

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65946; File No. SR-Phlx-2011-168)

December 13, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Option Floor Broker Subsidy

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 November 30, 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 eliminate Section VII of its Fee Schedule entitled the “Options Floor Broker Subsidy.”

While changes to the Fee Schedule 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, 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate the Options Floor Broker Subsidy ("Subsidy"). The Exchange is seeking to incentivize Floor Brokers in other ways, such as offering rebates for certain orders.<sup>3</sup> The Exchange believes that the Subsidy is no longer necessary as a means to incentivize Floor Brokers and proposes to eliminate the Subsidy.

The Exchange currently pays a Subsidy to member organizations with Exchange registered floor brokers that enter eligible contracts into the Exchange's Floor Broker Management System ("FBMS").<sup>4</sup> The Subsidy is paid based on the contract volume on Customer-to-non-Customer as well as non-Customer-to-non-Customer transactions for that month. Only the volume from orders entered by floor brokers into FBMS and subsequently

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<sup>3</sup> See SR-Phlx-2011-169 [sic] (a proposed rule change to amend and adopt rebates applicable to both electronic QCC Orders and Floor QCC Orders with some exceptions and also amend and adopt a Service Fee).

<sup>4</sup> FBMS is designed to enable floor brokers and/or their employees to enter, route, and report transactions stemming from options orders received on the Exchange. FBMS also is designed to establish an electronic audit trail for options orders represented and executed by floor brokers on the Exchange. See Exchange Rule 1080, Commentary .06.

executed on the Exchange qualifies. The Exchange pays a Subsidy based on a monthly total of all eligible contracts as follows:

**Per Eligible Contract Monthly Volume Subsidy Payment:**

<b>Tier I</b>	<b>Tier II</b>	<b>Tier III</b>	<b>Tier IV</b>
0 to 1,250,000	1,250,001 to 2,250,000	2,250,001 to 5,250,000	5,250,001 and greater
\$0.00 per contract	\$0.03 per contract	\$0.05 per contract	\$0.09 per contract

In computing the monthly eligible contracts, the Exchange currently excludes: (i) Customer-to-Customer executions; (ii) Firm-to-Customer executions where the Firm has reached the Firm Related Equity Option cap (“Cap”) (see Section II); (iii) Firm-to-Firm executions, where both sides have reached the Cap; (iv) dividend,<sup>5</sup> merger<sup>6</sup> and short stock interest<sup>7</sup> strategies; and (v) firm facilitation transactions.<sup>8</sup> The Subsidy applies to contracts that are executed as part of a Complex Order.<sup>9</sup> Where two or more member organizations with

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<sup>5</sup> A dividend strategy is defined as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend. See Section II of the Fee Schedule.

<sup>6</sup> A merger strategy is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed the first business day prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock. See Section II of the Fee Schedule.

<sup>7</sup> A short stock interest strategy is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class. See Section II of the Fee Schedule.

<sup>8</sup> 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.

<sup>9</sup> 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

Exchange registered floor brokers each enter one side of a transaction into FBMS, the executed contracts are divided equally among qualifying member organizations that participate in that transaction.

The Exchange also proposes to eliminate other references to the Subsidy in the Fee Schedule at Section I entitled “Rebates and Fees for Adding and Removing Liquidity in Select Symbols” and in the Table of Contents.

The Exchange proposes to eliminate this Subsidy on December 1, 2011. The Exchange has provided notification to its Floor Brokers of its intent to eliminate the Subsidy.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>11</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the proposed elimination of the Subsidy is reasonable for various reasons. First, the Exchange believes that its purpose for offering Floor Brokers an incentive to transact certain eligible contracts through FBMS no longer exists. Second, the Exchange is proposing to equalize the incentives provided to Floor Brokers and members entering electronic orders by offering a rebate on both electronic QCC Orders and Floor QCC

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

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

Orders.<sup>12</sup> Finally, in light of offering Floor Brokers a rebate on Floor QCC Orders, the Exchange no longer desires to incentivize Floor Brokers with the Subsidy.

The Exchange believes that eliminating the Subsidy is equitable and not unfairly discriminatory for various reasons. First, the Exchange will not offer the Subsidy to any Floor Broker. Second, members executing orders electronically are not being offered the Subsidy today, so eliminating the Subsidy will further equalize Floor Brokers and members entering electronic orders. Finally, unlike the Subsidy which is based on monthly volume, there is no volume requirement to obtain a rebate on either an electronic QCC Order or a Floor QCC Order. The rebate is paid on each contract for electronic QCC Orders and Floor QCC Orders. Therefore, all Floor Brokers are in an equal position to qualify for the rebate.

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>13</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

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<sup>12</sup> The Exchange recently determined to offer a rebate to Floor Brokers for Floor QCC Orders as of December 1, 2011. See SR-Phlx-2011-169 [sic].

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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-2011-168 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-2011-168. 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 Number SR-Phlx-2011-168 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>14</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).