options business by permitting a member organization under common ownership with another member organization, which transacts at least one options trade in an assigned Phlx house account, to be eligible for the \$1,100 Permit Fee. For purposes of this Permit Fee, “common ownership” is defined as at least 75% common ownership between member organizations. In other words the transactions of member organizations under common ownership will be viewed together in assessing the Permit Fee. Each member organization under common ownership will continue to pay a Permit Fee of \$1,100 each as long as one member has options trading activity recorded under their assigned Phlx house account number. The proposed amendments to the Permit Fee do not apply to members solely engaged in an equities business on PSX.

#### Inactive Nominee Fee

Currently, the Exchange assesses a member organization an Inactive Nominee Fee of \$500 for each of its inactive nominees<sup>7</sup> for a six month period, as provided for in Exchange Rule

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<sup>6</sup> The Exchange’s Membership Department assigns Phlx house accounts to members and member organizations upon request. There is no fee to obtain a Phlx house account.

<sup>7</sup> An inactive nominee is also assessed the Application and Initiation Fees when such person applies to be an inactive nominee. Such fees are reassessed if there is a lapse in the inactive nominee’s membership status. However, an inactive nominee would not be assessed the Application and Initiation Fees if such inactive nominee applied for membership without a lapse in that individual’s association with a particular member organization. See Securities Exchange Act Release No. 63780 (January 26, 2011), 76 FR 5846 (February 2, 2011) (SR-Phlx-2011-07). See also By-Law Article XII, Section 12

925.<sup>8</sup> The member organization is required to pay a fee for the privilege of maintaining the inactive nominee status of an individual.<sup>9</sup> An inactive nominee's status terminates after six months unless it has been reaffirmed in writing by the member organization or is terminated sooner.<sup>10</sup> An inactive nominee is assessed the \$500 fee every time the status is reaffirmed.<sup>11</sup>

The Exchange proposes to increase the Inactive Nominee Fee from \$500 to \$600 for the six month period described in Exchange Rule 925 and assess the member organization an Inactive Nominee Fee of \$100 per month for the applicable six month period as opposed to \$500 upon notification or reaffirmation of the inactive nominee status for the applicable six month period. The proposal will allow member organizations to discontinue payment of the Inactive Nominee Fee in the next full month after notice of termination of the inactive nominee status as the fee will be assessed per month. The member organization is therefore required to provide the Exchange notice of its intent to terminate an inactive nominee before the end of the month in

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<sup>8</sup> Pursuant to Exchange Rule 925, a member organization may designate an individual as an inactive nominee. To be eligible to be an inactive nominee an individual must be approved as eligible to hold a permit in accordance with the Exchange's By-Laws and Rules. An inactive nominee has no rights and privileges of a permit holder until the inactive nominee becomes an effective permit holder and all applicable Exchange fees are paid. See Exchange Rule 925.

<sup>9</sup> See Securities Exchange Act Release No. 39851 (April 10, 1998), 63 FR 19282 (April 17, 1998) (SR-Phlx-97-35) (a rule change which subjected inactive nominees to the membership application process, including fees, including a fee for the privilege of maintaining an inactive nominee status).

<sup>10</sup> See By-Law Article XII, Section 12-10.

<sup>11</sup> An inactive nominee is also assessed the Application and Initiation Fees when such person applies to be an inactive nominee. Such fees are reassessed if there is a lapse in the inactive nominee's membership status. However, an inactive nominee would not be assessed the Application and Initiation Fees if such inactive nominee applied for membership without a lapse in that individual's association with a particular member organization. See Securities Exchange Act Release No. 63780 (January 26, 2011), 76 FR 5846 (February 2, 2011) (SR-Phlx-2011-07). See also By-Law Article XII, Section 12-10.

order to avoid an assessment of the \$100 fee in the following month. For example, if on January 1, 2012 a member organization designated an individual as an inactive nominee, pursuant to Exchange Rule 925, and subsequently notified the Exchange on April 19, 2012 that the member organization desired to terminate the inactive nominee, the member organization would not be assessed the \$100 Inactive Nominee Fee in May and June 2012 for that inactive nominee. The Exchange will not however retroactively reimburse any fees, but rather would allow a member organization to terminate the remaining full months.

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

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>12</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>13</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 to require members transacting an options business to transact orders using an assigned Phlx house account is reasonable because the Exchange is transitioning permit billing to an automated billing process for its Permit Fees and this information will be utilized to more accurately ascertain if a member is transacting an options business in a particular month.

The Exchange believes that its proposal to allow member organizations under common ownership to be assessed a \$1,100 Permit Fee for transacting an options business on the Exchange, as long as one of the member organizations transacted an options trade in an assigned

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<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(4).

Phlx house account, is reasonable because the Exchange believes that viewing commonly owned members together for purposes of billing the Permit Fee will provide an opportunity for an entity that has multiple operations to maintain reasonable expenses while maintaining multiple permits for various member organizations.

The Exchange believes that it is equitable and not unfairly discriminatory to require members transacting an options business to transact orders using an assigned Phlx house account, because the Exchange is requiring all option members to utilize this process in order to increase the efficiency of identifying a member's eligibility for the \$1,100 Permit Fee. This will allow the Exchange to readily determine a member's level of activity in a particular month.

The Exchange believes that it is equitable and not unfairly discriminatory to consider together those transactions of member organizations under common ownership for purposes of assessing the Permit Fee because the Exchange will uniformly calculate the Permit Fee in this manner for all applicable member organizations under common ownership. Each member organization will continue to be assessed a Permit Fee of \$1,100 in the event that a member organization under common ownership transacts one options transaction in an assigned Phlx house account each month. The Exchange believes that a member organization that has multiple operations should not incur greater expenses merely because it determined to conduct its business under separate legal structures. In addition, those members that are not under common ownership with another member can still qualify for the \$1,100 Permit Fee by executing at least one trade in their assigned Phlx house account.

The Exchange believes that increasing the Inactive Nominee Fee from \$500 to \$600 is reasonable because the Exchange incurs administrative costs with respect to its administration of inactive nominees. The Exchange believes that its proposal to assess the Inactive Fee on a

monthly basis (\$100 per month) is also reasonable because it will allow member organizations to discontinue payment of the Inactive Nominee Fee in the next full month after notice of termination of the inactive nominee status as the fee will be assessed per month.

The Exchange believes that the amendments to the Inactive Nominee Fee are equitable and not unfairly discriminatory because these fee amendments will be uniformly applied in calculating Inactive Nominee Fees and assessing those fees on member organizations.

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.<sup>14</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

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(ii).



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 No. SR-Phlx-2011-134 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 No. SR-Phlx-2011-134. 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 such 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 No. SR-Phlx-2011-134 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>15</sup>

Elizabeth M. Murphy  
Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).