

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63406; File No. SR-Phlx-2010-165)

December 1, 2010

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Transaction Billing and Other Clarifying Amendments

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 November 23, 2010, NASDAQ OMX PHLX LLC ("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 its Fee Schedule to: (i) amend the calculation of transaction fees for billing purposes from a settlement date to trade date; and (ii) make other minor technical conforming amendments to the Fee Schedule.

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 invoices received by members and member organizations for January 2011 monthly billing, except for the minor technical amendments, which are effective upon filing.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 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 Exchange's Fee Schedule to include language to specify that the Exchange will calculate transaction fees on a calendar month trade date basis. The Exchange is proposing to enhance its billing system to be consistent with that of other NASDAQ OMX self-regulatory organizations.³

Currently, the Exchange calculates its transaction fees, except the Options Regulatory Fee, on a settlement date basis.⁴ For example, a member or member organization who will receive a billing invoice for the month of November 2010 will be assessed fees for trades which settled on November 1, 2010 through November 30, 2010

³ NASDAQ Stock Market LLC and the NASDAQ Options Market both utilize trade date billing.

⁴ In the United States options settle on a trade date ("T") + 1 basis or one day after the trade took place.

(“settlement date billing”). In other words, the member is being assessed fees for trades that occurred on October 29, 2010 (trade date) through November 29, 2010 (trade date).⁵ This is an example of the Exchange’s current settlement date billing.

The Exchange is proposing to bill its members on a trade date basis beginning with the January monthly billing. The impact to members would be as follows for the December and January monthly billing periods. A member who receives an invoice for the month of December 2010 would be assessed fees from November 30, 2010 (trade date) through December 31, 2010 (trade date) instead of through December 30, 2010 (trade date). A member who receives an invoice for the month of January 2011 would be assessed fees from January 3, 2010 (trade date) through January 31, 2010 (trade date) (“trade date billing”) [sic].⁶ This January monthly invoice would include fees for trade date January 3, 2010. In the current billing system, the member would have been assessed fees for settlement date January 3, 2010 in the December billing invoice, but because of the conversion to trade date billing, the Exchange would assess fees for January 3, 2010 as trade date billing and include that day in the January monthly billing invoice. The Exchange would then continue to bill members for each month thereafter including in that month’s invoice the first trade day of the month as the first billing date and the last trade day of that month as the last billing date for that monthly invoice.⁷

⁵ The Exchange invoices its members for fees on a monthly basis.

⁶ The Commission notes that the references in this sentence to 2010 should be to 2011.

⁷ The Exchange intends to issue an Options Trader Alert specifying the exact days that would be included in both the December 2010 and January 2011 billing cycles as notice to members.

Additionally, the Exchange intends to make a few minor technical conforming amendments to the Fee Schedule to reflect the Exchange's recent conversion to an LLC,⁸ recent amendments to Rule 1014⁹ and recent amendments to Section II of the Fee Schedule.¹⁰

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 invoices received by members and member organizations for January 2011 monthly billing, except for the minor technical amendments, which are effective upon filing.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹² 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 conversion from settlement date billing to calendar month trade date billing is equitable because it would apply uniformly to all members. The

⁸ See Securities Exchange Act Release No. 62783 (August 27, 2010), 75 FR 54204 (September 3, 2010) (SR-Phlx-2010-104) (a rule change to amend NASDAQ OMX PHLX from a Delaware corporation to a Delaware limited liability company).

⁹ See Securities Exchange Act Release No. 63036 (October 4, 2010), 75 FR 62621 (October 12, 2010) (SR-Phlx-2010-131) (a rule change to amend Exchange Rule 1014 to among other things amend the definitions of Streaming Quote Traders and Remote Streaming Quote Traders).

¹⁰ See Securities Exchange Act Release No. 63252 (November 5, 2010), 75 FR 69486 (November 12, 2010) (SR-Phlx-2010-150) (a rule change to add the KBW Bank Index ("BKX") to the Equity Option Fees).

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

Exchange also believes that the proposal is reasonable because other self-regulatory organizations already assess transaction fees on a trade date basis.

The proposed technical conforming amendments to the Fee Schedule are minor in nature and provide clarity to the Fee Schedule by conforming the text of the Fee Schedule to the other Rules of the Exchange.

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 Act¹³ and paragraph (f)(2) of Rule 19b-4¹⁴ thereunder. At any time within 60 days of the filing of the 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.

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 240.19b-4(f)(2).

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-2010-165 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-2010-165. 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 website

(<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 website 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 to File Number SR-Phlx-2010-165 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.¹⁵

Florence E. Harmon
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).