

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63372; File No. SR-Phlx-2010-162)

November 24, 2010

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Price Improvement (PIXL) Fees

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 November 18, 2010, NASDAQ OMX PHLX LLC (“Phlx” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 and supersede its pricing applicable to members utilizing the Exchange’s price improvement mechanism known as Price Improvement XL or (PIXL[®]).

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions settling on or after November 22, 2010.

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 self-regulatory organization 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 those 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 parts 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 and supersede the current fees assessed for orders known as PIXL Orders³ and Initiating Orders.⁴ The Exchange intends to place a cap on the maximum fee that would be assessed to market participants for utilizing the price improvement mechanism. The Exchange also proposes to amend the fee assessed for Initiating Orders.

³ “A member may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (“PIXL Order”) against principal interest or against any other order (except as provided in sub-paragraph (n)(i)(E) below) it represents as agent (“Initiating Order”) provided it submits the PIXL order for electronic execution into the PIXL Auction (“Auction”) pursuant to Rule 1080. See Exchange Rule 1080(n).

⁴ See footnote 3.

Currently, the Exchange assesses PIXL fees on Customers, Directed Participants⁵, Specialists⁶, Streaming Quote Traders (“SQT”)⁷, Remote Streaming Quote Traders (“RSQT”)⁸, Firms and Broker-Dealers. All options traded on the Exchange are eligible for PIXL.

The Exchange assesses a fee of \$0.05 per contract when an Initiating Order executes against a PIXL Order in the symbols listed in Section I, the Fees and Rebates for Adding and Removing Liquidity in Select Symbols⁹ (known as “Select Symbols”), and the symbols defined in Section II¹⁰ (“Section II Symbols”). The Exchange assesses the fees listed in Section II of the Fee Schedule for the PIXL Order when the PIXL Order trades against the Initiating Order in Section II Symbols and the Select Symbols. For example, a member or member organization is assessed \$0.00 for Customer transactions.

⁵ See Exchange Rule 1080(l), “...The term ‘Directed Specialist, RSQT, or SQT’ means a specialist, RSQT, or SQT that receives a Directed Order.” A Directed Participant has a higher quoting requirement as compared with a specialist, SQT or RSQT who is not acting as a Directed Participant. See Exchange Rule 1014.

⁶ A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

⁷ A Streaming Quote Trader 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.

⁸ A Remote Streaming Quote Trader 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.

⁹ The Fees and Rebates for Adding and Removing Liquidity in Select Symbols are listed in Section I of the Fee Schedule.

¹⁰ An equity option includes exchange-traded fund share (“ETF”), Holding Company Depositary Receipt (“HOLDR”), Russell 2000(R) Index (the "Full Value Russell Index" or "RUT"), options on the one-tenth value Russell 2000® Index (the "Reduced Value Russell Index" or "RMN"), options on the Nasdaq 100 Index traded under the symbol NDX ("NDX"), options on the one-tenth value of the Nasdaq 100 Index traded under the symbol MNX ("MNX") and the KBW Bank Index (“BKX”).

For the symbols assessed according to Section III¹¹ of the Fee Schedule, titled Sector Index Options Fees and U.S Dollar-Settled Foreign Currency (“WCO”) Options Fees, the transaction fees described in Section III apply to both the Initiating Order and the PIXL Order for all executions.

Select Symbols: Section I

With respect to executions in Select Symbols, where the PIXL Order is not trading against the Initiating Order, the PIXL Order is assessed the Fee for Removing Liquidity when that order is executed against a resting contra-side order or quote that was present upon initial receipt of the PIXL Order. The resting contra-side order or quote receives the Rebate for Adding Liquidity. Additionally, the PIXL Order receives the Rebate for Adding Liquidity when that order is executed against contra-side order(s) that respond to the PIXL auction broadcast message as well as when executed against contra-side quotes and unrelated orders on the PHLX book that arrived after the PIXL auction was initiated. The PIXL auction responders, contra-side order(s) and quote(s) is/are assessed the Fee for Removing Liquidity.

For the symbols assessed according to Section III of the Fee Schedule, titled Sector Index Options Fees and U.S Dollar-Settled Foreign Currency (“WCO”) Options Fees, the transaction fees described in Section III apply to both the Initiating Order and the PIXL Order for all executions.

¹¹ The symbols assessed fees according to Section III are BKX, FPX, HGX, OSX, SOX, UTY, and XAU (“Sector Index Options”) and U.S. Dollar-Settled Foreign Currency Options (“WCOs”).

