

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64580; File No. SR-Phlx-2011-73)

June 1, 2011

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of
Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Customer Complex
Orders

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 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 its Complex Order³ Fees in Section I of its Fee Schedule entitled "Rebates and Fees for Adding and Removing Liquidity in Select Symbols" and Section II entitled "Equity Options Fees."

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or ETF coupled with the purchase or sale of options contract(s). See Exchange Rule 1080, Commentary .08(a)(i).

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 certain Complex Order Fees in Section I, Part C of the Exchange's Fee Schedule⁴ as well as in Section II. The Exchange proposes the fee changes to create additional incentives for market participants to execute Customer Complex Orders on the Exchange.

The Exchange proposes to amend Section I, Part C which currently provides, "[a] Customer Complex Order will receive a Rebate for Adding Liquidity (as set forth in Part B) in an electronic auction and during the Exchange's opening process, except when such Customer order is contra to another Customer order." The Exchange is proposing to amend this provision as it relates to electronic auctions, specifically a Complex Order

⁴ Section I applies to certain symbols defined in Section I as "Select Symbols."

Live Auction (“COLA”).⁵ The Exchange is not amending the Rebate for Adding Liquidity as it applies to all other electronic auctions, including the Exchange’s opening process (collectively “Other Auctions”).

First, the Exchange would offer a Rebate for Adding Liquidity for a Customer Complex Order in a COLA, regardless of the contra-party. The contra-party restriction is being removed except with regard to Other Auctions,⁶ including the opening process. Specifically, the Exchange is proposing to pay a Rebate for Adding Liquidity on Customer Complex Orders in a COLA, notwithstanding whether the Customer order is contra to another Customer order. The Exchange would continue to pay a Rebate for Adding Liquidity on Customer Complex Orders during Other Auctions, including the Exchange’s opening process,⁷ in certain circumstances.

The Exchange is not amending the Rebate for Adding Liquidity as it applies to Other Auctions, including the Exchange’s opening process. For Other Auctions, the Exchange would continue to pay a Rebate for Adding Liquidity (as set forth in Part B)

⁵ COLA is the automated Complex Order Live Auction process. A COLA may take place upon identification of the existence of a COLA-eligible order either: (1) following a COOP, or (2) during normal trading if the Phlx XL system receives a Complex Order that improves the cPBBO. See Exchange Rule 1080.

⁶ For purposes of this filing, Other Auctions include Quote and Market Exhaust auctions. Market Exhaust occurs when there are no Phlx XL II participant (specialist, SQT or RSQT) quotations in the Exchange's disseminated market for a particular series and an initiating order in the series is received. In such a circumstance, the Phlx XL II system, using Market Exhaust, will initiate a Market Exhaust auction for the initiating order. Under Market Exhaust, any order volume that is routed to away markets will be marked as an Intermarket Sweep Order or “ISO.” See Exchange Rule 1082. COLA auctions are discussed above and not included in the Other Auctions reference.

⁷ See Exchange Rule 1017.

when a Customer Complex Order is executed against a non-Customer (Specialist,⁸ Registered Options Trader,⁹ SQT,¹⁰ RSQT,¹¹ Professional,¹² Firm or Broker-Dealer) contra-side Complex Order, or a non-Customer individual order or quote. In other words, for Other Auctions, the Exchange would continue to not pay a Rebate for Adding Liquidity when such Customer Complex Order is contra to another Customer order.

Additionally, the Exchange is proposing to amend Section II of the Fee Schedule which currently states, “[a] rebate of \$0.05 per contract will be paid for Customer complex orders that are electronically-delivered and executed against a non-Customer (Specialist, ROT, SQT, RSQT, Professional, Firm or Broker-Dealer) contra-side complex order, or a non-Customer individual order or quote.” The Exchange is proposing to pay a \$0.05 per contract rebate for Customer Complex Orders that are electronically delivered

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”).

regardless of the contra-party (“Nickel Rebate”). The contra-party restriction is being removed. The Exchange would continue to pay a rebate on Customer Complex Orders notwithstanding whether the Customer order is executed against a non-Customer contra-side Complex Order or a non-Customer individual order or quote. Section II applies to options overlying equities, exchange-traded note (“ETN”)¹³ options, exchange-traded fund (“ETF”) options¹⁴, indexes and HOLDRS¹⁵, which are Multiply-Listed.¹⁶

The Exchange is proposing to make a grammatical change in Section II to capitalize the words “complex order.” The Exchange is also proposing to amend the definition of electronic auctions in the Fee Schedule to reference Rule 1082 for additional clarity.

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.

¹³ ETNs are also known as "Index-Linked Securities," which are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments or market indexes of the foregoing. Index-Linked Securities are the non-convertible debt of an issuer that have a term of at least one (1) year but not greater than thirty (30) years. Despite the fact that Index-Linked Securities are linked to an underlying index, each trade as a single, exchange-listed security. Accordingly, rules pertaining to the listing and trading of standard equity options apply to Index-Linked Securities.

¹⁴ An ETF is an open-ended registered investment company under the Investment Company Act of 1940 that has received certain exemptive relief from the Commission to allow secondary market trading in the ETF shares. ETFs are generally index-based products, in that each ETF holds a portfolio of securities that is intended to provide investment results that, before fees and expenses, generally correspond to the price and yield performance of the underlying benchmark index.

¹⁵ HOLDRS are Holding Company Depository Receipts.

¹⁶ A Multiply Listed security means an option that is listed on more than one exchange.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹⁷ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁸ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that its proposal should continue to attract Customer order flow to the Exchange for the benefit of all market participants [sic]

The Exchange believes that its proposal is reasonable because the Exchange is continuing to pay the same Rebate for Adding Liquidity in a COLA electronic auction. The Exchange is seeking to increase the incentives for member organizations to send Customer Complex Order flow to the Exchange for execution by expanding the opportunity to earn a rebate. The Exchange believes that offering the Nickel Rebate on all Customer Complex Orders, executed in a non-Select Symbol, and electronically-delivered, regardless of the contra-party, is reasonable because the Nickel Rebate should incentivize additional Customer Complex Orders to be sent to the Exchange for execution.

The Exchange believes that the proposal is equitable because the Exchange is seeking to expand the opportunity to earn a Rebate for Adding Liquidity during a COLA, which the Exchange believes acts as an incentive to increase Customer Complex Orders to be delivered to the Exchange for execution, which in turn benefits all market participants. The Exchange believes the same rationale applies to the Nickel Rebate. As

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(4).

stated above, the Exchange believes market participants benefit from improved liquidity and trading opportunities.

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which knowledgeable and sophisticated market participants readily can, and do, send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive or economically unfavorable. The Exchange believes that the proposed modifications to the rebates paid for Customer Complex Orders must be competitive with rebates available on other options exchanges. The Exchange strongly believes that this competitive options marketplace impacts and influences the fees and rebates present on the Exchange today and affects the proposals set forth above.

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.¹⁹ 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

¹⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2011-73 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-2011-73. 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 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-2011-73 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.²⁰

Cathy H. Ahn
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).