

SECURITIES AND EXCHANGE COMMISSION  
(Release No.34-65790; File No. SR-Phlx-2011-150)

November 18, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Reduce Transaction Fees for Members Engaging in Certain Accommodation Transactions

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 November 7, 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 a transaction fee for members transacting certain Accommodation Transactions, specifically cabinet trading.<sup>3</sup>

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

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

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

<sup>3</sup> An "accommodation" or "cabinet" trade refers to trades in listed options on the Exchange that are worthless or not actively traded. Cabinet trading is generally conducted in accordance with Exchange Rules, except as provided in Exchange Rule 1059 entitled “Accommodation Trading”, which sets forth specific procedures for engaging in cabinet trading below \$1 per option contract.

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 create a new fee for equity options transactions executed pursuant to Exchange Rule 1059 entitled "Accommodation Trading." Cabinet or accommodation trading of option contracts is intended to accommodate persons wishing to effect closing transactions in those series of options dealt in on the Exchange for which there is no auction market.<sup>4</sup> Currently, the fees which members are assessed when

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<sup>4</sup> On December 30, 2010, the Exchange extended a pilot program through December 1, 2011 to allow cabinet transactions to take place in open outcry at a price of at least \$0 but less than \$1 per option contract. These lower priced transactions are traded pursuant to the same procedures applicable to \$1 cabinet trades, except that pursuant to the pilot program (i) bids and offers for opening transactions are only permitted to accommodate closing transactions in order to limit use of the procedure to liquidations of existing positions, and (ii) the procedures are also made available for trading in options participating in the Penny Pilot Program. See Securities Exchange Act Release No. 64571 (May 31, 2011), 76 FR 32385 (June 6, 2011) (SR-Phlx-2011-72).

transacting cabinet trades are the standard equity option fees.<sup>5</sup> The Exchange believes that the proposed fee reduction will encourage members to transact cabinet trades on the Exchange.

The Exchange is proposing to reduce transaction fees to \$.10 per contract for Cabinet Trades which occur pursuant to Rule 1059, for all participants, except Customers.<sup>6</sup> Specifically, the Exchange proposes to assess a \$.10 per contract transaction charge on Professionals,<sup>7</sup> Specialists,<sup>8</sup> Registered Options Traders,<sup>9</sup> SQTs,<sup>10</sup> RSQTs,<sup>11</sup> Broker-Dealers and Firms. Customers would continue to remain free of charge when transacting cabinet trades. Additionally, the Exchange currently waives the Firm equity options transaction fees for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are

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<sup>5</sup> The equity options fees are in Section II of the Fee Schedule.

<sup>6</sup> The Exchange is not proposing to otherwise amend its equity option fees.

<sup>7</sup> The term "professional" means 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). See Rule 1000(b)(14).

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

<sup>9</sup> A Registered Options Trader ("ROT") includes a Streaming Quote Trader ("SQT"), a Remote Streaming Quote Trader ("RSQT") and a Non-SQT, which by definition is neither a SQT or a RSQT. A Registered Option Trader 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).

<sup>10</sup> 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.

<sup>11</sup> 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.

trading in their own proprietary account.<sup>12</sup> Similar to the equity option fees, which are currently subject to the aforementioned waiver, the Exchange would continue to apply the waiver to members executing facilitation orders pursuant to Exchange Rule 1064 to cabinet trade equity option transactions.

In order to capture the necessary information electronically, the Exchange requires members to designate on the trade ticket that the option trade is a cabinet trade by entering the code, “Z5”, on the trading ticket and into the system, or directly into the Floor Broker Management System (“FBMS”).<sup>13</sup>

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on December 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>14</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>15</sup> in

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<sup>12</sup> The waiver does not apply to orders where a member is acting as agent on behalf of a non-member. See Securities Exchange Act Release No. 60477 (August 11, 2009), 74 FR 41777 (August 18, 2009) (SR-Phlx-2009-67).

<sup>13</sup> FBMS is designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. FBMS also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. See Exchange Rule 1080, Commentary .06.

<sup>14</sup> 15 U.S.C. 78f(b).

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

particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that it is reasonable to lower the fees for cabinet trades to incentivize members to transact cabinet trades. The proposed fees for cabinet trades would be lower for all market participants, except Customers who will remain free of charge. The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to not assess Customers a fee for transacting cabinet trades because Customer order flow attracts liquidity to the Exchange which in turn benefits of all market participants. The Exchange believes that it is equitable and not unfairly discriminatory to amend and lower fees for cabinet trades because all market participants will be assessed a uniform transaction fee, with the exception of Customers who will not be assessed a fee. The Chicago Board Options Exchange, Incorporated assesses fees for cabinet trading that are within the range of fees proposed by the Exchange.<sup>16</sup>

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 fee must be competitive with fees offered 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.

**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.

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<sup>16</sup> See Securities Exchange Act Release No. 61295 (January 6, 2010), 75 FR 2166 (January 14, 2010) (SR-CBOE-2009-098) (A rule change to assess equity option transaction fees for cabinet trades).

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>17</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:

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-2011-150 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.

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-Phlx-2011-150. 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 publicly available. All submissions should refer

to File Number SR-Phlx-2011-150 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>18</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).