

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61822; File No. SR-Phlx-2010-47)

April 1, 2010

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amendment of the Fee Schedule

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 22, 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 amend the Exchange’s Fee Schedule to: (i) increase the number of options to be included in the Exchange’s current schedule of transaction fees and rebates for adding and removing liquidity; (ii) increase the Sector Index Options Fees assessed on Registered Options Traders (on-floor) and Specialists from \$.30 to \$.35 and (iii) make other clarifying technical amendments to the Fee Schedule.

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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).

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 April 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 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 Exchange proposes to increase liquidity and to attract order flow by increasing the number of options to be included in the Exchange's current schedule of transaction fees and rebates for adding and removing liquidity.

Specifically, the Exchange proposes to add the following options: Alcoa, Inc. ("AA"); American International Group, Inc. ("AIG"); Advanced Micro Devices, Inc. ("AMD"); AMR Corporation ("AMR"); Caterpillar, Inc. ("CAT"); Cisco Systems, Inc. ("CSCO"); Ford Motor Company ("F"); Direxion Daily Financial Bull 3X Shares ("FAS"); Direxion Daily Financial Bear 3X Shares ("FAZ"); SPDR Gold Trust ("GLD"); Intel Corporation ("INTC"); JPMorgan

Chase & Co. (“JPM”), Las Vegas Sands Corp. (“LVS”); MGM Mirage (“MGM”); Micron Technology, Inc. (“MU”); Newmont Mining Corporation (“NEM”); Palm, Inc. (“PALM”); Pfizer, Inc. (“PFE”); ”); Potash Corp./Saskatchewan, Inc. (“POT”); SanDisk Corporation (“SNDK”); AT&T, Inc. (“T”); UAL Corporation (“UAUA”); Verizon Communications, Inc. (“VZ”), and United States Steel Corporation (“X”) collectively (“the options”). The options would be subject to the fees and rebates for adding and removing liquidity.

Currently, the Exchange assesses a per-contract transaction charge in multiple options<sup>5</sup> 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.<sup>6</sup>

The market participants are as follows: (i) specialists, Registered Options Traders (“ROTs”), Streaming Quote Traders (“SQTs”)<sup>7</sup> and Remote Streaming Quote Traders

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<sup>5</sup> The options that are currently assessed the fees and rebates for adding and removing liquidity are: Standard and Poor's Depository Receipts/SPDRs (“SPY”); the PowerShares QQQ Trust (“QQQQ”)®; iShares Russell 2000 (“IWM”); Citigroup Inc. (“C”); Apple, Inc. (AAPL); Allstate Corp., (ALL), Amazon.com, Inc. (“AMZN”), Bank of America Corporation (“BAC”); Dell, Inc. (“DELL”), Diamonds Trust Series 1 (“DIA”), DryShips, Inc. (“DRYS”), Eastman Kodak, Co. (“EK”), Market Vectors Gold Miners ETF (“GDX”), General Electric Company (“GE”), Goldman Sachs Group, Inc. (“GS”), Microsoft Corporation (“MSFT”), Qualcomm, Inc. (“QCOM”), Research In Motion Ltd. (“RIMM”), Starbucks Corp. (“SBUX”), UltraShort Financials ProShares (“SKF”), iShares Silver Trust (“SLV”), Semiconductor HOLDERS (“SMH”), United States Natural Gas (“UNG”), United States Oil Fund LP Units (“USO”), Ultra Financials ProShares (“UYG”), WynnResorts Ltd. (“WYNN”), and Financial Select Sector SPDR (“XLF”).

<sup>6</sup> See Securities Exchange Act Release No. 61684 (March 10, 2010), 75 FR 13189 (March 18, 2010) (SR-Phlx-2010-33).

<sup>7</sup> 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).

(“RSQTs”);<sup>8</sup> (ii) customers;<sup>9</sup> (iii) specialists, SQTs and RSQTs that receive Directed Orders (“Directed Participants”<sup>10</sup> or “Directed Specialists, RSQTs, or SQTs”<sup>11</sup>); (iv) Firms; and (v) broker-dealers.

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.

The Exchange proposes to increase the options transactions charge assessed on Registered Options Traders (on-floor) and Specialists in Sector Index Options from \$.30 to \$.35. The Exchange believes that the increases are necessary for the Exchange to continue to offset certain costs associated with maintaining the Sector Index Options.

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<sup>8</sup> 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).

<sup>9</sup> This applies to all customer orders, directed and non-directed.

<sup>10</sup> 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.

<sup>11</sup> 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.

The Exchange also proposes to amend the Fee Schedule to make technical amendments. Specifically, the Exchange proposes to amend a reference in the Payment For Order Flow Fees. Currently, the Payment For Order Flow Fee Schedule states that “QQQQ and other options that are trading in the Penny Pilot Program will be assessed a \$.25 per contract fee”. The Exchange recently filed a proposed rule change to create transaction fees and rebates for adding and removing liquidity.<sup>12</sup> In that filing, the Exchange stated that Payment for Order Flow fees will not be collected on transactions for transaction fees and rebates for adding and removing liquidity in certain named symbols. The PowerShares QQQ Trust (“QQQQ”)® is among the named symbols to which the transaction fees and rebates for adding and removing liquidity in certain named symbols are applied. Therefore, the Exchange proposes to remove the language referencing QQQQ from the Payment for Order Flow section of the Fee Schedule as that language was inadvertently not removed at the time of filing the aforementioned rule change.

Additionally, the Exchange recently filed a proposed rule change, which among other things, amended endnote 5 to create a reference to the Monthly Firm Cap.<sup>13</sup> That cap is actually referred to as the Firm Related Equity Option Cap in the Equity Options Fees portion of the Fee Schedule where the amount of such cap is defined. The Exchange proposes to amend the Fee Schedule to conform the text in endnote 5 to the remainder of the Fee Schedule by removing the term “Monthly Firm Cap” in endnote 5 and replacing the text with the following corrected text “Firm Related Equity Option Cap”.

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<sup>12</sup> See Securities Exchange Act Release No. 61684 (March 10, 2010), 75 FR 13189 (March 18, 2010) (SR-Phlx-2010-33).

<sup>13</sup> See Securities Exchange Act Release No. 61685 (March 10, 2010), 75 FR 13187 (March 18, 2010) (SR-Phlx-2010-39).

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>14</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>15</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the addition of the options to the fees and rebates for adding and removing liquidity is equitable in that it will apply to all categories of participants in the same manner. The Exchange also believes that increasing the sector index options fees for Registered Options Traders (on-floor) and Specialists is equitable in that it is in the range of other sector index option options transaction sector index fees.

Additionally, the Exchange believes that the clarifying technical amendments will provide further clarity to the Fee Schedule.

### 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>16</sup> and paragraph (f)(2) of Rule 19b-4<sup>17</sup> 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

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

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

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

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-2010-47 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-2010-47. 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-2010-47 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>18</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).