SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65888; File No. SR-Phlx-2011-160)

December 5, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Firm Related Equity Option Cap

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 November 22, 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 Section II of the Fee Schedule entitled "Equity Options Fees" to apply the Firm Related Equity Option Cap to certain proprietary orders of affiliated member organizations.

While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on December 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.

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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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to apply the Firm Related Equity Option Cap to proprietary orders of certain affiliates of member organizations. Currently, Firms are subject to a maximum fee of $75,000 ("Firm Related Equity Option Cap"). Firm equity option transaction fees and QCC Transaction Fees[3], in the aggregate, for one billing month will not exceed the Firm Related Equity Option Cap per member organization when such members are trading in their own proprietary account.[4] The Firm equity options transaction fees[5] will be

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3 QCC Transaction Fees apply to QCC Orders as defined in Exchange Rule 1080(o) and 1064(e). For QCC Orders as defined in Exchange Rule 1080(o), and Floor QCC Orders, as defined in 1064(e), a Service Fee of $0.05 per side will apply once a Firm has reached the Firm Related Equity Option Cap. This $0.05 Service Fee will apply to every contract side after a Firm has reached the Firm Related Equity Option Cap.

4 Once Firms reach the Firm Related Equity Option Cap by incurring qualifying fees, they will not incur additional transaction fees beyond the $75,000 Firm Related Equity Option Cap for that month as long as those transactions occurred in their own proprietary account. Member organizations must notify the Exchange in writing of all accounts in which the member is not trading in its own proprietary account. The Exchange will not make adjustments to billing invoices where transactions are commingled in accounts which are not subject to the Firm Related Equity Option Cap.

5 See Section II of the Exchange's Fee Schedule for equity option transaction fees.

waived for members executing facilitation orders[6] pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account. [7]

The Exchange proposes to apply the Firm Related Equity Option Cap to proprietary orders effected for the purpose of hedging the proprietary over-the-counter trading of an affiliate of a member organization that qualifies for the Firm Related Equity Option Cap ("Qualifying Member Organization"). A Qualifying Member Organization would be a 100% wholly-owned affiliate or subsidiary of a member organization that is not a Phlx member organization and is registered as a United States or foreign broker-dealer. In other words, a Qualifying Member Organization must be either a wholly-owned subsidiary of a Phlx member organization or a wholly-owned subsidiary of the parent company of a Phlx member organization. These orders must clear in the customer range at The Options Clearing Corporation and be subject to the fees assessed to Broker-Dealers in order for the trade to be eligible for the Firm Related Equity Option Cap. The Exchange would aggregate the Qualifying Member Organization's fees in Multiply-Listed options[8] on the Exchange with the transaction fees of affiliated member organizations in Multiply-Listed options on the Exchange for purposes of determining whether the Qualifying Member Organization has reached the Firm Related Equity Option Cap.

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6 A facilitation occurs when a floor broker holds an options order for a public customer and a contra-side order for the same option series and, after providing an opportunity for all persons in the trading crowd to participate in the transaction, executes both orders as a facilitation cross. See Exchange Rule 1064 entitled "Crossing, Facilitation and Solicited Orders."

7 The waiver would not apply to orders where a member is acting as agent on behalf of a non-member.

8 Multiply Listed Securities include those symbols which are subject to rebates and fees in Section I, Rebates and Fees For Adding and Removing Liquidity in Select Symbols, and Section II, Equity Options Fees.

