

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62661; File No. SR-Phlx-2010-110)

August 6, 2010

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Billing Policies

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 August 4, 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 Fee Schedule to: (i) require members and member organizations to identify accounts to properly identify joint back-office (“JBO”) participant transactions; (ii) specify certain policies to dispute billing invoices; and (iii) amend the index to rearrange the order of fees on the 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, on the Commission’s Web site at www.sec.gov, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 memorialize current practices for the Exchange to clearly identify orders that are not subject to the Firm Related Equity Option Cap in order to ensure that members and members organizations are being properly billed the Exchange fees and also to modify the time requirements to dispute Exchange dues and fees to reduce the Exchange's operational costs. The Exchange proposes to memorialize an existing process that requires members and member organizations to identify certain trades which are not subject to the Firm Related Equity Option Cap and to set concrete timelines to dispute any assessed Exchange dues and fees.

Currently, the Firms are subject to a maximum fee of \$75,000 also known as the Firm Related Equity Option Cap. Firm equity option transaction charges, in the aggregate, for one billing month cannot exceed the Firm Related Equity Option Cap per member organization, except for orders of JBO Participants.³ Therefore, Exchange accounts used for JBO Participant orders are not subject to the Firm Related Equity Option Cap. The Exchange proposes to

³ A JBO participant is a Member, Member Organization or non-member organization that maintains a JBO arrangement with a clearing broker-dealer ("JBO Broker") subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System. See also Exchange Rule 703. JBO participant orders are not subject to the Firm Related Equity Option Cap because the Exchange is unable to differentiate orders of a JBO participant from orders of its JBO Broker and therefore is unable to aggregate the JBO participant's orders. JBO participant orders may employ the F-account type and qualify for the Firm charge, but are not eligible for the Monthly Firm Cap.

memorialize the current practice of requiring members and member organizations to notify the Exchange in writing⁴ and indicate which accounts are used to segregate orders of JBO participants from other Firm orders. The Exchange believes that memorializing the policy within the Fee Schedule will eliminate any confusion as to which orders are JBO Participant orders and not subject to the Firm Related Equity Option Cap. Further the Exchange proposes to create a new billing practice with respect to JBO transactions. The Exchange proposes to indicate on the Fee Schedule that the Exchange will not make any adjustments to billing invoices where JBO transactions are commingled with other Firm orders in Exchange accounts, which are designated by the member organization as not subject to the Firm Related Equity Option Cap. The Exchange believes that this practice would not create an undue burden on its members and/or member organizations and would ensure a more efficient billing process.

The Exchange also proposes to establish a billing practice to prevent members and member organizations from disputing billing invoices after sixty (60) days. The Exchange proposes to state on its Fee Schedule that all billing disputes must be submitted to the Exchange in writing⁵ and must be accompanied by supporting documentation. All disputes must be submitted no later than sixty (60) days after receipt of an Exchange invoice. The Exchange proposes to exclude the following types of fee disputes: NASDAQ OMX PSX Fees, Proprietary Data Feed Fees and Co-Location Services Fees.⁶ The Exchange is excluding these types of fees because these fees are billed separately to Exchange members and Exchange members do not have the same type of notice as all other fees on the Fee Schedule, as they do not receive reports

⁴ The Exchange will issue an Options Regulatory Alert to specify the proper Exchange contacts to notify the Exchange.

⁵ The Exchange invoice specifies the Exchange contact persons with whom to dispute the invoice.

⁶ These fees are not included in the reports described in footnote 7.

for certain fees. The Exchange believes that members and member organizations should be aware of any billing errors within two months of receiving an invoice.⁷ The Exchange further believes that this practice will conserve Exchange resources which are expended when untimely billing disputes require staff to research applicable fees and order information beyond two months after the transaction occurred.

Finally, the Exchange proposes to rearrange its Fee Schedule to relocate the Routing Fees and PSX Fees in the Fee Schedule to eliminate sequential numbering discrepancies in the Index which arose when the Fee Schedule was reformatted.

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 the proposal to memorialize the current practice concerning JBO accounts is reasonable to ensure that the Firm Related Equity Option Cap is properly applied in billing members and member organizations. The Exchange believes that the proposal is equitable because the process of notifying the Exchange of accounts used for

⁷ The Exchange provides members and member organizations the ability to sign-up to receive certain daily reports (i.e. daily traded against report, daily cancel fees, etc...), which provides the members and member organizations with trade data to determine fees prior to receiving a billing invoice. In addition, members and member organizations have access to myphlx.com, a password protected website, which provides members an electronic copy of current and historical invoices, as well as the supporting details for assessed charges. Members will have the ability to retrieve trade information from this website on a T +1 basis no later than September 30, 2010. This new enhancement will provide members and member organizations the ability to see information about their trades and billing information prior to receiving the final month-end invoice.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

JBO orders is currently being employed and would therefore not create an undue burden.

The Exchange believes that the proposed amendment to billing practices, the proposal to not adjust commingled JBO orders, is reasonable because members and member organizations are currently required to properly account for these type of orders. The proposal is equitable because this practice will apply to all members and member organizations transacting JBO business.

Additionally, the Exchange believes the requirement that all billing disputes must be submitted within 60 days from receipt of the invoice, with the exception of certain fees, is reasonable because the Exchange provides ample tools to properly and swiftly monitor and account for various charges incurred in a given month. Also, the proposal is equitable because it equally applies to all members and member organizations. The Exchange's administrative costs would also be lowered as a result of this policy. Finally the Exchange believes that the proposal to rearrange the Fee Schedule is both reasonable and equitable because it clarifies the Fee Schedule.

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

Act¹⁰ and subparagraph (f) of Rule 19b-4¹¹ thereunder. 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.

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-2010-110 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-2010-110. 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

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

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 the 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-2010-110 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.¹²

Florence E. Harmon
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).