

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64520; File No. SR-Phlx-2011-66)

May 19, 2011

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Qualified Contingent Cross Fees

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 May 13, 2011, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“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 adopt fees applicable to a Qualified Contingent Cross Order (“QCC Order”) for execution in the Phlx XL II System.³

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on May 16, 2011.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A QCC Order is comprised of an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. The QCC Order must be executed at a price at or between the National Best Bid and Offer and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the PHLX XL II System. See Rule 1080(o). See also Securities Exchange Act Release No. 64249 (April 7, 2011), 76 FR 20773 (April 13, 2011) (SR-Phlx-2011-47) (a rule change to establish a QCC Order to facilitate the execution of stock/option Qualified Contingent Trades that satisfy the requirements of the trade through exemption in connection with Rule 611(d) of the Regulation NMS).

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, at the Commission's Public Reference Room, and on the Commission's website at www.sec.gov.

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 Sections I and II, of the Exchange's Fee Schedule, entitled "Rebates and Fees for Adding and Removing Liquidity in Select Symbols"⁴ and "Equity Options Fees"⁵ to establish fees for a new order type called Qualified Contingent Cross.⁶

There are currently several categories of market participants: Customers, Directed Participants,⁷ Specialists,⁸ Registered Options Traders,⁹ SQTs,¹⁰ RSQTs,¹¹ Broker-Dealers,

⁴ Section I fees and rebates are applicable to certain select symbols which are defined in Section I ("Select Symbols").

⁵ Section II includes options overlying equities, ETFs, ETNs, indexes and HOLDRS which are Multiply Listed.

⁶ The Qualified Contingent Cross functionality will be operative on May 16, 2011.

⁷ A Directed Participant is a Specialist, SQT, or RSQT that executes a customer order that is directed to them by an Order Flow Provider and is executed electronically on PHLX XL II.

Firms and Professional.¹² The Exchange proposes to adopt pricing for QCC Orders for the above categories applicable to both Sections I and II. QCC Transaction Fees will apply to the Select Symbols listed in Section I and the symbols applicable to Section II. The Exchange proposes to assess Directed Participants, Specialists, ROTs, SQTs, RSQTs, Professionals, Firms and Broker-Dealers a \$0.20 per contract QCC transaction fee (“QCC Transaction Fees”). A Customer would not be assessed a QCC Fee.

As mentioned, the proposed QCC Fees would apply to Sections I and II of the Fee Schedule and would be subject to the Firm Related Equity Option Cap and the Monthly Cap. The Firm Related Equity Option Cap is currently \$75,000.¹³ ROTs and Specialists are currently

⁸ A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

⁹ A Registered Options Trader (“ROT”) includes a Streaming Quote Trader (“SQT”), a Remote Streaming Quote Trader (“RSQT”) and a Non-SQT ROT, which by definition is neither a SQT or a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. See Exchange Rule 1014 (b)(i) and (ii).

¹⁰ An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

¹¹ An RSQT is defined Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

¹² The Exchange defines a “professional” as any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) (hereinafter “Professional”).

¹³ Firm equity option transaction charges, in the aggregate, for one billing month will not exceed the Firm Related Equity Option Cap per member organization when such members are trading in their own proprietary account. The Firm equity options transaction charges will be waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account.

subject to a Monthly Cap of \$550,000.¹⁴

The Exchange also proposes additional text to Sections I and II of the Fee Schedule to describe the applicability of both the Firm Related Equity Option Cap and the Monthly Cap to those sections of the Fee Schedule.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on May 16, 2011.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁶ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the proposed fees are equitable because the fees are within the range of fees currently assessed in Section II for Multiply Listed equity options. Customers are not assessed a fee for options overlying equities which are Multiply Listed. Other market participants are assessed transaction fees which range from \$.20 per contract to \$.25 per contract,

Firms that (i) are on the contra-side of an electronically-delivered and executed Customer complex order; and (ii) have reached the Firm Related Equity Option Cap will be assessed a \$0.05 per contract fee. See Securities Exchange Act Release No. 63780 (January 26, 2011), 76 FR 5846 (February 2, 2011) (SR-Phlx-2011-07).

¹⁴ The trading activity of separate ROTs and Specialist member organizations will be aggregated in calculating the Monthly Cap if there is at least 75% common ownership between the member organizations. In addition, ROTs and Specialists that (i) are on the contra-side of an electronically-delivered and executed Customer complex order; and (ii) have reached the Monthly Cap will be assessed a \$0.05 per contract fee. See Securities Exchange Act Release No. 64113 (March 23, 2011), 76 FR 17468 (March 29, 2011) (SR-Phlx-2011-36).

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4).

generally.¹⁷ In addition, the Exchange is proposing to assess the same fee on all market participants uniformly, with the exception of Customers. The Exchange believes that its proposal to not assess Customers QCC Transaction Fees is not unfairly discriminatory because the Exchange is seeking to incentivize Broker-Dealers and Professionals to execute Customer QCC Orders on the Exchange.

The Exchange believes that the proposed fees are reasonable because the fees are comparable to the Exchange's fees, as stated above, and because the fees are within the range of fees assessed by the International Securities Exchange, LLC ("ISE") for qualified contingent cross orders. ISE assesses \$0.20 per contract for qualified contingent cross orders to all market participants¹⁸ except the priority customer.¹⁹

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants readily can, and do, send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the proposed QCC Fees it assesses must be competitive with fees assessed on other options exchanges. The Exchange believes that this competitive marketplace impacts the fees present on the Exchange today and influences the proposals set forth above.

¹⁷ A Broker-Dealer is the one exception to this range. A Broker-Dealer is assessed \$.45 per contract for electronically submitted transactions in Penny Pilot and non-Penny Pilot options.

¹⁸ The fee for an ISE market maker is either \$.18 or \$.20 per contract, depending on the product. See ISE's Fee Schedule. See also SR-ISE-2011-14.

¹⁹ An ISE priority customer is not assessed a fee. See ISE's Fee Schedule.

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.²⁰ 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-2011-66 on the subject line.

²⁰ 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-2011-66. 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-2011-66 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.²¹

Cathy H. Ahn
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).