

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62744; File No. SR-Phlx-2010-105)

August 19, 2010

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 13, 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 and II 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 assess a Cancellation Fee on all electronically delivered all-or-none ("AON") orders that are submitted by a Professional and subsequently cancelled by the party that originally submitted the order.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 amend the manner in which the Cancellation Fee is assessed on members. The Exchange proposes to assess a Cancellation Fee of \$1.10 on all electronically delivered³ AON orders that are submitted by a Professional⁴ (hereafter “Professional AON”) and subsequently cancelled by the party that originally submitted the order. The Exchange has observed that the number of cancelled Professional AON orders greatly exceeds the normal order cancellation activity on the Exchange for all other order types, and thus affects the automated order handling capacity of the Exchange’s systems. The Exchange proposes to include Professional AON orders into the calculation of cancelled orders to assess the Cancellation Fee to recover costs associated with system issues that are attributable to cancelled AON orders. A Professional order is treated, for purposes of priority, as a Customer order.⁵

Currently, the Exchange assesses a Cancellation Fee of \$2.10 per order on member organizations for each cancelled electronically delivered Customer order that exceeds the

³ Electronically delivered orders are delivered through the Exchange’s options trading platform known as PHLX XL II.

⁴ Currently, a Professional is treated in the same manner as an off-floor broker-dealer for purposes of Rules 1014(g)(except with respect to AON orders, which will be treated like Customer orders), 1033(e), 1064.02 (except professional orders will be considered Customer orders subject to facilitation), and 1080.08 as well as Options Floor Procedure Advices B-6, B-11 and F-5. Member organizations must indicate whether orders are for professionals.

⁵ Id.

number of Customer orders executed on the Exchange by that member organization in a given month. The Exchange calculates the Cancellation Fee by aggregating all Customer orders and cancellations received from a member organization in a particular calendar month. At least 500 Customer cancellations must be made in a given month by a member organization in order for a member organization to be assessed the Cancellation Fee (“500 Threshold”). The Cancellation Fee is not assessed in a month in which fewer than 500 electronically delivered Customer orders⁶ are cancelled. Simple cancels and cancel-replacement orders are the types of orders that are counted when calculating the number of electronically delivered orders.⁷ The following order activity is exempt from the Cancellation Fee: (i) pre-market cancellations;⁸ (ii) Complex Orders⁹ that are submitted electronically; (iii) unfilled Immediate-or-Cancel¹⁰ Customer orders; and (iv) cancelled Customer orders that improved the Exchange’s prevailing bid or offer (PBBO) market at the time the Customer orders were received by the Exchange.

⁶ For purposes of assessing the Cancellation Fee, Customer orders from the same member organization in the same series on the same side of the market that are executed at the same price within a 300 second period will be aggregated and counted as one executed Customer option order.

⁷ A cancel-replacement order is a contingency order consisting of two or more parts which require the immediate cancellation of a previously received order prior to the replacement of a new order with new terms and conditions. If the previously placed order is already filled partially or in its entirety the replacement order is automatically canceled or reduced by such number. See Exchange Rule 1066(c)(7).

⁸ See Securities Exchange Act Release Nos. 53226 (February 3, 2006), 71 FR 7602 (February 13, 2006)(SR-Phlx-2005-92); and 53670 (April 18, 2006), 71 FR 21087 (April 24, 2006) (SR-PHLX-2006-21). See also Securities Exchange Act Release No. 60046 (June 4, 2009), 74 FR 28083 (June 12, 2009) (SR-Phlx-2009-44).

⁹ 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).

¹⁰ An Immediate-or-Cancel (IOC) order is a limit order that is to be executed in whole or in part upon receipt. Any portion not so executed shall be cancelled.

The Exchange proposes to continue to assess the \$2.10 Cancellation Fee on all Customer orders that exceed the 500 Threshold for cancelled orders. Professional AON orders would be computed in calculating the 500 Threshold before any order is assessed a Cancellation Fee.¹¹ Beyond the 500 Threshold, each Customer order would be assessed a Cancellation Fee of \$2.10 per order; this is not changing. The Exchange proposes to assess each Professional AON order, beyond the 500 Threshold, a \$1.10 per order Cancellation Fee.

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 and other persons using its facilities. The Exchange believes that the proposed amendments to the Cancellation Fee are reasonable because they will ease system congestion and allow the Exchange to recover costs associated with excessive order cancellation activity. The Exchange has experienced a significant increase in the number of Professional AON orders. Also, the Exchange believes that the amendment to the Cancellation Fee is equitable because the addition of the Professional AON orders to the Cancellation Fee computation would continue to be applied equitably among members according to system use.

¹¹ In reaching the 500 Threshold, orders must be executed from the same member organization in the same series on the same side of the market and executed at the same price within a 300 second period. Orders are aggregated and counted as one executed Customer or Professional AON option order.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

With respect to Section I, Rebates and Fees for Adding and Removing Liquidity in Select Symbols, of the Fee Schedule, a Customer is entitled to receive a \$.20 rebate for adding liquidity, is assessed no fee for adding liquidity and is assessed a \$.25 fee for removing liquidity. A Professional in that same fee model is entitled to receive a \$.20 rebate for adding liquidity, is assessed no fee for adding liquidity and is assessed a \$.40 fee for removing liquidity. The Professional AON orders would be assessed a fee that is \$1.00 lower (\$.10 as compared to \$.10) than fees assessed for Customer orders over the 500 Threshold.

With respect to the fees in Section II, Equity Options Fees, of the Fee Schedule, a Customer is not assessed a fee for options transactions (penny or non-penny), however a Professional is assessed a \$.20 fee for options transactions (penny and non-penny). Neither a Customer nor a Professional are assessed an Options Surcharge in RUT, RMN, MNX or NDX. Again, there would be a \$1.00 differential between Customer and Professional AON orders with this proposed Cancellation Fee.

The Exchange assesses the Cancellation Fee by aggregating all Customer orders. Cancellations received from a member organization in a particular calendar month from the same member organization in the same series on the same side of the market and executed at the same price within a 300 second period are aggregated and counted as one option order. The Professional AON orders, which receive a Customer priority, are proposed to be included in that calculation. The Exchange would assess the Cancellation Fee only after the 500 Threshold is reached. The Exchange believes that this proposal is equitable because: (i) the Exchange is assessing the fee on aggregate Customer orders (including Professional AON orders) because they are the specific cause of the system congestion;¹⁴ (ii) Professional AON orders have the

¹⁴ The Exchange has no evidence that Broker-Dealer and other market participants contribute to system congestion as a result of cancellation orders.

benefit of the Customer priority and therefore should be treated similar to Customers in terms of the Cancellation Fee assessment; and (iii) the Exchange proposes to assess a lower Cancellation Fee on a Professional order as compared to a Customer order.

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 Act¹⁵ and Rule 19b-4(f)(2)¹⁶ thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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:

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 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-2010-105 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-2010-105. 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,¹⁷ 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 the 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

¹⁷ The text of the proposed rule change is available on Exchange's Web site at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, on the Commission's Web site at <http://www.sec.gov>, at Phlx, and at the Commission's Public Reference Room.

to File Number SR-Phlx-2010-105 and should be submitted on or before [insert date 21 days after publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Florence E. Harmon
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).