

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62518; File No. SR-Phlx-2010-90)

July 16, 2010

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Complex Orders

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 28, 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. 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 [sic] amend its Section II equity options fees to: (i) pay a \$0.05 per contract side rebate to members for certain Customer complex orders³; and (ii) assess a \$0.05 fee to Firms on the contra-side of a Customer complex order that have reached the maximum on the Firm Related Equity Option Cap.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A complex order is a spread, straddle, combination, ratio or collar order, all of which consist of more than one component, priced like a single order at a net debit or credit based on the prices of the individual components. See Exchange Rule 1080.08 Commentary .08(a)(i). In 2008, the Exchange automated the handling of complex orders on its electronic trading platform for options, PHLX XL. See Securities Exchange Act Release No. 58361 (August 14, 2008), 73 FR 49529 (August 21, 2008) (SR-Phlx-2008-50). Since that time, the Exchange has enhanced its options trading platform, now known as Phlx XL II. See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32).

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be effective for trades settling on or after July 1, 2010.

The text of the proposed rule change is available on Phlx's Web site at www.nasdaqtrader.com, on the Commission's Web site at www.sec.gov, at Phlx, 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 purpose of the proposed rule change is to attract additional complex order business, specifically by amending the equity options fees to pay a \$0.05 rebate per contract to members for Customer complex orders in equity options that are electronically⁴ executed against a non-

⁴ Complex Orders executed on the floor of the Exchange and not electronically executed are not subject to the \$0.05 per contract rebate described in this proposal.

Customer contra-side⁵ complex order or a non-Customer contra-side individual order or quote. Currently, members are assessed the equity options fees in Section II of the Fee Schedule for executing Customer complex orders that are electronically executed against non-Customer contra-side complex orders.⁶ Now, instead of assessing a fee of \$0.00 per contract, the Exchange is proposing to pay a \$0.05 rebate. Similarly, the Exchange also proposes to pay a \$0.05 rebate to members for Customer complex orders where the complex order is executed against or “legged” against individual non-Customer contra-side orders or quotes.

The Exchange would continue to assess other market participants the current equity options fees. The payment for order flow fees will continue to apply to complex order transactions. The Exchange believes that paying rebates for executing such Customer complex orders as described herein will increase the volume of complex orders that are executed on Phlx XL II.

The Exchange also proposes to assess a \$0.05 per contract fee to Firms that: (i) are on the contra-side of a Customer complex order; and (ii) have reached the maximum of the Firm

⁵ This would be a complex order that is contra to an order from a specialist, Registered Options Trader (as defined in Exchange Rule 1014(b)(i) and (ii)), Streaming Quote Trader (as defined in Exchange Rule 1014(b)(ii)(A)), Remote Streaming Quote Specialist (as defined in Exchange Rule 1014(b)(ii)(B)), Professional (as defined in Exchange Rule 1000(b)(14)), Broker-Dealer or Firm. A complex order strategy means any Complex Order involving any option series which is priced at a net debit or credit (based on the relative prices of each component). The Exchange will calculate both a bid price and an offer price for each Complex Order Strategy based on the current PBBO (as defined below) [sic] for each component of the Complex Order and the bid/ask differential for each component. See Exchange Rule 1080, Commentary .08(a)(ii).

⁶ The proposed rebate and fee do not apply to any of the symbols listed in Section 1, titled “Rebates for Adding and Fees for Removing Liquidity in Select Symbols.”

Related Equity Option Cap. Currently, the Exchange has in place a Firm Related Equity Option Cap of \$75,000. Firms are subject to this Firm Related Equity Option Cap per member organization for equity option transactions, in the aggregate, for one billing month.⁷ The Exchange believes that assessing such a fee to Firms for transacting Customer complex orders, once that Firm has reached the maximum of the Firm Related Equity Option Cap, will help defray the cost of paying the \$0.05 per contract rebate to Customers. For example, when a Firm exceeds the \$75,000 Firm Related Equity Option Cap, a \$0.05 per contract fee will be added to the Firm Related Equity Option Cap, over those trades that were counted in reaching the \$75,000, when a Firm is contra to a Customer Complex Order. The Exchange proposes to amend the current language in the Fee Schedule, relating to equity option fees, concerning the Firm Related Equity Option Cap, to reflect the proposal and also amend the language to provide more clarity to the \$75,000 cap.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be effective for trades 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 Act⁸ in general, and furthers the objectives of Section 6(b)(4) of the Act⁹ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

⁷ The exception to this is for orders of joint back-office participants. The equity options transaction charges are waived for firms executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

The Exchange believes that paying a rebate to members for electronically-delivered complex orders is equitable because it is similar to rebates currently being paid by the International Stock Exchange LLC (“ISE”) for select symbols.¹⁰ By offering the \$0.05 per contract rebate, the Exchange hopes to encourage more customer complex orders to be executed via Phlx XL. The \$0.05 per contract rebate is reasonable because it is similar to rebates paid by other exchanges for customer orders.¹¹

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) of the Act¹² and Rule 19b-4(f)(2)¹³ thereunder. At any time within 60 days of the filing of such 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

¹⁰ See ISE’s Schedule of Fees.

¹¹ See Securities Exchange Release Act. 59478 (February 27, 2009), 74 FR 9857 (March 6, 2009) (SR-NYSEALTR-2009-19).

¹² 15 U.S.C. 78s(b)(3).

¹³ 17 CFR 240.19b-4(f)(2).

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-2010-90 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-Phlx-2010-90. 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 will also 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 No. SR-Phlx-2010-90 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).