

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61699; File No. SR-Phlx-2010-42)

March 12, 2010

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees and Rebates for Adding and Removing Liquidity

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 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 Act³ and Rule 19b-4(f)(2) thereunder,⁴ 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 amend the applicability of Complex Orders to fees and rebates for adding and removing liquidity.

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 March 1, 2010.⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ The Commission notes that the fees in this proposed rule change were effective upon filing on March 1, 2010 and apply solely to trades effected on or after that date.

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.

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 applicability of Complex Orders to remain competitive.

The Exchange proposes modifying the applicability of Complex Orders to the fees and rebates for adding and removing liquidity. Currently, single contra-side orders that are executed against the individual components of Complex Orders will be charged under the proposed Fee Schedule. The individual components of such a Complex Order will not be charged. The Exchange proposes amending this exception to state that individual components of such a Complex Order will be charged according to the fees and rebates for adding and removing liquidity. The Exchange is amending the applicability of Complex Orders to the fees described herein because the Exchange no longer believes that this incentive is necessary.

Currently, the Exchange assesses a per-contract transaction charge in Standard and Poor's Depository Receipts/SPDRs ("SPY")⁶, the PowerShares QQQ Trust ("QQQQ")[®]; Ishares Russell 2000 ("IWM") and Citigroup Inc. ("C") options on five different categories of market participants that submit orders and/or quotes that remove, or "take," liquidity from the Exchange. The per-contract transaction charge depends on the category of market participant submitting an order or quote to the Exchange that removes liquidity.⁷

The market participants are as follows: (i) specialists, Registered Options Traders ("ROTs"), Streaming Quote Traders ("SQTs")⁸ and Remote Streaming Quote Traders ("RSQTs");⁹ (ii) customers;¹⁰ (iii) specialists, ROTs, SQTs and RSQTs that receive Directed Orders ("Directed Participants"¹¹ or "Directed Specialists, RSQTs, or SQTs"¹²); (iv) Firms; and (v) broker-dealers.

⁶ SPY options are based on the SPDR exchange-traded fund ("ETF"), which is designed to track the performance of the S&P 500 Index.

⁷ See SR-Phlx-2010-33.

⁸ An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. See Exchange Rule 1014(b)(ii)(A).

⁹ An RSQT is 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 through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Exchange Rule 1014(b)(ii)(B).

¹⁰ This applies to all customer orders, directed and non-directed.

¹¹ For purposes of this fee, a Directed Participant is a Specialist, SQT, or RSQT that executes a customer order that is directed to them by an Order Flow Provider and is executed electronically on the Exchange's electronic trading platform for options, PHLX XL II.

¹² 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

The per-contract transaction charges are assessed on participants who submit proprietary quotes and/or orders that remove liquidity from the Exchange's market in options listed on the Fee Schedule. The Exchange also assesses a transaction charge to Firms and broker-dealers that add liquidity.

Additionally, the Exchange has in place a per-contract rebate relating to transaction charges for orders or quotations that add liquidity to the Exchange's market in options listed on the fee schedule. The amount of the rebate depends on the category of participant whose order or quote was executed as part of the Phlx disseminated Best Bid and/or Offer.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act¹³ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁴ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, including its monthly volumes, the order types it uses, and the prices of its quotes and orders (i.e., its propensity to add or remove liquidity). The rate increase to Firms for adding liquidity in the various symbols including the additional Symbols is the same rate that is currently being assessed on Broker-Dealers.

Specifically, the Exchange believes that amending the applicability of the complex orders to these fees is equitable as that will apply equally to all participants.

higher quoting requirement as compared with a specialist, SQT or RSQT who is not acting as a Directed Participant. See Exchange Rule 1014.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4).

Accordingly, the Exchange also believes that the addition of the options to this portion of the Fee Schedule is equitable in that it will apply to all categories of participants in the same manner.

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 Act¹⁵ and paragraph (f)(2) of Rule 19b-4¹⁶ thereunder. At any time within 60 days of the filing 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

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 240.19b-4(f)(2).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2010-42 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Phlx-2010-42. 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-2010-42 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.¹⁷

Florence E. Harmon
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).