

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65924; File No. SR-Phlx-2011-167)

December 9, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Permit 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 November 28, 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 waive Permit Fees for existing Exchange members or member organizations that were members on the Exchange prior to the initiation of PSX and have since determined to commence an equities business.

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 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

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

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

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 purpose of the proposed rule change is to extend the waiver of Permit Fees to Exchange members or member organizations that were members on the Exchange prior to the initiation of PSX and have since determined to commence an equities business. The Exchange continues to seek to encourage members to trade on NASDAQ OMX PSX ("PSX")<sup>3</sup> under a market participant identifier ("MPID")<sup>4</sup> registered to the member or member organization.

Currently, the Exchange assesses members and member organizations who are transacting business on the Exchange a Permit Fee of \$1,100 per month.<sup>5</sup> A member or member organization is assessed the \$1,100 monthly Permit Fee if that member or member organization: (1) transacts its option orders in its assigned Phlx house account in a particular month; (2) is a clearing member of The Options Clearing Corporation or a Floor Broker; or (3) for those member organizations which are under common ownership, transacts at least one options trade in a Phlx house account that is assigned to one of the member organizations under common

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<sup>3</sup> PSX is the Exchange's cash equities market electronic trading platform.

<sup>4</sup> An MPID is a four-letter code used by a member to categorize its trading activity for a specific purpose.

<sup>5</sup> The Exchange recently filed to amend its Permit Fees to \$2,000 for members transacting business on the Exchange. The rule text of Exhibit 5 reflects the text of that currently effective filing which will be operative on January 3, 2012, in part. See SR-Phlx-2011-166.

ownership.<sup>6</sup> Members who are not transacting business on the Exchange are assessed a Permit Fee of \$7,500 per month. A member or member organization is assessed the \$7,500 Permit Fee for not transacting business on the Exchange if that member is either: (i) not a PSX Participant;<sup>7</sup> or not engaged in an options business at the Exchange in a particular month. In addition, a member or member organization that sponsors an options participant<sup>8</sup> would pay an additional Permit Fee for each sponsored options participant. If the Exchange member or member organization meets the exemption criteria related to the \$7,500 Permit Fee, the member or member organization would be assessed the \$1,100 Permit Fee or \$2,000 as of January 3, 2012.

At the time PSX began operations in October 2010, the Exchange filed a rule change to waive the Application Fee, Initiation Fee, Permit Fee and Account Fee for applicants applying to participate in PSX (“October 2010 Rule Change”).<sup>9</sup> The October 2010 Rule Change applied the waivers to new Exchange members that solely participated in PSX.<sup>10</sup> Also, the October 2010 Rule Change did not apply the waivers to an applicant seeking approval to participate solely in the options market, or to an applicant seeking to participate in both the equities and the options

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<sup>6</sup> For purposes of the Permit Fee, "common ownership" shall be defined as at least 75% common ownership between the member organizations.

<sup>7</sup> Applicants that apply for membership solely to participate in the NASDAQ OMX PSX equities market are not assessed a Permit Fee, Application Fee, Initiation Fee, or Account Fee. See Securities Exchange Act Release No. 61863 (April 7, 2010), 75 FR 20021 (April 16, 2010) (SR-Phlx-2010-54).

<sup>8</sup> See Exchange Rule 1094 titled Sponsored Participants. A Sponsored Participant may obtain authorized access to the Exchange only if such access is authorized in advance by one or more Sponsoring Member Organizations. Sponsored Participants must enter into and maintain participant agreements with one or more Sponsoring Member Organizations establishing a proper relationship(s) and account(s) through which the Sponsored Participant may trade on the Exchange.

<sup>9</sup> See Securities Exchange Act Release No. 63351 (November 19, 2010), 75 FR 73140 (November 29, 2010) (SR-Phlx-2010-54).

<sup>10</sup> See Securities Exchange Act Release No. 63351 (November 19, 2010), 75 FR 73140 (November 29, 2010) (SR-Phlx-2010-54).

markets.<sup>11</sup> Finally, the October 2010 Rule Change did not apply waivers to members or member organizations that cease their options operations, but remain as sole PSX Participants. The Exchange subsequently filed an amendment to allow existing members or member organizations that cease to conduct an options business on Phlx XL II,<sup>12</sup> but continue to conduct business PSX, to receive a waiver of Permit Fee.<sup>13</sup>

This filing proposes to apply the waiver of the Permit Fee<sup>14</sup> to those Exchange members and member organizations that were members of the Exchange before the initiation of PSX, but were not conducting an options business, and thereafter commenced conducting an equities business. These members and member organizations were not considered “new” members and were therefore not subject to the waiver. The Exchange proposes to allow these members and member organizations to receive a waiver of the Permit Fee. These members and member organizations must not be conducting an options business to receive the waiver, but would be considered PSX only.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>15</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>16</sup> in

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<sup>11</sup> See Securities Exchange Act Release No. 63351 (November 19, 2010), 75 FR 73140 (November 29, 2010) (SR-Phlx-2010-54).

<sup>12</sup> Phlx XL II is the Exchange’s electronic options trading platform.

<sup>13</sup> See Securities Exchange Act Release No. 64265 (April 8, 2011), 76 FR 21080 (April 14, 2011) (SR-Phlx-2011-43).

<sup>14</sup> These members and member organizations would not be assessed an Application Fee or Initiation Fee because they are already Exchange members or member organizations and have previously paid those fees. In addition, the monthly Account Fee would not be applicable to PSX Participants as MPIDs are used to identify member firms’ participation, not account numbers.

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

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 it is reasonable to waive fees as an incentive for existing Exchange members and member organizations to continue to transact business on PSX.

The Exchange believes that the proposal is equitable and not unfairly discriminatory because the waiver applies uniformly to any members and member organizations that solely conduct an equities business on the Exchange. The fact that these members and member organizations were at the Exchange prior to the commencement of PSX should not prohibit them from receiving the same waiver as other equities members who are not conducting an options Exchange.

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>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

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<sup>16</sup> 15 U.S.C. 78f(b)(4).

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

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 No. SR-Phlx-2011-167 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-2011-167. 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-2011-167 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).