

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66426; File No. SR-Phlx-2012-17)

February 21, 2012

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Fee Schedule to Define a Market Maker

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 February 7, 2012, 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 Preface to its Fee Schedule to add a definition for a “Market Maker.” In addition, the Exchange proposes to delete outdate language in the Preface.

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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 rule filing is to define the term “Market Maker” and utilize the term in describing certain market participants with respect to transaction fees. The Exchange believes that utilizing the term “Market Maker” as a category of market participant to describe transaction fees would further clarify the Fee Schedule.

The Exchange proposes to amend the Preface to the Fee Schedule to add language to define a “Market Maker” as a Specialist,³ Registered Options Trader (“ROT”),⁴ Streaming Quote Trader (“SQT”),⁵ and Remote Streaming Quote Trader (“RSQT”).⁶ The Exchange proposes to also amend the Fee Schedule to replace the market participant category of “Specialists, ROTs, SQTs and RSQTs” with the term “Market Maker” where transaction fees are specified. As currently noted in the Preface, while Directed Participants are Specialists and ROTs, including SQTs and RSQTs, and therefore Market Makers, they are assessed different transaction fees and

³ A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

⁴ A Registered Option Trader is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. A ROT includes SQTs and RSQTs as well as on and off-floor ROTS.

⁵ 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.

⁶ A 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.

are therefore not included in the definition of “Market Maker” for purposes of defining categories of market participants.

The Exchange also proposes to delete certain outdated language in the Preface which describes a ROT. The Exchange previously filed a rule change to eliminate a foreign currency options participant from the Exchange’s Rules.⁷ The Exchange is proposing to update footnote 7 in the Preface of the Fee Schedule to reflect the current text of Rule 1014 and eliminate the words “or a foreign currency options participant.”

The Exchange also proposes to make other grammatical corrections to capitalize the word “Specialist” in the Fee Schedule.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(4) of the Act⁹ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that amending the Fee Schedule to describe Specialists, ROTs, SQTs and RSQTs as Market Makers is reasonable because other exchanges utilize the term market maker in their fee descriptions. Also, the Exchange believes that the proposal is equitable and not unfairly discriminatory because the Exchange is proposing to utilize a term that is known among its members to describe a fee category. Also, the Exchange’s definition in the Preface provides guidance on how the term is being utilized in the Fee Schedule as are other

⁷ See Securities Exchange Act Release No. 64338 (April 25, 2011), 76 FR 24069 (April 25, 2011) (SR-Phlx-2011-13) (a rule change, which among other things, eliminates the foreign currency options participant from the Exchange’s Rules).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

market participant terms.

The Exchange believes that deleting outdated language is reasonable, equitable and not unfairly discriminatory as the text of the Fee Schedule would be consistent with other Rules.

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.¹⁰ 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

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-Phlx-2012-17 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-2012-17. 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-2012-17 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.¹¹

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Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).