

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65720; File No. SR-Phlx-2011-147)

November 9, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Complex Order Rebates and Fees for Adding and Removing Liquidity

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 November 1, 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 Order Fees in Section I of its Fee Schedule entitled “Rebates and Fees for Adding and Removing Liquidity in Select Symbols.”

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

¹ 15 U.S.C. 78s(b)(1).

² 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Section I, Part B of the Exchange’s Fee Schedule for Complex Orders. 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).³

The Exchange is proposing to: (i) eliminate all references to Designated Options;⁴ (ii) amend its Customer Complex Order Rebate for Adding Liquidity for all Select Symbols,⁵ which will now include the Designated Options; and (iii) amend its Complex Order Fees for Removing Liquidity for Select Symbols, which will now include the Designated Options.

³ See Exchange Rule 1080, Commentary .08(a)(i).

⁴ The Exchange defines Designated Options in Section I of its Fee Schedule as the following options: (i) Standard and Poor’s Depository Receipts/SPDRs (“SPY”); (ii) the PowerShares QQQ Trust (“QQQ”)®; (iii) Apple, Inc. (“AAPL”); (iv) iShares Russell 2000 Index (“IWM”); (v) Bank of America Corporation (“BAC”); (vi) Citigroup, Inc. (“C”); (vii) SPDR Gold Trust (“GLD”); (viii) Intel Corporation (“INTC”); (ix) JPMorgan Chase & Co. (“JPM”); (x) iShares Silver Trust (“SLV”); (xi) Financial Select Sector SPDR (“XLF”); and (xii) Ford Motor Company (“F”) (taken together, “Designated Options”).

⁵ All Designated Options are also Select Symbols.

The Exchange proposes to eliminate the Customer Complex Order Rebate for Adding Liquidity in Designated Options and the Complex Order Fees for Removing Liquidity in Designated Options. Designated Options will be paid the rebates and assessed the fees applicable to Select Symbols. The Exchange initially filed a proposed rule change⁶ to pay a different Customer Complex Order Rebate to Add Liquidity and assess different Complex Order Fees for Removing Liquidity for Designated Options as compared to Select Symbols. In that filing, the Exchange noted that it believed that the proposed Complex Order rebate and fees for the Designated Options would attract additional order flow to the Exchange.

At this time, the Exchange is proposing to remove the Complex Order rebate and fees for Designated Options and instead assess those Designated Options the same rates that apply to the Select Symbols. The Exchange is combining Designated Options and Select Symbols into one category. The Exchange is increasing the Customer Complex Order Rebate for Adding Liquidity and also increasing the Fees for Removing Liquidity in the combined category. The Exchange believes that increasing the Complex Order Customer Rebate for Adding Liquidity will further attract additional order flow to the Exchange. The Exchange believes that increasing the Complex Order Fees for Removing Liquidity will assist the Exchange in recouping certain costs associated with its Fees and Rebates for Adding and Removing Liquidity while not impeding the Exchange from continuing to increase its order flow.

Currently, the Exchange pays a Customer Complex Order Rebate for Adding Liquidity in Designated Options of \$0.27 per contract. The Exchange proposes to eliminate the Customer Complex Order Rebate for Adding Liquidity in Designated Options and instead apply the Complex Order Rebate for Adding Liquidity in Select Symbols to those symbols by removing

⁶ See Securities Exchange Act Release No. 65049 (August 5, 2011), 76 FR 49810 (August 11, 2011) (SR-Phlx-2011-103).

the text “except in Designated Options**” from the Fee Schedule. The Exchange currently pays a Customer Complex Order Rebate for Adding Liquidity in Select Symbols of \$0.24 per contract. The Exchange is proposing to increase that Customer Complex Order Rebate for Adding Liquidity in Select Symbols to \$0.30 per contract.

Currently, the Exchange assesses the following Complex Order Fees for Removing Liquidity in Select Symbols and Designated Options, respectively.

	Customer	Directed Participant	Specialist, ROT, SQT and RSQT	Firm	Broker-Dealer	Professional
Fee for Removing Liquidity in all Select Symbols except in Designated Options	\$0.25	\$0.27	\$0.29	\$0.30	\$0.35	\$0.30
Fee for Removing Liquidity in Designated Options	\$0.00	\$0.28	\$0.29	\$0.30	\$0.35	\$0.30

The Exchange proposes to amend the Complex Order Fees for Removing Liquidity for all Select Symbols, including the Designated Options, for a Directed Participant⁷, Specialist,⁸ ROT,⁹ SQT¹⁰ and RSQT,¹¹ Firm and Professional¹² as follows:

⁷ The term “Directed Participant” applies to transactions for the account of a Specialist, Streaming Quote Trader or Remote Streaming Quote Trader resulting from a Customer order that is (1) directed to it by an order flow provider, and (2) executed by it electronically on Phlx XL II.

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, which by definition is neither a SQT nor 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).

