

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64539; File No. SR-Phlx-2011-68)

May 24, 2011

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Market Access Provider 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 May 17, 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 eliminate the Market Access Provider Subsidy in Section VII 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 June 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 eliminate Section VII, entitled “Market Access Provider Subsidy” from the Fee Schedule. The Market Access Provider Subsidy is a per contract fee payable by the Exchange to Eligible Market Access Providers³ for Eligible Contracts⁴ submitted by MAPs for execution on the Exchange. The Exchange does not desire to incentivize MAPs going forward by offering a subsidy.

In 2007, the Exchange began to offer MAPs a subsidy to route additional option orders to the Exchange.⁵ The subsidy is applicable to any Exchange member

³ A Market Access Provider is an Exchange member organization that offers customers automated order routing systems and electronic market access to U.S. options markets (“Market Access Providers” or “MAPs”).

⁴ “Eligible Contracts” means contracts that result from the execution on the Exchange of: (1) Equity option orders (other than crosses) sent electronically to an Eligible MAP (and routed to the Exchange electronically by the Eligible MAP) by its customers; and (2) MAP Routing Orders (other than crosses) sent electronically by the Eligible MAP. Contracts that are executed electronically as part of a Complex Order are not Eligible Contracts.

⁵ See Securities Exchange Act Release No. 56274 (August 16, 2007), 72 FR 48720 (August 24, 2007) (SR-Phlx-2007-54).

organization that qualifies as a MAP and elects to participate for that calendar month.

The Exchange pays a per-contract MAP Subsidy to any Exchange member organization that qualifies as a MAP (an "Eligible MAP")⁶ and elects to participate by submitting any application(s) and/or form(s) required by the Exchange, and complying with other conditions.⁷ The Exchange currently pays a monthly subsidy of \$0.10 (the "Subsidy

⁶ "Eligible MAP" means a MAP eligible for the Market Access Provider Subsidy and who is required to: (1) submit any required Exchange applications and/or forms for Exchange approval to participate as an Eligible MAP; (2) provide to its customers systems that enable the electronic routing of equity option orders to all of the U.S. options exchanges, including Phlx; (3) provide to its customers current consolidated market data from the U.S. options exchanges; (4) interface with Phlx's API to access the Exchange's electronic options trading platform, PHLX XL II; (5) offer to its customers a customized interface and routing functionality (including sweep function described below) such that: (A) Phlx will be the default destination for all equity option orders (whether marketable or not), provided that in the case of marketable orders, Phlx is at the national best bid or offer ("NBBO") on the appropriate side of the market (i.e., the contra-side of the order that is routed to Phlx), regardless of size or time, up to Phlx's disseminated size; and (B) the MAP's option order routing functionality incorporates a feature that causes orders at a specified price to be routed simultaneously to multiple exchanges with a single click (a "sweep function"), which is configured to route all such orders (or, if such orders are for a size larger than the size disseminated by the Phlx on the opposite side of the market, at least the portion of the order that corresponds to Phlx's disseminated size) to Phlx as the default destination for execution for a size up to the full size quoted on the Phlx, provided that, in the case of marketable orders, the Phlx disseminated price on the appropriate side of the market is at the NBBO; (6) configure its own option order routing functionality such that it is configured as described in sub-paragraph 5(A) and (B) above, with respect to all equity option orders as to which the MAP has discretion as to routing ("MAP Routing Orders"); (7) ensure that the customized functionality described in sub-paragraphs (5) and (6) above permits users submitting option orders through such system(s) to manually override the Phlx as the default destination on an order-by-order basis; and (8) enter into and maintain an agreement with the Exchange to function as an Eligible MAP and be in compliance with all terms thereof.

⁷ The MAP must enter into a Priority Routing Covenant with the Exchange which is an agreement with Phlx to refrain from entering into arrangements with other exchanges or execution venues where such exchange or execution venue will have the same routing position as, or priority over, Phlx as the default destination for certain option orders, unless Phlx otherwise consents.

Rate") to Eligible MAPs for each Eligible Contract executed in the immediately preceding calendar month above the particular Eligible MAP's Baseline Order Flow.⁸

The Exchange is also proposing to make other technical amendments to the Fee Schedule to renumber Sections VIII through XI to account for the elimination of the Market Access Provider Subsidy section. The Exchange is proposing to eliminate the MAP Subsidy, and not offer any such subsidy as of June 1, 2011.

b. Statutory Basis

The [sic] 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.

The MAP Subsidy was designed to allow MAPs to offer their customers a customized interface and provide those customers support for such an interface. The Exchange pays a MAP Subsidy to incentivize MAPs to bring order flow to the Exchange. The Exchange believes that eliminating the MAP Subsidy is reasonable because the Exchange no longer desires to incentivize member organizations by offering such a subsidy. The Exchange also believes the proposal is equitable because it would no longer offer such a MAP Subsidy to any market participant.

⁸ "Baseline Order Flow" for an Eligible MAP means the higher of: (1) 500,000 contracts, or (2) the average contracts per month, calculated for the 3-month period immediately preceding the Eligible MAP entering into the agreement with Phlx, that resulted from the execution on the Phlx of equity option orders (other than crosses) routed to Phlx electronically by such Eligible MAP. Contracts that are executed electronically as part of a Complex Order are not included in the calculation of Baseline Order Flow.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

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 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

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2011-68 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-2011-68. 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-2011-68 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).