

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65576; File No. SR-Phlx-2011-133)

October 14, 2011

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

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 October 3, 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 Remote Streaming Quote Trader ("RSQT")<sup>3</sup> Fee in Section VI of the Exchange's Fee Schedule entitled "Access Service, Cancellation, Membership, Regulatory and Other 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 November 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, on

---

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

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

<sup>3</sup> 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).

the Commission's website at <http://www.sec.gov/> 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the RSQT Fee in Section VI of the Exchange's Fee Schedule, entitled "Access Service, Cancellation, Membership, Regulatory and Other Fees," in order to simplify its RSQT Fee and automate its billing of this fee.

An RSQT is 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.<sup>4</sup> An RSQT may only submit such quotations electronically from off the floor of the Exchange.<sup>5</sup> An RSQT shall

---

<sup>4</sup> A qualified RSQT may function as a Remote Specialist upon Exchange approval.

<sup>5</sup> See Exchange Rule 1014(b)(ii)(B). No person who is either directly or indirectly affiliated with an RSQT shall submit quotations as a specialist, SQT, RSQT or non-SQT ROT in options in which such affiliated RSQT is assigned. An RSQT may only trade in a market making capacity in classes of options in which he is assigned or approved as a Remote Specialist.

not submit option quotations in eligible options to which such RSQT is assigned to the extent that the RSQT is also approved as a Remote Specialist in the same options.<sup>6</sup>

Currently, the Exchange assesses its RSQT Fee in seven categories as follows:

RSQT Category I	\$1700.00 per calendar month
	<p>RSQT is Eligible to trade:</p> <ul style="list-style-type: none"> <li>● 1 issue selected from the top 5 national volume leaders</li> <li>● 1 issue selected from the 6th to 10th national volume leaders</li> <li>● 3 issues selected from the 11th to 25th national volume leaders</li> <li>● 4 issues selected from the 26th to 50th national volume leaders</li> <li>● 1 index issue</li> <li>● 190 other issues</li> </ul>
RSQT Category II	\$3200.00 per calendar month
	<p>RSQT is Eligible to trade:</p> <ul style="list-style-type: none"> <li>● 2 issues selected from the top 5 national volume leaders</li> <li>● 2 issues selected from the 6th to 10th national volume leaders</li> <li>● 6 issues selected from the 11th to 25th national volume leaders</li> </ul>

<sup>6</sup> See Exchange Rules 1014(b) and 507 for qualifications relating to assignments.

	<ul style="list-style-type: none"> <li>● 8 issues selected from the 26<sup>th</sup> to 50<sup>th</sup> national volume leaders</li> <li>● 2 index issues</li> <li>● 380 other issues</li> </ul>
<p>RSQT Category III</p>	<p style="text-align: right;">\$4700.00 per calendar month</p> <p>RSQT is Eligible to trade:</p> <ul style="list-style-type: none"> <li>● 3 issues selected from the top 5 national volume leaders</li> <li>● 3 issues selected from the 6<sup>th</sup> to 10<sup>th</sup> national volume leaders</li> <li>● 9 issues selected from the 11<sup>th</sup> to 25<sup>th</sup> national volume leaders</li> <li>● 12 issues selected from the 26<sup>th</sup> to 50<sup>th</sup> national volume leaders</li> <li>● 3 index issues</li> <li>● 570 other issues</li> </ul>
<p>RSQT Category IV</p>	<p style="text-align: right;">\$6200.00 per calendar month</p> <p>RSQT is Eligible to trade:</p> <ul style="list-style-type: none"> <li>● 4 issues selected from the top 5 national volume leaders</li> <li>● 4 issues selected from the 6<sup>th</sup> to 10<sup>th</sup> national volume leaders</li> <li>● 12 issues selected from the 11<sup>th</sup> to 25<sup>th</sup> national volume leaders</li> <li>● 16 issues selected from the 26<sup>th</sup> to 50<sup>th</sup> national volume</li> </ul>

	<p>leaders</p> <ul style="list-style-type: none"> <li>● 5 index issues</li> <li>● 759 other issues</li> </ul>
<p>RSQT Category V</p>	<p style="text-align: right;">\$7700.00 per calendar month</p> <p>RSQT is Eligible to trade:</p> <ul style="list-style-type: none"> <li>● 5 issues selected from the top 5 national volume leaders</li> <li>● 5 issues selected from the 6<sup>th</sup> to 10<sup>th</sup> national volume leaders</li> <li>● 15 issues selected from the 11<sup>th</sup> to 25<sup>th</sup> national volume leaders</li> <li>● 20 issues selected from the 26<sup>th</sup> to 50<sup>th</sup> national volume leaders</li> <li>● 7 index issues</li> <li>● 948 other issues</li> </ul>
<p>RSQT Category VI</p>	<p style="text-align: right;">\$9200.00 per calendar month</p> <p>RSQT is Eligible to trade:</p> <ul style="list-style-type: none"> <li>● 5 issues selected from the top 5 national volume leaders</li> <li>● 5 issues selected from the 6<sup>th</sup> to 10<sup>th</sup> national volume leaders</li> <li>● 15 issues selected from the 11<sup>th</sup> to 25<sup>th</sup> national volume leaders</li> <li>● 25 issues selected from the 26<sup>th</sup> to 50<sup>th</sup> national volume leaders</li> </ul>

