

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66005; File No. SR-Phlx-2011-174)

December 19, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Strategy Executions and the Monthly Cap

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 7, 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 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 exclude all dividend<sup>3</sup>, merger<sup>4</sup>, short stock interest<sup>5</sup> and reversal<sup>6</sup> and conversion<sup>7</sup> strategies (collectively "Strategy Executions") from the Monthly Firm Fee Cap<sup>8</sup> and the Monthly Cap.<sup>9</sup>

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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> 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.

<sup>4</sup> 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.

<sup>5</sup> 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.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on January 3, 2012.

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, at the Commission's website at [www.sec.gov](http://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 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.

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<sup>6</sup> Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration.

<sup>7</sup> Conversions are established by combining a long position in the underlying security with a long put and a short call position that shares the same strike and expiration.

<sup>8</sup> The Monthly Firm Fee Cap is currently \$75,000. Firm equity option transaction charges, in the aggregate, for one billing month will not exceed the Monthly Firm Fee 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. Firms that (i) are on the contra-side of an electronically-delivered and executed Customer complex order; and (ii) have reached the Monthly Firm Fee Cap will be assessed a \$0.05 per contract fee. See Securities Exchange Act Release No. 63780 (January 26, 2011), 76 FR 5846 (February 2, 2011) (SR-Phlx-2011-07).

<sup>9</sup> ROTs and Specialists are currently subject to a Monthly Cap of \$550,000. The trading activity of separate ROTs and Specialist member organizations will be aggregated in calculating the Monthly Cap if there is at least 75% common ownership between the member organizations. In addition, ROTs and Specialists that (i) are on the contra-side of an electronically-delivered and executed Customer complex order; and (ii) have reached the Monthly Cap will be assessed a \$0.05 per contract fee. See Securities Exchange Act Release No. 64113 (March 23, 2011), 76 FR 17468 (March 29, 2011) (SR-Phlx-2011-36).

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 Section II of the Exchange's Fee Schedule<sup>10</sup> entitled "Equity Option Fees" to exclude Strategy Executions from the Monthly Firm Fee Cap and the Monthly Cap.

Currently, Specialist<sup>11</sup>, Registered Options Trader<sup>12</sup>, SQT<sup>13</sup> and RSQT<sup>14</sup>, Professional<sup>15</sup>, Firm and Broker-Dealer equity option transaction fees are capped at \$1,000 for dividend, merger and short stock interest strategies executed on the same trading day in the same options class when such members are trading in their own proprietary accounts. Equity option transaction fees

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<sup>10</sup> Section II includes options overlying equities, ETFs, ETNs, indexes and HOLDERS which are Multiply Listed.

<sup>11</sup> A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

<sup>12</sup> A Registered Options Trader ("ROT") includes a Streaming Quote Trader ("SQT"), a Remote Streaming Quote Trader ("RSQT") and a Non-SQT ROT, which by definition is neither a SQT or a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. See Exchange Rule 1014 (b)(i) and (ii).

<sup>13</sup> An SQT 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.

<sup>14</sup> An RSQT 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. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

<sup>15</sup> The Exchange defines a "professional" as 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) (hereinafter "Professional").

for dividend, merger and short stock interest strategies combined are further capped at the greater of \$10,000 per member or \$25,000 per member organization per month when such members are trading in their own proprietary accounts. Specialist, ROT, SQT and RSQT, Professional, Firm and Broker-Dealer options transaction fees in Multiply Listed Options are capped at \$500 per day for reversal and conversion strategies executed on the same trading day in the same options class (“Reversal and Conversion Cap”). The Exchange is proposing to exclude the Strategy Executions, which are already subject to caps today, from the Monthly Firm Fee Cap and the Monthly Cap.

The Exchange is also proposing to amend the name of the “Monthly Cap” to the “Monthly Market Maker Cap” to better reflect the market participants that are eligible for the cap.<sup>16</sup> The Exchange also proposes to amend all references in the Fee Schedule to reflect the new name of the cap.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on January 3, 2012.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>17</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>18</sup> in

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<sup>16</sup> The Exchange market maker category includes Specialists (see Rule 1020) and Registered Options Traders (Rule 1014(b)(i) and (ii), which includes Streaming Quote Traders or SQTs (see Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders or RSQTs (see Rule 1014(b)(ii)(B)). This would also include Directed Participants. The term “Directed Participant” applies to transactions for the account of a Specialist, Streaming Quote Trader or Remote Streaming Quote Trader resulting from a Customer order that is (1) directed to it by an order flow provider, and (2) executed by it electronically on Phlx XL II.

<sup>17</sup> 15 U.S.C. 78f(b).

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

The Exchange believes that the proposal to exclude the Strategy Executions from the benefit of either the Monthly Firm Fee Cap or the Monthly Cap is reasonable because those strategies are already subject to caps. Firms, ROTs and Specialists have the ability to not pay transaction fees once either the Monthly Firm Fee Cap or the Monthly Cap, as applicable, is reached and therefore the Exchange believes it is reasonable to exclude Strategy Executions, which already have the benefit of caps, from receiving a second cap.

The Exchange believes that it is equitable and not unfairly discriminatory to exclude Strategy Executions from the Monthly Firm Fee Cap or the Monthly Cap because only certain participants are impacted, namely Firms, ROTs and Specialists, as they are the only ones receiving the benefit of the Monthly Firm Fee Cap or the Monthly Cap, as applicable. Other market participants are not impacted because they are not subject to another cap. Therefore, the Exchange believes that this fee is being uniformly applied to those participants subject to caps. In addition, NYSE Amex LLC also excludes certain strategy executions from its monthly firm fee cap.<sup>19</sup>

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>18</sup> 15 U.S.C. 78f(b)(4).

<sup>19</sup> See SR-NYSEAMEX-2011-94 (a proposal to exclude reversals and conversions, dividend spreads, box spreads, short stock interest spreads, merger spreads, and jelly rolls, which are currently capped at \$750 per transaction and \$25,000 per month, from the monthly firm fee cap of \$100,000).

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>20</sup> 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 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2011-174 on the subject line.

Paper comments:

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

- 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-2011-174. 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 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 offices 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-2011-174, 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.<sup>21</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>21</sup> 17 CFR 200.30-3(a)(12).