Customer	Directed Participant	Specialist, ROT, SQT and RSQT	Firm	Broker-Dealer	Professional
\$0.00	\$0.30	\$0.32	\$0.35	\$0.35	\$0.35

Customers and Broker-Dealers would remain at the same rates applicable today for Designated Options. The Exchange proposes to eliminate the Designated Options category by removing the text “except in Designated Options**” from the Fee Schedule. The Exchange would also eliminate any other references to Designated Options in Section I of the Fee Schedule.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹³ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁴ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange also believes that there is an equitable allocation of reasonable rebates among Exchange members.

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 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).

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4).

The Exchange believes that it is reasonable and equitable to only pay a Complex Order Rebate for Adding Liquidity to Customers, as compared to other market participants, because the Customer rebate will attract Customer order flow to the Exchange for the benefit of all market participants. Likewise, the Exchange believes that it is reasonable to not assess a Complex Order Fee for Removing Liquidity for Customers, because this also will attract Customer order flow to the Exchange which in turn also benefits all market participants.

The Exchange believes that its proposal to eliminate the Designated Options category and pay an increased Customer Complex Order Rebate to Add Liquidity for all Select Symbols, which would now include the Designated Options, is reasonable because this will attract additional order flow to the Exchange. The Exchange also believes that it is equitable and not unfairly discriminatory to pay all Select Symbols, including the Designated Options, a higher Customer Rebate for Adding Liquidity for Complex Orders because all the symbols in Section I will be paid a uniform rebate to transact Customer orders.

The Exchange believes that it is reasonable to assess higher Complex Order Fees for Removing Liquidity for a Directed Participant, Specialist, ROT, SQT and RSQT, Firm and Professional because the rates will remain within the range of fees assessed today for Single contra-side orders.¹⁵ In addition, the Complex Order Fees for Removing Liquidity are within the range of fees at the International Securities Exchange, LLC (“ISE”).¹⁶ The Exchange proposes to increase the Complex Order Fees for Removing Liquidity, but continue to assess market

¹⁵ Single contra-side orders are in Section I, Part A of the Exchange’s Fee Schedule. There is one distinction, namely the Customer Fee for Removing Liquidity for a Single contra-side order is \$0.25 per contract and there will be no Fee for Removing Liquidity for Complex Orders in the new combined Fee for Removing Liquidity for Select Symbols, which will include the Designated Options.

¹⁶ See ISE’s Schedule of Fees.

makers¹⁷ lower rates as compared to other market participants because market makers have obligations to the market, which do not apply to Firms, Professionals and Broker-Dealers.¹⁸ Directed Participants are assessed a different Complex Order Fee for Removing Liquidity as compared to other market makers because they have higher quoting obligations as compared to market makers.¹⁹ Firms, Broker-Dealers and Professionals would be assessed equal rates and Customers would not be assessed a fee.²⁰

The Exchange believes that it is equitable and not unfairly discriminatory to increase the Complex Order Fees for Removing Liquidity for Select Symbols, including the Designated Options, for all market participants except Customers and Broker-Dealers because these fees

¹⁷ The Exchange market maker category includes Specialists (see Rule 1020) and ROTs (Rule 1014(b)(i) and (ii), which includes SQTs (see Rule 1014(b)(ii)(A)) and RSQTs (see Rule 1014(b)(ii)(B)).

¹⁸ See Exchange Rule 1014 titled “Obligations and Restrictions Applicable to Specialists and Registered Options Traders.”

¹⁹ See Exchange Rule 1014 titled “Obligations and Restrictions Applicable to Specialists and Registered Options Traders.”

²⁰ Customers are not assessed a Complex Order Fee for Removing Liquidity today in Designated Options. Customers are assessed a \$0.25 per contract Complex Order Fee For Removing Liquidity in the Select Symbols today. The Broker-Dealer fee would remain the same.

would apply uniformly to these market participants.²¹ In addition, the Complex Order Fees for Removing Liquidity are comparable to the complex order fees at ISE.²²

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants can readily send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the Complex Order fees and rebates it pays/assesses must be competitive with fees and rebates in place on other exchanges. The Exchange believes that this competitive marketplace impacts the fees and rebates 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.

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.

²¹ Today, Customers are assessed a Complex Order Fee for Removing Liquidity in all Select Symbols, except Designated Options, of \$0.25 per contract. This proposal would result in a decrease for Customers currently paying the \$0.25 per contract fee today, as the proposed Customer rate in the combined category will be \$0.00. The Exchange believes that this is reasonable because it is within the range of fees assessed by other exchanges. ISE does not assess its customers a complex order taker fee. See ISE's Schedule of Fees. The Exchange believes that decreasing the Customer Fee for Removing Liquidity in Complex Orders in the Select Symbols is equitable and not unfairly discriminatory because today there is no Complex Order Fee for Removing Liquidity for Designated Options and the proposed rates will uniformly assess no fee for Customers in the combined category.

²² See ISE's Schedule of Fees.

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.²³ 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. Please include File Number SR-Phlx-2011-147 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-2011-147. 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

²³ 15 U.S.C. 78s(b)(3)(A)(ii).

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 Number SR-Phlx-2011-147 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.²⁴

Kevin M. O'Neill
Deputy Secretary

²⁴ 17 CFR 200.30-3(a)(12).