

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66099; File No. SR-Phlx-2011-184)

January 4, 2012

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Rebates and Fees for Adding and Removing Liquidity in Select Symbols

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 December 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 the Rebates and Fees for Adding and Removing Liquidity in Select Symbols in Section I, Part A of the Exchange's Fee Schedule.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on January 3, 2012.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Section I of the Fee Schedule, entitled "Rebates and Fees for Adding and Removing Liquidity in Select Symbols," at Part A, entitled "Single contra-side orders," to amend the Professional³ Rebate for Adding Liquidity in order to treat a Professional similar to other non-customer market participants for purposes of the rebate.

Currently, Section I of the Fee Schedule, which applies to certain select symbols,⁴ is comprised of a Part A, single contra-side order fees, and a Part B, Complex Order fees.⁵ There

³ The Exchange defines a "professional" as any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) (hereinafter "Professional").

⁴ Select symbols shall be defined as options overlying the following symbols: AA, AAPL, ABX, AIG, ALL, AMD, AMR, AMZN, AXP, BAC, BRCD, C, CAT, CIEN, CSCO, DELL, DIA, DRYs, EBAY, EK, F, FAS, FAZ, FXI, GDX, GE, GLD, GLW, GS, HAL, IBM, INTC, IWM, JPM, LVS, MGM, MSFT, MU, NEM, NOK, NVDA, ORCL, PFE, PG, POT, QCOM, QQQ, RIG, RIMM, RMBS, SBUX, SDS, SIRI, SKF, SLV, SLW, SMH, SNDK, SPY, T, TBT, TZA, UAL, UNG, USO, UUP, UYG, V, VALE, VXX, VZ, WYNN, X, XLF, XOM, XOP, XRX and YHOO ("Select Symbols"). These symbols are Multiply-Listed.

⁵ The Rebates and Fees for Adding and Removing Liquidity in Select Symbols will

are currently several categories of market participants: Customers, Directed Participants,⁶ Specialists,⁷ Registered Options Traders,⁸ SQTs,⁹ RSQTs,¹⁰ Broker-Dealers, Firms and Professionals. Currently, the Exchange pays the following Rebates for Adding Liquidity:

	Customer	Directed Participant	Specialist, ROT, SQT and RSQT	Firm	Broker-Dealer	Professional
Rebate for Adding Liquidity	\$0.26	\$0.23	\$0.23	\$0.00	\$0.00	\$0.26

The Exchange proposes to decrease the Professional Rebate for Adding Liquidity from \$0.26 per contract to \$0.23 per contract. The Exchange is not proposing to amend any other rebates or fees in Section I.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on January 3, 2012.

continue to apply only to electronic orders.

⁶ A Directed Participant is a Specialist, SQT, or RSQT that executes a customer order that is directed to them by an Order Flow Provider and is executed electronically on PHLX XL II.

⁷ A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

⁸ A Registered Options Trader (“ROT”) includes a Streaming Quote Trader (“SQT”), a Remote Streaming Quote Trader (“RSQT”) and a Non-SQT ROT, which by definition is neither a SQT or a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. See Exchange Rule 1014 (b)(i) and (ii).

⁹ An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

¹⁰ An RSQT is defined Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹² 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 decrease the Rebate for Adding Liquidity for Professionals is reasonable because a Professional would be paid the same rebates as other market makers.¹³ Currently, a Customer and Professional are paid the highest Rebate for Adding Liquidity available for Single contra-side orders. The Exchange believes that paying a Customer a higher rebate, as compared to market participants, incentivizes Broker-Dealers to route Customer orders to the Exchange, which in turn should increase liquidity and benefit all market participants. The Exchange recently increased the Rebate for Adding Liquidity for Professionals,¹⁴ while it also increased the Professional Fee for Removing Liquidity for Single contra-side orders, to a rate equal to Firms and Broker-Dealers. The Exchange believes that it is reasonable to now decrease the Professional Rebate for Adding Liquidity to the same rate that is paid to market makers, thereby paying Customers the highest rebate. The Exchange believes that

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

¹³ The Exchange market maker category includes Specialists (see Rule 1020) and Registered Options Traders (Rule 1014(b)(i) and (ii), which includes Streaming Quote Traders or SQTs (see Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders or RSQTs (see Rule 1014(b)(ii)(B)). This would also include Directed Participants. The term “Directed Participant” applies to transactions for the account of a Specialist, Streaming Quote Trader or Remote Streaming Quote Trader resulting from a Customer order that is (1) directed to it by an order flow provider, and (2) executed by it electronically on Phlx XL II.

¹⁴ See Securities Exchange Act Release No. 65940 (December 12, 2011), 76 FR 78322 (December 16, 2011) (SR-Phlx-2011-162).

Professionals would still benefit from a rebate, which is not offered to Firms and Broker-Dealers, while also being assessed the same rates as Firms and Broker-Dealers to remove liquidity. A Professional would be paid the same rebate as is currently offered to all other non-Customer market participants receiving a Rebate for Adding Liquidity for Single contra-side orders. With respect to the Fee for Removing Liquidity in Single contra-side orders, Directed Participants, Specialists, ROTs, SQTs and RSQTs, are assessed lower fees because they have quoting obligations,¹⁵ unlike Firms, Broker-Dealers and Professionals.

The Exchange believes it is equitable and not unfairly discriminatory to pay a Professional a Rebate for Adding Liquidity similar to market makers because the Professional is still advantaged by a rebate as compared to Firms and Broker-Dealers. Section I Fees for Removing Liquidity in both Single contra-side orders and Complex Orders align Professionals with Firms and Broker-Dealers.¹⁶ All Professionals would be equally eligible to receive the Rebate for Adding Liquidity. In addition, the Exchange's Rebates for Adding Liquidity are within the range of fees assessed by the International Securities Exchange, LLC ("ISE").¹⁷

The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that the fees it charges and rebates it pays for options overlying the various Select Symbols remain competitive with fees and rebates charged/paid by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

¹⁵ See Exchange Rule 1014 titled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders."

¹⁶ See Section I of the Fee Schedule at Parts A and B.

¹⁷ See ISE's Fee Schedule (a Professional is assessed the same fees and paid the same rebates similar to a Firm for simple orders and complex orders).

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.¹⁸ 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 No. SR-Phlx-2011-184 on the subject line.

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2011-184. 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-2011-184 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.¹⁹

Kevin M. O'Neill
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).