

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63957; File No. SR-Phlx-2011-20)

February 24, 2011

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Dividend and Merger Strategies

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 February 14, 2011, 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 clarify the definitions of dividend and merger strategies in Section II of its Fee Schedule titled, "Equity Options Fees."

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 clarify the definitions of dividend and merger strategies in Section II of the Fee Schedule titled “Equity Options Fees,” so that the applicability of equity option transaction charges and caps³ are clear to members.

The Exchange provides a definition of a dividend strategy in Section II of its Fee Schedule. The Exchange defines a dividend strategy, along with other strategies, to provide members with information necessary to calculate the combined fee cap on equity option transaction charges for dividend, merger and short stock interest strategies. The Exchange defines a dividend strategy as follows “...transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed prior to the date on which the underlying stock goes ex-dividend.”

The Exchange proposes to amend this dividend strategy definition to provide clarity with respect to the text “prior to the date.” The Exchange proposes to amend the definition to state, “transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of

³ Equity options transaction charges for Specialists, Registered Options Traders, Streaming Quote Traders, Remote Streaming Quote Traders, Firms and Broker-Dealers are capped at \$1,000 for dividend, merger and short stock interest strategies executed on the same trading day in the same options class when such members are trading in their own proprietary accounts. Equity option transaction charges for dividend, merger and short stock interest strategies combined are capped at \$25,000 per member organization per month when such members are trading in their own proprietary accounts.

in-the-money options of the same class, executed *immediately* prior to the date on which the underlying stock goes ex-dividend.” The Exchange believes that this language would clarify the timing of such a dividend strategy. The Exchange is proposing to make clear that such transactions must occur immediately prior to the date on which the underlying stock goes ex-dividend to meet the definition of a dividend strategy. The Exchange would interpret the proposed term “immediately” to mean the first business day prior to the date on which the underlying stock goes ex-dividend.

Similarly, the Exchange provides a definition of a merger strategy in Section II of its Fee Schedule. The Exchange defines a merger strategy, along with other strategies, to provide members with information necessary to calculate the combined fee cap on equity option transaction charges for dividend, merger and short stock interest strategies. The Exchange defines a merger strategy as follows “...as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock.”

The Exchange proposes to amend this merger strategy definition to provide clarity with respect to the text “prior to the date.” The Exchange proposes to amend the definition to state, “transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed *immediately* prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock.” The Exchange believes that this language would clarify the timing of such a merger strategy. The Exchange is proposing to make clear that such transactions must occur immediately prior to the date on which the shareholders of record are required to elect their

respective form of consideration to meet the definition of a merger strategy. The Exchange would interpret the proposed term “immediately” to mean the first business day prior to the date on which shareholders of record are required to elect their respective form of consideration.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act⁴ in general, and furthers the objectives of Section 6(b)(4) of the Act⁵ 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 it is reasonable to amend the definitions of dividend and merger strategies to provide members with a definition that is clear and unambiguous. In addition, the Exchange believes that the amended definitions would provide members clear guidance on the applicability of the equity option transaction charges and the available caps.

The Exchange believes that the proposed amendments are equitable because the proposed new definitions would apply equally to all members transacting dividend or merger strategies. The Exchange would uniformly apply the definitions to all members who transacted such dividend and/or merger strategies when assessing equity option transaction charges and applying caps.

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.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

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 Act.⁶ 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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-2011-20 on the subject line.

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2011-20. 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 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 offices 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-2011-20, 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.⁷

Cathy H. Ahn
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(12).