Equity Options: Section II

With respect to executions in Section II Equity Options¹², the PIXL Order is assessed the appropriate Equity Option Fee in Section II of the Fee Schedule. The contra-side order or quote is assessed the appropriate Equity Option Fee listed on the Fee Schedule as well. All other Equity Options Fees in Section II apply as appropriate, including but not limited to Payment for Order Flow.

The Exchange is proposing to amend its PIXL fees to assess \$0.07 per contract for each Initiating Order and to add language to the Fee Schedule to indicate that certain fees will be limited to a maximum of \$0.32 per contract for PIXL Orders. Specifically, for options overlying the Select Symbols defined in Section I and Equity Options defined in Section II of the Fee Schedule, the maximum fee any participant will pay will be \$0.32 per contract. The Exchange believes that these fees should encourage the initiation of price improvement auctions.

The Exchange is also adding “BKX” to the text of Section IV of the Fee Schedule, as BKX was added to the equity options fees.¹³

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions settling on or after November 22, 2010.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹⁴ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁵ in

¹² This includes all Symbols that are not specifically Select Symbols as listed in Section I of the Fee Schedule.

¹³ See Securities Exchange Act Release No. 63252 (November 5, 2010), 75 FR 69486 (November 12, 2010) (SR-Phlx-2010-150) (a rule change to add the KBW Bank Index (“BKX”) to the Equity Option Fees).

particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange is lowering prices to provide incentives for its members to seek price improvement for customer orders. Offering lower prices to members that initiate a price improvement opportunity is sound public policy and market structure. Any order that is assessed the lower fee will, by definition, have received the opportunity for an execution at a price superior to the market. The Exchange believes that the fee proposal is both equitable and reasonable for this and the reasons listed hereafter.

The proposed fees are consistent with the price differentials that exist today at most option exchanges. For example, the highest transaction fee differential proposed by the Exchange is the same transaction fee differential that currently exists between broker-dealers that manually facilitate their customer order flow (known as firm facilitation) and the transaction fees charged to other broker-dealers by the both NYSE Arca, Inc. (“NYSE Arca”)¹⁶ and NYSE Amex LLC (“NYSE Amex”).¹⁷ ¹⁸ [sic]

Additionally, the fees and rebates assessed by the Exchange are similar, and in some cases less than, the fees and rebates assessed by the Boston Options Exchange Group, LLC

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4).

¹⁶ See Securities Exchange Act Release No. 62670 (August 9, 2010), 75 FR 49546 (August 13, 2010) (SR-NYSEArca-2010-77). See also NYSE Arca’s Fee Schedule. NYSE Arca assesses no fee for firm facilitation - manual trades and a \$0.25 per contract fee for all other firm and broker-dealer manual trades.

¹⁷ See Securities Exchange Act Release No. 50012 (August 9, 2010), 75 FR 50012 (August 16, 2010) (SR-NYSEAmex-2010-81). See also NYSE Amex’s Fee Schedule. NYSE Amex assesses no fee for firm facilitation - manual trades and a \$0.25 per contract fee for all other firm and broker-dealer manual trades.

¹⁸ The Exchange also assesses similar firm facilitation fees. See Exchange’s Fee Schedule.

(“BOX”)¹⁹ and the International Securities Exchange (“ISE”)²⁰ for orders executed in a price improvement mechanism. For example a BOX participant could be assessed total fees of \$0.35 per contract as the price improvement period (“PIP”) initiator and receive a rebate for their customer PIP order of \$0.25 per contract (in this example the net fee charged the BOX participant would be \$0.10), whereas the PIP responder could be assessed a fee of \$0.50 per contract. This is a differential of \$0.40 per contract between two BOX participants for participating in the PIP auction, which is equal to or less than the differentials that exist in the Exchange’s proposal. With respect to ISE, the Exchange pays a rebate for certain PIXL executions, which is similar to the \$0.15 rebate ISE pays for its price improvement mechanism.

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.²¹ 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

¹⁹ See Securities and Exchange Act Release No. 62632 (August 3, 2010), 75 FR 47869 (August 3, 2010) (SR-BX-2010-049).

²⁰ See the ISE schedule of fee as of August 2, 2010.

²¹ 15 U.S.C. 78s(b)(3)(A)(ii).

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 Number SR-Phlx-2010-162 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-2010-162. 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,²² 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

²² The text of the proposed rule change is available on the Commission's website at <http://www.sec.gov/rules/sro.shtml>.

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 Number SR-Phlx-2010-162 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.²³

Elizabeth M. Murphy
Secretary

²³ 17 CFR 200.30-3(a)(12).