	<ul style="list-style-type: none"> <li>● 9 index issues</li> <li>● 1141 other issues</li> </ul>
RSQT Category VII	<p style="text-align: right;">\$10,700.00 per calendar month</p> <p>RSQT is eligible to trade all equity option and index option issues</p>

Currently, each RSQT is assessed an RSQT Fee based on the number and type of option issues (as described above) in which an RSQT is assigned. The national volume leader calculations are performed by the Exchange.<sup>7</sup> Each additional category is a progressively higher fee for an RSQT to submit quotations from off the floor of the Exchange in a progressively greater number of options in each aforementioned national volume grouping and in a greater number of index options. Accordingly, in order to submit electronic quotations from off the floor of the Exchange in all options traded on the Exchange, an RSQT would be required to pay fees applicable to a Category VII RSQT. The RSQT Fee is assessed based on the highest RSQT category level in which the RSQT was qualified to trade at any time during a particular calendar month.<sup>8</sup>

---

<sup>7</sup> The Exchange calculates the national volume for equity options and options overlying Exchange-Traded Fund Shares every six months, effective from January 1 through June 30, and again from July 1 through December 31. The January-June national volume rankings are based on the total national volume for a particular option traded during the previous month of October, as determined by The Options Clearing Corporation ("OCC"); the July-December national volume rankings will be based on the total national volume for a particular option traded during the previous month of May, as determined by the OCC. See Securities Exchange Act Release No. 51428 (March 24, 2005), 70 FR 16325 (March 30, 2005) (SR-Phlx-2005-12).

<sup>8</sup> For example, if an RSQT is eligible to trade at any time in a given calendar month as a Category I RSQT, and sometime during that calendar month becomes qualified and eligible to trade as a Category II RSQT, the RSQT will be assessed the fee applicable to a Category II RSQT, regardless of when such RSQT became eligible to trade at the

The Exchange proposes to eliminate the current RSQT Fee and instead adopt a new RSQT Fee based solely on the number of options assigned to a particular RSQT. The Exchange proposes to adopt the following monthly RSQT Fee based on the corresponding number of option class assignments<sup>9</sup>:

<b>Number of Option Class Assignments</b>	<b>RSQT Fee</b>
less than 100 classes	\$5,000 per month
More than 100 classes and less than 999 classes	\$8,000 per month
1000 or more classes	\$11,000 per month

In calculating the RSQT Fee, the Exchange will calculate the number of option class assignments for equity options including exchange-traded funds (“ETFs”), exchange-traded notes (“ETNs”)<sup>10</sup> and HOLDRS<sup>11</sup>. The Exchange will not include and therefore not assess a fee for currencies or indexes in calculating the number of option class assignments.

---

Category II level, and regardless of whether or not, during that calendar month, the RSQT resumed eligibility as a Category I RSQT.

<sup>9</sup> For purposes of this filing, the term “issues” and “classes” have the same meaning.

<sup>10</sup> 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.

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

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>12</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>13</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 the proposed amendments to the RSQT Fee are reasonable because the Exchange is creating a simple method for calculating the RSQT Fee. The proposal will calculate the RSQT Fee on the number of option assignments as compared to the national volume for equity options and options overlying Exchange-Traded Fund Shares. This new calculation will enable RSQTs to easily determine the amount of option class assignments and therefore the RSQT Fee on a monthly basis without the need for a more comprehensive calculation. The Exchange believes that this revised form of calculating the RSQT Fee will be more transparent to members, create a simple calculation of the fee based solely on the number of option class assignments and allow for ease of automation of this fee.

The Exchange believes that the proposed RSQT Fee is equitable and not unfairly discriminatory because the proposed fee is more representative of system usage by RSQTs and costs to the Exchange. While several factors determine a particular RSQT's Fee in any given month, a comparison of the current RSQT Fee and the proposal which is based solely on option assignments is not a fair determination of the impact of this fee proposal. The Exchange believes

---

<sup>11</sup> HOLDRS are Holding Company Depository Receipts.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(4).

that a majority of RSQTs will experience an increase or decrease in the RSQT Fee of approximately \$300-\$1800 a month based on this proposal. The Exchange has not increased this fee since it was established in 2005 and believes that the proposed fee is a fair representation of the Exchange's technology costs and the increased amount of system usage attributable to each RSQT.

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>14</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 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:

---

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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 No. SR-Phlx-2011-133 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 No. SR-Phlx-2011-133. 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 No. SR-Phlx-2011-133 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>15</sup>

Elizabeth M. Murphy  
Secretary

---

<sup>15</sup> 17 CFR 200.30-3(a)(12).