

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64863; File No. SR-Phlx-2011-94)

July 12, 2011

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of
Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to the Options Floor
Broker Subsidy

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 June 30, 2011, 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 Section VII of its Fee Schedule entitled the "Options Floor Broker Subsidy."

The Exchange also proposes to make an amendment to Section III of the Fee Schedule entitled "Singly Listed Options."

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on July 1, 2011.

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 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 computation for eligible contracts. The Exchange proposes to amend the eligible contract computation to limit the eligible contracts where a Firm is also obtaining the benefit of the Firm Related Equity Option Cap (“Cap”).³ The Exchange believes that the benefit of the Cap should be taken into account in the eligible contract computation.

The Exchange currently pays an Options Floor Broker Subsidy (“Subsidy”) to member organizations with Exchange registered floor brokers that enter eligible contracts

³ The Firm Related Equity Option Cap is currently \$75,000. Firm equity option transaction charges and QCC Transaction Fees, in the aggregate, for one billing month will not exceed the Firm Related Equity Option Cap per member organization when such members are trading in their own proprietary account. The Firm equity options transaction charges will be waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account. Members and member organizations must notify the Exchange in writing of all accounts in which the member is not trading in its own proprietary account. The Exchange will not make adjustments to billing invoices where transactions are commingled in accounts which are not subject to the Firm Related Equity Option Cap. In addition, Firms that (i) are on the contra-side of an electronically-delivered and executed Customer complex order; and (ii) have reached the Firm Related Equity Option Cap will be assessed a \$0.05 per contract fee. See Section II of the Exchange’s Fee Schedule.

into the Exchange's Floor Broker Management System ("FBMS").⁴ The Subsidy is paid based on the contract volume on Customer-to-non-Customer as well as non-Customer-to-non-Customer transactions for that month. Only the volume from orders entered by floor brokers into FBMS and subsequently executed on the Exchange qualifies. The Exchange pays a Subsidy based on a monthly total of all eligible contracts as follows:

Per Eligible Contract Monthly Volume Subsidy Payment:

Tier I	Tier II	Tier III	Tier IV
0 to 1,250,000	1,250,001 to 2,250,000	2,250,001 to 5,250,000	5,250,001 and greater
\$0.00 per contract	\$0.03 per contract	\$0.05 per contract	\$0.09 per contract

In computing the monthly eligible contracts, the Exchange currently excludes: (i) Customer-to-Customer executions; (ii) dividend,⁵ merger⁶ and short stock interest⁷

⁴ FBMS is designed to enable floor brokers and/or their employees to enter, route, and report transactions stemming from options orders received on the Exchange. FBMS also is designed to establish an electronic audit trail for options orders represented and executed by floor brokers on the Exchange. See Exchange Rule 1080, commentary .06.

⁵ A dividend strategy is defined as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend. See Section II of the Fee Schedule.

⁶ A merger strategy is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed the first business day prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock. See Section II of the Fee Schedule.

⁷ A short stock interest strategy is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class. See Section II of the Fee Schedule.

strategies; and (iii) firm facilitation transactions.⁸ The Subsidy applies to contracts that are executed as part of a Complex Order.⁹ Where two or more member organizations with Exchange registered floor brokers each enter one side of a transaction into FBMS, the executed contracts are divided equally among qualifying member organizations that participate in that transaction.

The Exchange is proposing to amend the computation of eligible contracts to also exclude: (i) Firm-to-Customer executions, where the Firm has reached the Cap; and (ii) Firm-to-Firm executions, where both sides have reached the Cap. The Exchange also proposes to amend Section VII to capitalize the word “Customer” and make other technical amendments.

Additionally, the Exchange is proposing to amend Section III of the Fee Schedule entitled “Singly Listed Options.” Specifically, the Exchange proposes to remove the list of Alpha Index Options symbols (“Alpha Symbols”). The Alpha Symbols are subject to

⁸ A facilitation occurs when a floor broker holds an options order for a public customer and a contra-side order for the same option series and, after providing an opportunity for all persons in the trading crowd to participate in the transaction, executes both orders as a facilitation cross. See Exchange Rule 1064.

⁹ A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or ETF coupled with the purchase or sale of options contract(s). See Exchange Rule 1080, Commentary .08(a)(i).

change.¹⁰ The Exchange provides a list of Alpha Symbols, which are subject to the Alpha Index Options Fee, at <http://www.nasdaqomxtrader.com/Micro.aspx?id=Alpha>.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on July 1, 2011.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹² in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the proposed amendments to the Subsidy are equitable and reasonable because member organizations with Exchange registered floor brokers would continue to be provided an equal opportunity to receive a Subsidy. The Exchange believes that amending the computation to exclude Firm-to-Customer executions and Firm-to-Firm executions where the Firm sides have reached the Cap is reasonable because the Exchange would not be paying a Subsidy on executions that incur no transaction fees. In addition, the Exchange believes that amending the computation to exclude Firm-to-Customer executions and Firm-to-Firm executions where the Firm sides have reached the Firm Related Equity Option Cap is equitable because the exclusions apply uniformly to all member organizations. Finally, the Exchange does not believe that

¹⁰ The Exchange would file a proposed rule change with the Commission each time it proposes to amend the Alpha Symbols which are subject to the Alpha Index Options Fee in Section III of the Fee Schedule.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

this Subsidy is unreasonable or discriminatory because any floor broker is afforded the opportunity of meeting the volume criteria.

The Exchange believes that its proposal to amend Section III of the Fee Schedule to remove the list of Alpha Symbols is both reasonable and equitable because the list of symbols is readily available on the Exchange's website. Since the Alpha Symbols are subject to change, the Exchange believes that the list of current symbols on the Exchange's website is the most appropriate and current source of information for the complete list of Alpha Symbols subject to the Alpha Index Options Fee.¹³

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.¹⁴ 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

¹³ This list is kept up to date and current with any rule changes that are filed with the Commission.

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2011-94 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-2011-94. 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 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-2011-94 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.¹⁵

Cathy H. Ahn
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).