

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62179; File No. SR-Phlx-2010-77)

May 26, 2010

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Reformatting the Fee Schedule

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 May 25, 2010, NASDAQ OMX PHLX, Inc. (“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 its existing NASDAQ OMX PHLX, Inc. Fee Schedule (“fee schedule”) solely to create a more user-friendly Fee Schedule.

The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, at the principal office of the Exchange, at the Commission’s Public Reference Room, and on the Commission’s Web site at www.sec.gov.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to reformat the Fee Schedule to make it more user-friendly. The newly proposed Fee Schedule includes the current fees, which remain unchanged. In the process of reformatting the Fee Schedule, additional connecting language was added where appropriate to provide clarity to the end-user. The proposal eliminates the current endnotes. The Exchange believes that by placing the language that is currently contained in endnotes into the text of the fees better displays any exceptions or exclusions referenced in those endnotes by more prominently displaying them in the text.

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The Exchange proposes to replace the descriptive term “Category” with a new term, “Sections”, in the table of contents. This is being done solely to eliminate confusion in the use of the word “category” which is utilized in different ways by the Exchange in its fee proposals. The Exchange is also combining the Sector Index Options Fees and the U.S. Dollar-Settled Foreign Currency (“WCO”) Options Fees into one section on the Fee Schedule.

Equity Options Fees

The Exchange converted the current equity options fees into a table format for ease of reference.³ Currently, the Exchange does not separately display an options transaction charge

³ The Exchange also proposes removing all references to “per contract” after each fee in the table.

for penny pilot program options (“Penny Pilot”)⁴ and Non-Penny Pilot options for customers, professionals and firms. The Exchange is proposing to display the separate categories in this revised Fee Schedule although the fees remain unchanged. The Exchange’s proposal displays a similar fee for Penny Pilot and non-Penny Pilot options transactions charges for customer, professionals and firms to make clear that there is no price distinction for those market participants between Penny and non-Penny options. The Exchange is not proposing any amendments to its fees.

Additionally, the Exchange proposes to transplant endnotes (C) and (5) from the endnote section of the Fee Schedule, which the Exchange proposes to eliminate, into the Equity Options Fees section to clarify which notes apply to the displayed fees. The Exchange also proposes a similar change in the Payment for Order Flow Fees section of the Equity Option Fees with respect to endnotes (30) and (32). Additional non-substantive language has been added where appropriate to indicate what section of the Fee Schedule the transplanted endnote refers to in the Fee Schedule. For example, the words “Payment for Order Flow Fees will be” was added to the beginning of endnote (30) to clarify the context of that transplanted endnote with respect to the Payment for Order Flow Fees. The Exchange added similar language to the beginning of endnotes throughout the Fee Schedule when transplanting that text to add reference for the reader and for purposes of clarity.

⁴ The Penny Pilot was established in January 2007; and in October 2009, it was expanded and extended through December 31, 2010. See Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR-Phlx-2006-74) (approval order establishing Penny Pilot); 60873 (October 23, 2009), 74 FR 56675 (November 2, 2009) (SR-Phlx-2009-91) (expanding and extending Penny Pilot); 60966 (November 9, 2009), 74 FR 59331 (November 17, 2009) (SR-Phlx-2009-94) (adding seventy-five classes to Penny Pilot); and 61454 (February 1, 2010), 75 FR 6233 (February 8, 2010) (SR-Phlx-2010-12) (adding seventy-five options classes to the Penny Pilot). See also SR-Phlx-2010-65 (adding additional seventy-five option classes to the Penny Pilot). See also Exchange Rule 1034.

Sector Index Options Fees and U.S. Dollar-Settled Foreign Currency Options Fees

The Exchange similarly converted the current fees into a table for ease of reference and combined the sector index and U.S. dollar-settled foreign currency option fees into the same section of the Fee Schedule.

Access Service, Cancellation, Membership, Regulatory and Other Fees

The Exchange reformatted this section of the Fee Schedule to reorder these fees for ease of reference. The Options Regulatory Fee was relocated after the Real-Time Risk Management Fee with no changes. Next, all permit related fees were grouped together with the endnotes weaved into this section with the clarifying language added to each endnote as described herein. The Streaming Quote Trader and Remote Streaming Quote Trader Fees were organized into tables with no changes to the text. The remainder of the fees in this section are rearranged in order to present the fees by topic. The endnotes were transplanted and words were added to indicate which fee the note references within the Fee Schedule. The Examinations Fee and FINRA fees remain the same.

Market Access Provider Subsidy, Options Floor Broker Subsidy, Routing Fees, Proprietary Data Feed Fees, NASDAQ OMX PSX

The Exchange did not amend the following sections of the Fee Schedule: Market Access Provider Subsidy, Options Floor Broker Subsidy, Routing Fees, Proprietary Data Feed Fees and NASDAQ OMX PSX. As previously stated the Exchange eliminated the endnotes section and incorporated those endnotes into the Fee Schedule instead by transplanting them into the corresponding pages of the Fee Schedule. In addition, the Exchange also proposes to amend language in endnote 55 which refers to the monthly charges for the fees for Trading Floor Personnel Registration Fee and the Fees for Certain Stock Exchange Clerks by removing the dollar amounts from that text.

These proposed changes, as previously mentioned, are non-substantive amendments and are added for the sole purpose of creating a simplified, easily readable format for displaying the various fees.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act⁶ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that this proposal is both reasonable and equitable because providing the members with a more user-friendly Fee Schedule will better display the allocation of fees among Exchange members. The Exchange believes that this proposed format will provide additional transparency of Exchange fees.

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) of the Act⁷ and paragraph (f)(3) of Rule 19b-4⁸ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(3).

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.

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 Number SR-Phlx-2010-77 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2010-77. 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 Web site (<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 Web site 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 publicly available. All submissions should refer to File Number SR-Phlx-2010-77 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.⁹

Florence E. Harmon
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).