A member organization would be required to certify the affiliate status of any Qualifying Member Organization whose trading activity it seeks to aggregate and to certify that the trades identified as eligible for the Firm Related Equity Option Cap were made for the purposes of hedging proprietary over-the county [sic] trading of the member organization or its affiliates. The member organization would be required to inform the Exchange immediately of any event that causes an entity to cease to be an affiliate. In addition, member organizations must notify the Exchange in writing of the account(s) designated for purposes of hedging the proprietary over-the-counter trading of the Qualifying Member Organization or its affiliates.[9] The Exchange would require member organizations to segregate other orders from that of its affiliates for those orders to be eligible for the Firm Related Equity Option Cap by placing such orders in a separate house account. If the member organization does not segregate the transactions into the specified house account which was designated by the member organization for the purpose of affiliated eligible transactions, the Exchange will not make any adjustments to the billing invoice to account for those transactions not placed in the specified account and those transactions will not be subject to the Firm Related Equity Option Cap. The Exchange believes that this practice would not create an undue burden on its member organizations and would ensure a more efficient billing process.

The Exchange also proposes to rename the "Firm Related Equity Option Cap" as the "Monthly Firm Fee Cap" to more accurately describe the cap. The Exchange also proposes to amend a reference to "members and member organizations" in Section II of the Fee Schedule as only "member organizations" for clarity.

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[9] The Exchange assesses a $50 Account Fee for each account beyond the number of permits billed to the member organization.

While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on December 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[10] in general, and furthers the objectives of Section 6(b)(4) of the Act[11] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

Specifically, the Exchange believes the proposed rule change is reasonable because it would allow aggregation of the trading activity of a member organization and its Qualifying Member Organization for purposes of the Firm Related Equity Option Cap only in very narrow circumstances, namely, where the Qualifying Member Organization is an affiliate, as defined herein, and the trading activity of the Qualifying Member Organization, which would be included in the calculation of the Firm Related Equity Option Cap, is limited to proprietary orders of the Qualifying Member Organization effected for purposes of hedging the proprietary over-the-counter trading of the member organization or its affiliates. Furthermore, other exchanges have rules that permit the aggregation of the trading activity of affiliated entities for the purposes of calculating and assessing certain fees.[12] The Exchange believes that it is

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10 15 U.S.C. 78f(b).

11 15 U.S.C. 78f(b)(4).

12 See the Chicago Board Options Exchange, Incorporated ("CBOE") Fees Schedule (CBOE's application of its Fee Cap and Scale to order to certain non-Trading Permit Holder affiliates of a clearing trading permit holder). See also NASDAQ Stock Market LLC's ("NASDAQ") Rule 7027 (a NASDAQ pricing rule which allows affiliated members to aggregate their activity under certain provision of NASDAQ's fee schedule that make fees dependent upon the volume of their activity). See also the Chicago Stock Exchange, Inc. ("CHX") Fee Schedule at Section P entitled "Aggregation of Activity of Affiliated Participants" (CHX allows a participant to request the aggregation of its activity with the activity of its affiliates). See also the International Securities Exchange,

reasonable to require member organizations to segregate these transactions in a separate account to create an effective way to account and bill for these transactions.

The Exchange believes that its proposal is equitable and not unfairly discriminatory because any member organization may request that the Exchange aggregate its trading activity with the trading activity of a Qualifying Member Organization for purposes of calculating the Firm Related Equity Option Cap. The Exchange believes that it is equitable and not unfairly discriminatory to require member organizations to segregate these transactions in a separate account as this requirement would apply to all member organizations.

The Exchange also believes that the amendments to rename the Firm Related Equity Option Cap and change a reference from "members and member organizations" to "member organizations" are reasonable, equitable and not unfairly discriminatory because these amendments will more accurately describe the cap and the member that is being billed.

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.[13] At any time within 60 days of the filing of the proposed rule change, the Commission

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LLC's ("ISE") Fee Schedule at footnote 2 (ISE permits Non-ISE Market-Maker transaction fees that are part of the originating or contra side of a crossing transaction to be included in the calculation of the monthly fee cap).

13 15 U.S.C. 78s(b)(3)(A)(ii).

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 No. SR-Phlx-2011-160 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-2011-160. 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-2011-160 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.[14]

Kevin M. O'Neill
Deputy Secretary

[14] 17 CFR 200.30-3(a)(12).