

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-64141; File No. SR-Phlx-2011-32)

March 29, 2011

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 24, 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 the Exchange's Fee Schedule to apply the Trading Floor Personnel Registration Fee to Inactive Nominees.<sup>3</sup> In addition, the Exchange is proposing to amend the dividend and merger strategy text in the Exchange's Fee Schedule to add specificity to those definitions.

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 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).

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on April 1, 2011.

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 provide that an Inactive Nominee must pay the Trading Floor Personnel Registration Fee in order to recover certain administrative expenses associated with Inactive Nominees. An Inactive Nominee's status requires additional administration because the Inactive Nominee is also deemed a clerk for the purpose of Exchange Rule 1090.

Pursuant to By-Law Article X, Section 12-10, to be eligible as 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 does not have any rights or privileges of a permit holder

unless and until the Inactive Nominee becomes an effective permit holder and all applicable Exchange fees are paid.<sup>4</sup>

The Inactive Nominee allows a member to have additional flexibility in obtaining coverage on the trading floor. An Inactive Nominee stands ready to assume a membership upon notice by the member requesting that a specific permit be transferred intra-firm on an expedited and temporary basis. This transfer allows an Inactive Nominee to become an effective member of the Exchange.<sup>5</sup> By way of example, an Inactive Nominee would be activated in the event of an emergency due to illness or other factors. This would allow a member organization to have a full staff available to conduct business on the Exchange trading floor.

An Inactive Nominee is also deemed a clerk for purposes of Exchange Rule 1090.<sup>6</sup> Rule 1090 was enacted to identify categories of persons that are not members of the Exchange and who are not eligible to effect transactions, but are located on the Exchange's trading floor. In order for Rule 1090 to apply to all categories of registered persons located on the Exchange's

---

<sup>4</sup> An Inactive Nominee is currently required to pay \$500 every 6 months for the privilege of maintaining an Inactive Nominee Status. See the Inactive Nominee Fee on the Exchange's Fee Schedule. See also Exchange By-Law Article X, Section 12-10.

<sup>5</sup> The Inactive Nominee is required to notify the Membership Department in writing prior to the trading day on which they will act in place of a member. The Exchange requires an Inactive Nominee on the Exchange's trading floor to wear a badge which is provided by the Exchange and contains identifying information. The Inactive Nominee cannot simultaneously act as a member and a clerk on the same day.

<sup>6</sup> The term "Clerk " means any registered on-floor person employed by or associated with a member, member organization, participant, or participant organization who is not a member and is not eligible to effect transactions on the Options Floor as a Specialist, Registered Options Trader, or Floor Broker. See Exchange Rule 1090. For purposes of Rule 1090, an Inactive Nominee shall be deemed a Clerk.

Options Floor that are generally not eligible to effect transactions, Inactive Nominees are deemed to be Clerks for purposes of that Rule.<sup>7</sup>

Currently, the Exchange assesses a \$100 per month Trading Floor Personnel Registration Fee. This fee is imposed on member/participant organizations for individuals who are employed by such member/participant organizations and who work on the Exchange's trading floor, such as clerks, interns, stock execution clerks that handle equity orders that are part of an options contingency order and other associated persons, but who are not registered as members or participants. The Exchange currently does not impose the Trading Floor Personnel Registration Fee on Inactive Nominees because an Inactive Nominee is required to register as a member.

The Exchange is proposing to eliminate the following qualifying language applicable to the Trading Floor Personnel Fee "...but who are not registered as members or participants." In addition, the Exchange is proposing to add the following clarifying language "[t]his fee is not imposed on permit holders." The Exchange also proposes to add a parenthetical to indicate that for purposes of the Trading Floor Personnel Registration Fee a Clerk includes an Inactive Nominee. This would add Inactive Nominees to the list of individuals who are employed on the Exchange's trading floor and are subject to the Trading Floor Personnel Registration Fee. The only participants that would not be subject to the fee would be permit holders.

Additionally, the Exchange is proposing to amend the definitions of dividend and merger strategies in Section II of the Fee Schedule titled "Equity Options Fees." The Exchange recently amended the definitions of dividend and merger strategy to provide clarity with respect to the text "prior to the date."<sup>8</sup> The Exchange added the word "immediately" to both definitions to

---

<sup>7</sup> See Securities Exchange Act Release No. 46505 (September 17, 2002), 67 FR 60273 (September 25, 2002) (SR-Phlx-2001-104).

<sup>8</sup> See SR-Phlx-2011-20.

make clear that the timing of the trigger event must occur the first business day prior to the trigger event. For example, with respect to 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. With respect to 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. In order that the meaning of immediately is clear, the Exchange is proposing to replace the words “immediately” with “the first business day” in both the dividend and merger strategy definitions in Section II of 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 Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>10</sup> 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 applying the Trading Floor Personnel Registration Fee to Inactive Nominees is reasonable because Inactive Nominees are not subject to the permit fees which permit holders are required to pay to maintain their membership. Permit holders are required to pay a monthly Permit Fee in order to transact business at the Exchange. Similar to clerks, interns and stock execution clerks, Inactive Nominees do not pay a permit fee.

---

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

The Exchange believes that applying the Trading Floor Personnel Registration Fee to Inactive Nominees is equitable because it would uniformly apply to all inactive nominees and overall the fee would apply to all individuals that do not maintain a permit.

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.

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.<sup>11</sup> 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

---

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2011-32 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-2011-32. 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-2011-32, 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.<sup>12</sup>

Cathy H. Ahn  
Deputy Secretary

---

<sup>12</sup> 17 CFR 200.30-3(a)(12).