

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62472; File No. SR-Phlx-2010-94)

July 8, 2010

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the 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 June 29, 2010, NASDAQ OMX PHLX, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. 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 July 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 implementing a fee for adding liquidity. Specifically, the Exchange proposes to assess a \$0.05 per contract fee for Firms and Broker-Dealers who add liquidity in select symbols.³ The Exchange is proposing these fees in order to support increased bandwidth usage.

The Exchange currently assesses a per-contract transaction charge in various select Symbols on six different categories of market participants that submit orders and/or quotes that remove, or "take," liquidity from the Exchange: (i) specialists⁴, Registered Options Traders

³ The fees and rebates for adding and removing liquidity are applicable to executions in options overlying AA, AAPL, ABK, ABX, AIG, ALL, AMD, AMR, AMZN, ARIA, AXP, BAC, BRCD, C, CAT, CIEN, CIGX, CSCO, DELL, DIA, DNDN, DRYs, EBAY, EK, F, FAS, FAZ, GDx, GE, GLD, GLW, GS, HAL, IBM, INTC, IWM, IYR, JPM, LVS, MGM, MOT, MSFT, MU, NEM, NOK, NVDA, ONNN, ORCL, PALM, PFE, POT, QCOM, QID, QQQQ, RIG, RIMM, RMBS, SBUX, SDS, SIRI, SKF, SLV, SMH, SNDK, SPY, T, TBT, TZA, UAU, UNG, USO, UYG, V, VALE, VZ, WYNN, X, XHB, XLF, XRX and YHOO ("Symbols").

⁴ A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

(“ROTs”)⁵, 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.

⁵ A Registered Option Trader is defined in Exchange Rule 1014(b) as 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. A ROT includes a SQT, a RSQT and a Non-SQT, which by definition is neither a SQT or a RSQT. See Exchange Rule 1014 (b)(i) and (ii).

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”).

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
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 proposes to assess a \$0.05 per contract fee for adding liquidity in the select Symbols for Firms and Broker-Dealers. Today, Firms and Broker-Dealers receive no rebate for adding liquidity, therefore the proposal constitutes a \$0.05 fee increase for those participants.

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 July 1, 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 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 believes that its proposal to assess a \$0.05 per contract for Firms and Broker-Dealers adding liquidity in the select Symbols is reasonable because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes. For example, the proposed fees assessed to Firms and Broker-Dealers are comparable to rates assessed by the International Securities Exchange, Inc. (“ISE”). Currently, ISE assesses a fee of \$0.10 for Firm Proprietary orders and a fee of \$0.20 for Non-ISE Market maker (FARMM) orders for adding liquidity in certain symbols.¹⁴ In addition, the Exchange also believes that these fees are reasonable because the net differential between the proposed fee for adding liquidity and the proposed fee for removing liquidity is similar to the \$0.30 net differential that exists today at ISE as between a Market Maker Plus receiving a \$0.10 rebate and a Non-ISE Market Maker (FARMM) being assessed a \$0.20 fee for adding liquidity.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

¹⁴ See ISE’s Schedule of Fees. See also Securities and [sic] Exchange Act Release No. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010) (SR-ISE-2010-25).

The Exchange believes that the price differentiation between Firms and Brokers-Dealers and Specialists, ROTs, SQTs and RSQTs¹⁵ is justified in that the Specialists, ROTs, SQTs and RSQTs have obligations to the market, which do not apply to Firms and Broker-Dealers.¹⁶ The concept of incenting market makers, who have quoting obligations, with a rebate is not novel.¹⁷ The Exchange believes that it is equitable to assess a \$0.05 fee for adding liquidity on Firms and Broker-Dealers who have no such quoting requirements as do market makers. In addition, the Exchange believes that by not assessing a fee on customers for adding liquidity and providing a \$.20 per contract rebate for adding liquidity incentivizes customer order flow to the Exchange. Moreover, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because the proposed fees are consistent with price differentiation that exists today at all option exchanges.

Differentiated pricing is typical in mature, competitive markets and is generally understood to benefit purchasers. Simply put, investor protection is furthered by the lowering of prices and by robust competition, not by a regulatory paradigm that (contrary to current economic thought) enforces price rigidity and uniformity while looking askance at attempts to reduce prices. As Congress and the Commission both recognize, nothing is more important to fostering a national market system than competition—and few things are more important to competition than the ability to quickly alter prices or other terms to respond to competition or win a significant new customer. Price rigidity and uniformity are signs of a stagnant market, not

¹⁵ Specialists, ROTs, SQTs and RSQTs are the Exchange's market maker category.

¹⁶ See Exchange Rule 1014 titled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders."

¹⁷ See Securities Exchange Act Release No. 62048 (May 6, 2010) 75 FR 26830 (May 12, 2010) (SR-ISE-2010-43).

a vibrant one; regulation of differential pricing should be reserved to anti-competitive conduct that impedes the objectives of the securities laws.

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 the proposal is an equitable allocation of fees and not unfairly discriminatory for the reasons stated above.

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 Act¹⁸ and paragraph (f)(2) of Rule 19b-4¹⁹ 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:

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁹ 17 CFR 240.19b-4(f)(2).

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-2010-94 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-2010-94. 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-2010-94 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.²⁰

Florence E. Harmon
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).