

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64010; File No. SR-Phlx-2011-26)

March 2, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Inactive Nominee Fee

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 22, 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 memorialize its Inactive Nominee³ Fee. 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, on the Commission's website at <http://www.sec.gov>, and at the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term "inactive nominee" means a natural person associated with and designated as such by a member organization and who has been approved for such status and is registered as such with the Membership Department. An inactive nominee shall have no rights or privileges under a permit unless and until said inactive nominee becomes admitted as a member of the Exchange pursuant to the By-Laws and Rules of the Exchange. An inactive nominee merely stands ready to exercise rights under a permit upon notice by the member organization to the Membership Department on an expedited basis. See Exchange Rule 1(i).

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 memorialize the Inactive Nominee Fee in the Exchange's Fee Schedule.

The Exchange currently assesses a member organization an Inactive Nominee Fee of \$500 to maintain an individual's inactive nominee status for a six month period, as provided for in Exchange By-Law Article XII, Section 12-10.⁴ The member organization is required to pay a fee for the privilege of maintaining the inactive nominee status of an individual.⁵ An inactive nominee's status terminates after six months unless it has been reaffirmed in writing by the

⁴ Pursuant to Exchange By-Law Article XII, Section 12-10, a member organization may designate an individual as an inactive nominee. To be eligible to be an inactive nominee an individual must be approved as eligible to hold a permit in accordance with the Exchange's By-Laws and Rules. An inactive nominee has no rights and privileges of a permit holder until the inactive nominee becomes an effective permit holder and all applicable Exchange fees are paid. See By-Law Article XII, Section 12-10.

⁵ See Securities Exchange Act Release No. 39851 (April 10, 1998), 63 FR 19282 (April 17, 1998) (SR-Phlx-97-35) (a rule change which subjected inactive nominees to the membership application process, including fees, including a fee for the privilege of maintaining an inactive nominee status).

Member Organization or is terminated sooner.⁶ An inactive nominee is assessed the \$500 fee every time the status is reaffirmed.⁷

The Exchange has assessed the Inactive Nominee Fee of \$500 since the inception of the inactive nominee category.⁸ This fee was administered pursuant to By-Law Article XII, Section 12-10, and never appeared in the Exchange's Fee Schedule. In recent years, the Exchange has memorialized additional fees within the Fee Schedule to create a centralized location for fees. The Exchange desires to memorialize this fee in the Fee Schedule and to make clear which membership fees an Inactive Nominee Fee [sic] would be assessed and when an inactive nominee would be assessed such fees by adding explanatory text to the Fee Schedule.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁰ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

⁶ See By-Law Article XII, Section 12-10.

⁷ An inactive nominee is also assessed the Application and Initiation Fees when such person applies to be an inactive nominee. Such fees are reassessed if there is a lapse in the inactive nominee's membership status. However, an inactive nominee would not be assessed the Application and Initiation Fees if such inactive nominee applied for membership without a lapse in that individual's association with a particular member organization. See Securities Exchange Act Release No. 63780 (January 26, 2011), 76 FR 5846 (February 2, 2011) (SR-Phlx-2011-07). See also By-Law Article XII, Section 12-10.

⁸ Originally, the inactive nominee was defined in Exchange Rule 21, but the definition was later moved to the definitions section in Rule 1.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

The Exchange believes that it is reasonable to memorialize the Inactive Nominee Fee on the Exchange's Fee Schedule so the fee is transparent to all members. While the Exchange has been assessing the Inactive Nominee Fee since 1998, the fee was administered pursuant to By-Law Article XII, Section 12-10 and was not located on the Fee Schedule. The Exchange believes that placing the fee on the Fee Schedule would summarize all the membership fees in one location and clarify all the fees an individual is subject to for the privilege of maintain [sic] an inactive nominee status.

The Exchange believes that it is equitable to place the Inactive Nominee Fee on the Fee Schedule because it uniformly impacts all inactive nominees as they are all subject to the Inactive Nominee Fee.

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 Act.¹¹ 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

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2011-26 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-2011-26. 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 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 available publicly. All submissions should refer to File Number SR-Phlx-2011-26 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.¹²

Cathy H. Ahn
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).