

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61961; File No. SR-Phlx-2010-61)

April 22, 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 April 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 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 fees and rebates for adding and removing liquidity for options overlying various select symbols.

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 May 3, 2010.

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).

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 Exchange proposes to amend its current fees and rebates for adding and removing liquidity by eliminating the fees for adding liquidity. Specifically, the Exchange proposes to eliminate the current \$0.45 Firm and \$0.45 Broker-Dealer per-contract fees for adding liquidity.

The Exchange currently assesses a per-contract transaction charge in various select symbols⁵ on six different categories of market participants that submit orders and/or quotes that remove, or "take," liquidity from the Exchange: (i) specialists, Registered Options Traders

⁵ The fees and rebates for adding and removing liquidity are applicable to executions in options overlying AA, AAPL, AIG, ALL, AMD, AMR, AMZN, BAC, C, CAT, CSCO, DELL, DIA, DRY, EK, F, FAS, FAZ, GDX, GE, GLD, GS, INTC, IWM, JPM, LVS, MGM, MSFT, MU, NEM, PALM, PFE, POT, QCOM, QQQQ, RIMM, SBUX, SKF, SLV, SMH, SNDK, SPY, T, UAU, UNG, USO, UYG, VZ, WYNN, X and XLF ("Symbols").

(“ROTs”), Streaming Quote Traders (“SQTs”)⁶ and Remote Streaming Quote Traders (“RSQTs”);⁷ (ii) customers;⁸ (iii) specialists, SQTs and RSQTs that receive Directed Orders (“Directed Participants”⁹ or “Directed Specialists, RSQTs, or SQTs”¹⁰); (iv) Firms; (v) broker-dealers; and (vi) Professionals.¹¹ The current per-contract transaction charge depends on the category of market participant submitting an order or quote to the Exchange that removes liquidity.

The per-contract transaction charges that are currently assessed on participants who submit proprietary quotes and/or orders that remove liquidity in the applicable Symbols are, by category:

<u>Category</u>	<u>Charge</u>
Customer	\$0.25 per contract

⁶ 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).

⁷ 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).

⁸ This applies to all customer orders, directed and non-directed.

⁹ For purposes of the fees and rebates related to adding and removing liquidity, 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 PHLX XL II.

¹⁰ 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.

¹¹ 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”).

Directed Participants	\$0.30 per contract
Specialist, ROT, SQT, RSQT	\$0.32 per contract
Firms	\$0.45 per contract
Broker-Dealers	\$0.45 per contract
Professional	\$0.40 per contract

The Exchange also currently assesses a per-contract rebate relating to transaction charges for orders or quotations that add liquidity in the select Symbols. The amount of the rebate depends on the category of participant whose order or quote was executed as part of the Phlx Best Bid and Offer. Specifically, the per-contract rebates are, by category:

<u>Category</u>	<u>Rebate</u>
Customer	\$0.20 per contract
Directed Participants	\$0.25 per contract
Specialist, ROT, SQT, RSQT	\$0.23 per contract
Firms	\$0.00 per contract
Broker-Dealers	\$0.00 per contract
Professional	\$0.20 per contract

The Exchange also currently assesses a transaction charge of \$0.45 per contract to Firms and \$0.45 per contract to broker-dealers that add liquidity, which this proposal seeks to eliminate.

The Exchange also proposes to amend the Fee Schedule to remove all references to the fees for adding 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 May 3, 2010.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹² in general, and furthers the objectives of Section 6(b)(4) of the Act¹³ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the elimination of the fees for adding liquidity is reasonable because the proposal is consistent with the current Fee Schedule and industry fee assessments of member firms that allow for different rates to be charged for different order types originated by dissimilarly classified market participants.¹⁴ Additionally, 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 Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that the fees it charges for orders overlying the various Symbols remain competitive with fees charged by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

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.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

¹⁴ See International Securities Exchange, LLC Schedule of Fees.

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2010-61 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-2010-61. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 240.19b-4(f)(2).

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-2010-61 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).