

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61984; File No. SR-Phlx-2010-60)

April 26, 2010

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to QNET Sector Index Option Fees

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 16, 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 due, fee, or other charge applicable only to a member under Section 19(b)(3)(A)(ii) of the Act,³ 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 Exchange's Fee Schedule for Sector Index Options by assessing a \$.20 per contract transaction fee for options overlying the NASDAQ Internet Index ("QNET"). The Exchange also proposes making other technical clarifications.

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 May 3, 2010.

¹ 5 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 Website at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, on the Commission's Web site at <http://www.sec.gov>, at the principal office of the Exchange, 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add additional transaction fees to Category III of its Fee Schedule, titled Sector Index Options. The Exchange proposes to assess a \$.20 per contract transaction fee for options overlying QNET for the following market participants: customers, registered options traders (on-floor), specialists, professionals⁵, firms and broker-dealers. The Exchange is proposing to assess the \$.20 per contract fee from trade date April 30, 2010 through trade date December 30, 2010. Thereafter, the Exchange proposes to assess the options transaction charges for sector index options as designated by category of market participant on the Fee Schedule, beginning on trade date December 31, 2010. In other words, the Exchange is

⁵ 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).

proposing to eliminate the \$.20 per contract transaction promotional pricing after December 30, 2010 and instead assess members the applicable sector index options transaction charges, by market participant, on December 31, 2010. For example, for transactions in QNET sector index options, a customer would no longer be assessed the \$.20 per contract on trade date December 31, 2010, but instead would be assessed the option transaction charge, which is currently \$.44 per contract.

The Exchange proposes to assess a fixed rate across all market participants for a specified period of time to incentivize members to trade QNET.

The Exchange also proposes removing certain text from the Fee Schedule that was the result of an inadvertent error. The Exchange is proposing to delete the text, “Subject to certain thresholds and per trade caps” from Categories III and IV of the Fee Schedule as related to Registered Options Traders (on-floor) and Specialists in sector index options fees and U.S. dollar-settled foreign currency option fees. The Exchange indicated in a prior proposed rule change that the Firm Related Equity Option and Index Option Cap would no longer be applicable to sector index options⁶ and U.S. dollar-settled foreign currency options⁷ and the volume threshold.⁸

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 May 3, 2010.

⁶ See Securities Exchange Act Release No. 59545 (March 9, 2009), 74 FR 11158 (March 16, 2009) (SR-Phlx-2009-20).

⁷ See Securities Exchange Act Release Nos. [sic] 59243 (January 13, 2009), 74 FR 4272 (January 23, 2009) (SR-Phlx-2008-86).

⁸ See Securities Exchange Act Release No. 61337 (January 12, 2010), 75 FR 2905 (January 19, 2010) (SR-Phlx-2009-104).

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁰ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the proposed \$.20 per contract sector index option fees for QNET is equitable because all market participants would be assessed the same fee. The Exchange further believes that offering the \$.20 per contract fee for a specified promotional period and thereafter assessing the standard sector index option transaction fees is also equitable because it is intended to encourage trading in QNET. In addition, the removal of extraneous language in the Fee Schedule should provide clarity to members concerning fees.

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 Act¹¹ and paragraph (f)(2) of Rule 19b-4¹² 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

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 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. Please include File Number SR-Phlx-2010-60 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-2010-60. 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 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 available publicly. All submissions should refer to File Number SR-Phlx-2010-60 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.¹³

Florence E. Harmon
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).