

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62745; File No. SR-Phlx-2010-113)

August 19, 2010

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 17, 2010, NASDAQ OMX PHLX, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 modify the current method of calculating the minimum number of orders submitted by a member organization and subsequently cancelled that is required to assess a Cancellation Fee on electronically delivered Customer orders, and Professional<sup>3</sup> all-or-none (“AON”) orders that are submitted by the member.

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.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Rule 1000(b)(14) provides in relevant part: “The term “professional” means 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).”

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 amend the manner in which the Cancellation Fee is assessed on member organizations. Currently, the Exchange assesses the Cancellation Fee on member organizations that submit Customer orders and Professional AON orders if the aggregate number of Customer orders and Professional AON orders submitted by such members and then cancelled totals 500 orders or more in a particular calendar month (the “500 Order Threshold”).

The Exchange proposes to modify the calculation of the 500 Order Threshold by creating two separate Cancellation Fee calculations, one applicable to Customer orders and one applicable to AON orders that are submitted by a Professional.<sup>4</sup> Under the proposal, the 500 Order Threshold would be calculated for Customer orders and Professional AON orders

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<sup>4</sup> Currently, a Professional is treated in the same manner as an off-floor broker-dealer for purposes of Rules 1014(g)(except with respect to AON orders, which will be treated like Customer orders), 1033(e), 1064.02 (except professional orders will be considered Customer orders subject to facilitation), and 1080.08 as well as Options Floor Procedure Advices B-6, B-11 and F-5. Member organizations must indicate whether orders are for professionals.

separately, and would not be aggregated.<sup>5</sup> The Exchange proposes this rule change to simplify the calculation of the 500 Order Threshold.

The Exchange recently amended the Cancellation Fee to include Professional AON orders in the computation of the 500 Order Threshold for the application of the Cancellation Fee.<sup>6</sup> Currently, the Exchange assesses a Cancellation Fee of \$2.10 per Customer order and \$1.10 per Professional AON order for each cancelled electronically delivered<sup>7</sup> Customer order or Professional AON order that exceeds the aggregate number of Customer and Professional AON orders executed on the Exchange by that member organization in a given month. The Cancellation Fee is not assessed in a month in which fewer than 500 electronically delivered Customer or Professional AON orders<sup>8</sup> are cancelled.

Further, simple cancels<sup>9</sup> and cancel-replacement<sup>10</sup> orders are types of orders that are counted when calculating the number of electronically delivered orders. The following order

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<sup>5</sup> The Cancellation Fee [sic] to member organizations that submit a minimum of 500 Customer orders in a given month, and to Professionals that submit a minimum of 500 AON orders in a given month. For purposes of assessing the Cancellation Fee, Customer or Professional AON orders from the same member organization in the same series on the same side of the market that are executed at the same price within a 300 second period will be aggregated and counted as one executed option order.

<sup>6</sup> See SR-Phlx-2010-105.

<sup>7</sup> Electronically delivered orders are delivered through the Exchange's options trading platform known as PHLX XL II.

<sup>8</sup> For purposes of assessing the Cancellation Fee, Customer or Professional AON orders from the same member organization in the same series on the same side of the market that are executed at the same price within a 300 second period will be aggregated and counted as one executed option order.

<sup>9</sup> The designation "simple cancel" indicates that an order is to be cancelled.

<sup>10</sup> A cancel-replacement order is a contingency order consisting of two or more parts which require the immediate cancellation of a previously received order prior to the replacement of a new order with new terms and conditions. If the previously placed order is already filled partially or in its entirety the replacement order is automatically canceled or reduced by such number. See Exchange Rule 1066(c)(7).

activity is exempt from the Cancellation Fee: (i) pre-market cancellations;<sup>11</sup> (ii) Complex Orders<sup>12</sup> that are submitted electronically; (iii) unexecuted Immediate-or-Cancel<sup>13</sup> Customer orders; and (iv) cancelled Customer orders that improved the Exchange's prevailing bid or offer (PBBO) market at the time the Customer orders were received by the Exchange.

The Exchange proposes to amend its Cancellation Fee to separately compute a Customer Cancellation Fee and a Professional AON Cancellation Fee. Each fee will be separately aggregated and each 500 Order Threshold will be calculated separately. Therefore, a member organization will not be assessed a fee on the first 500 cancelled Customer orders which meet the criteria specified above for inclusion in the Cancellation Fee. Similarly, a member organization will not be assessed a fee on the first 500 cancelled Professional AON orders which meet the criteria specified above for inclusion in the Cancellation Fee. The Exchange is not amending the method by which the Cancellation Fee is calculated; it is simply creating two separate 500 Order Threshold calculations. This amendment allows member organizations additional latitude in cancelling both Customer and Professional AON orders before incurring a fee for such cancellation.

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<sup>11</sup> See Securities Exchange Act Release Nos. 53226 (February 3, 2006), 71 FR 7602 (February 13, 2006)(SR-Phlx-2005-92); and 53670 (April 18, 2006), 71 FR 21087 (April 24, 2006) (SR-PHLX-2006-21). See also Securities Exchange Act Release No. 60046 (June 4, 2009), 74 FR 28083 (June 12, 2009) (SR-Phlx-2009-44).

<sup>12</sup> A complex order is a spread, straddle, combination, ratio or collar order, all of which consist of more than one component, priced like a single order at a net debit or credit based on the prices of the individual components. See Exchange Rule 1080.08 Commentary .08(a)(i).

<sup>13</sup> An Immediate-or-Cancel (IOC) order is a limit order that is to be executed in whole or in part upon receipt. Any portion not so executed shall be cancelled.

The Exchange is also proposing to make minor technical amendments that are grammatical in nature to the language of the Fee Schedule, relating to the Cancellation Fee, solely for purposes of clarification.<sup>14</sup>

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>15</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>16</sup> 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 the proposed amendments to the Cancellation Fee are reasonable because they will continue to ease system congestion and allow the Exchange to recover costs associated with excessive order cancellation activity. The Exchange believes that by separately calculating Customer and Professional AON cancellations for purposes of the Cancellation Fee will simplify the calculation of this fee.

The Exchange believes that the amendment to the Cancellation Fee is equitable because it will afford member organizations the opportunity to cancel additional Customer and Professional AON orders before a fee is incurred by the member organization. The Exchange would continue to assess the Cancellation Fee only after the 500 Order Threshold is reached for both Customer and Professional AON cancelled 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.

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<sup>14</sup> E-mail from Angela Saccomandi Dunn, Assistant General Counsel, Phlx to Ronesha A. Butler, Special Counsel, Division of Trading and Markets dated August 19, 2010.

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

<sup>16</sup> 15 U.S.C. 78f(b)(4).

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>17</sup> and Rule 19b-4(f)(2)<sup>18</sup> thereunder. At any time within 60 days of the filing of such 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2010-113 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-2010-113. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>18</sup> 17 CFR 19b-4(f)(2).

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,<sup>19</sup> 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 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

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<sup>19</sup> The text of the proposed rule change is available on Exchange's Web site at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, on the Commission's Web site at <http://www.sec.gov>, at Phlx, and at the Commission's Public Reference Room.

to File Number SR-Phlx-2010-113 and should be submitted on or before [insert date 21 days after publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).