

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61685; File No. SR-Phlx-2010-39)

March 10, 2010

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Certain Exchange Fees

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 March 1, 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, II and III below, which Items have been prepared by the Exchange. Phlx has designated this proposal as one establishing or changing a member due, fee, or other charge imposed under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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: (i) increase the options transaction charge for Registered Options Traders (“ROTs”) and Specialists to \$.22; (ii) increase the Options Surcharge in options on the Russell 2000® Index (the “Full Value Russell Index” or “RUT”), options on the one-tenth value Russell 2000® Index<sup>5</sup> (the “Reduced Value Russell Index” or “RMN”), options on the

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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> 15 U.S.C. 78s(b)(3)(A)(ii).

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

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Nasdaq 100 Index<sup>6</sup> traded under the symbol NDX (“NDX”) and options on the one-tenth value of the Nasdaq 100 Index traded under the symbol MNX (“MNX”) to \$.15 for ROTs, Specialists, Firms and Broker-Dealers; (iii) amend its Monthly Cap on equity options transaction fees to \$650,000; (iv) amend the Firm Related Equity Option Cap to \$75,000; (v) increase the U.S. Dollar-Settled Foreign Currency Options transaction charges to \$.30 per contract; and (vi) increase the Real-Time Risk Management Fee to \$.003 per contract.

While changes to the Exchange’s Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be operative for trades settling on or after March 1, 2010.

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, at the Commission’s Public Reference Room and on the Commission’s Web site at [www.sec.gov](http://www.sec.gov).

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

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<sup>6</sup> NASDAQ(R), NASDAQ-100(R) and NASDAQ-100 Index(R) are registered trademarks of The NASDAQ OMX Group, Inc. (which with its affiliates are the “Corporations”) and are licensed for use by NASDAQ OMX PHLX, Inc. in connection with the trading of options products based on the NASDAQ-100 Index(R). The options products have not been passed on by the Corporations as to their legality or suitability. The options products are not issued, endorsed, sold, or promoted by the Corporations. The Corporations make no warranties and bear no liability with respect to the options products.

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

Generally, the purpose of the proposed rule change is to update the Exchange's Fee Schedule by amending existing fees. The Exchange believes that the increases are necessary for the Exchange to remain competitive.

Equity Options Fees

The Exchange proposes increasing the options transaction charge for Registered Options Traders ("ROTs") and specialists to \$.22. Currently, the Exchange assesses a per contract fee of \$.21 on ROTs (on-floor) and specialists.<sup>7</sup> The Exchange also proposes amending the Options Surcharge in RUT, RMN, MNX and NDX to increase the current fee of \$.10 per contract to \$.15 per contract for ROTs (on-floor), specialists, Firms and Broker-Dealers.

The Exchange proposes to decrease the current Monthly Cap on equity options transactions from \$750,000 to \$650,000. The Monthly Cap is currently applicable to ROTs<sup>8</sup> and specialists.<sup>9</sup> The Exchange believes that by reducing the Monthly Cap, a greater number of

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<sup>7</sup> This fee is subject to a Monthly Cap of \$750,000.

<sup>8</sup> A ROT is 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.

<sup>9</sup> This Monthly Cap is not applicable to electronic trading in Standard and Poor's Depository Receipts/SPDRs ("SPY"), PowerShares QQQ Trust ("QQQQ")®; Ishares Russell 2000 ("IWM") and Citigroup Inc. ("C").

members may benefit from the Monthly Cap and the Exchange will attract additional order flow.<sup>10</sup>

The Exchange also proposes to decrease the Firm Related Equity Option Cap from \$85,000 to \$75,000 per month. The Exchange recently increased the Firm Related Equity Option Cap.<sup>11</sup> Similarly, the Exchange believes that by reducing the Firm Related Equity Option Cap additional members will benefit from the cap.<sup>12</sup>

#### U.S. Dollar-Settled Foreign Currency Option Fees

The Exchange proposes to increase the Options Transaction Charge in U.S. Dollar-Settled Foreign Currency Options Fees for ROTs (on-floor), specialists and Firms from \$.24 to \$.30.

#### Real-Time Risk Management Fee

The Exchange proposes to increase the Real-Time Risk Management Fee to \$.003 per contract. The current fee is \$.0025 per contract. This fee is assessed on members who receive information on a real-time basis.

The proposed changes to the Fee Schedule will be effective for transactions settling on or after March 1, 2010.

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<sup>10</sup> The Exchange recently amended the calculation of the Monthly Cap by aggregating the trading activity of separate ROTs and specialist member organizations if there is at least 75% common ownership between the member organizations as reflected on each member organizations' Form BD, Schedule A. See Securities Exchange Act Release N. 61558 (February 22, 2010) (SR-Phlx-2010-16).

<sup>11</sup> See SR-Phlx-2010-25.

<sup>12</sup> This Firm Related Equity Option Cap is not applicable to electronic trading in Standard and Poor's Depository Receipts/SPDRs ("SPY"), PowerShares QQQ Trust ("QQQQ")®; Ishares Russell 2000 ("IWM") and Citigroup Inc. ("C").

## 2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>14</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes the increases to the Equity Options Fees are equitable in that ROTs, specialists, Firms and Broker Dealers will be charged the same rate with respect to the Options Surcharge. The increase to the Options Transaction Charge for ROTs and specialists is offset by other amendments to reduce caps. The Exchange believes that members will benefit from the reduced Monthly Cap and Firm Related Equity Option Cap. The amendments to the U.S. Dollar-Settled Foreign Currency Options Fees are consistent for ROTs (on-floor), Specialists and Firms. Also, the Real-Time Risk Management fee will apply to all members alike.

### 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<sup>15</sup> and paragraph (f)(2) of Rule 19b-4<sup>16</sup> thereunder. At any time within 60 days of the filing

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<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4).

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

<sup>16</sup> 17 CFR 240.19b-4(f)(2).

of the proposed rule change, the Commission may summarily abrogate 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-2010-39 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2010-39. 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 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 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 publicly available. All submissions should refer to File Number SR-Phlx-2010-39 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>17</sup>

Florence E. Harmon  
Deputy Secretary

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