

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64938; File No. SR-Phlx-2011-93)

July 20, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Service Fee on QCC Orders and Floor QCC Orders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4² thereunder, notice is hereby given that, on July 11, 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 Fee Schedule to adopt a Service Fee of \$0.05 per side for Qualified Contingent Cross (“QCC”) Orders (electronic)³ and Floor QCC Orders.⁴

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A QCC Order is comprised of an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. The QCC Order must be executed at a price at or between the National Best Bid and Offer and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the PHLX XL II System. See Rule 1080(o). See also Securities Exchange Act Release No. 64249 (April 7, 2011), 76 FR 20773 (April 13, 2011) (SR-Phlx-2011-47) (a rule change to establish a QCC Order to facilitate the execution of stock/option Qualified Contingent Trades (“QCTs”) that satisfy the requirements of the trade through exemption in connection with Rule 611(d) of the Regulation NMS).

⁴ A Floor QCC Order must: (i) be for at least 1,000 contracts, (ii) meet the six requirements of Rule 1080(o)(3) which are modeled on the QCT Exemption, (iii) be executed at a price at or between the National Best Bid and Offer (“NBBO”); and (iv) be rejected if a

The text of the proposed rule change is available on the Exchange's website at <http://nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, 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 adopt a Service Fee for both QCC Orders (electronic) and Floor QCC Orders once a Firm reaches the Firm Related Equity Option Cap ("Cap"), which is described below. The Exchange proposes this Service Fee recognizing that the qualified contingent cross capability is a premium service offered by the Exchange. This Service Fee is proposed to recoup costs incurred by the Exchange to offer this capability including trade matching and processing, post trade allocation, submission for clearing and customer service activities related to trading activity on the Exchange.

Customer order is resting on the Exchange book at the same price. In order to satisfy the 1,000-contract requirement, a Floor QCC Order must be for 1,000 contracts and could not be, for example, two 500-contract orders or two 500-contract legs. See Rule 1064(e). See also Securities Exchange Act Release No. 64688 (June 16, 2011), 76 FR 36606 (June 22, 2011) (SR-Phlx-2011-56) (a rule change to establish a qualified contingent cross order for execution on the floor of the Exchange).

Firms are subject to a \$75,000 Cap. Firm equity option transaction charges and QCC Transaction Fees, in the aggregate, for one billing month may not exceed the Cap per member organization when such members are trading in their own proprietary account. The Firm equity options transaction charges are waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account.⁵

The Exchange proposes to adopt a Service Fee of \$0.05 per side once a Firm has reached the Cap. This \$0.05 per side Service Fee will apply to every contract side of a QCC Order (electronic) and Floor QCC Order that is executed once a Firm has reached the Cap in a particular calendar month. A Firm that does not reach the Cap in a particular calendar month will not be assessed the Service Fee in that month. The Exchange proposes to add text to Section II of the Fee Schedule entitled “Equity Options Fees” to describe the Service Fee. The Exchange also proposes to add a clarifying sentence to Section II of the Fee Schedule to clarify that QCC Transaction Fees are included in the monthly calculation of the Cap.⁶

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(4) of the Act⁸ in

⁵ In addition, Firms that (i) are on the contra-side of an electronically-delivered and executed Customer complex order; and (ii) have reached the Cap will be assessed a \$0.05 per contract fee. See Section II of the Exchange’s Fee Schedule.

⁶ See Securities Exchange Act Release No. 64520 (May 19, 2011), 76 FR 30223 (May 24, 2011) (SR-Phlx-2011-66) (a rule change to adopt fees applicable to a Qualified Contingent Cross Order) and SR-Phlx-2011-84 (an immediately effective proposed rule change to adopt fees applicable to a Floor Qualified Contingent Cross order). QCC Transaction Fees are defined in Section II of the Fee Schedule as applicable to QCC Orders, as defined in Exchange Rule 1080(o), and Floor QCC Orders, as defined in 1064(e).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

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 Service Fee is reasonable because Firms have the ability to cap fees and even with the added Service Fee, Firms should generally pay less once they reach the Cap because they will not pay the normally applicable transaction fees. This Service Fee would reduce the discrepancy that exists today between Firms and other market participants. For example, Firms who reach the Cap in a particular month would pay the Service Fee instead of other normally applicable transaction fees as a result of reaching the Cap. As stated in the filing, the Service Fee does not apply to Firms who did not reach the Cap. Also, the Exchange believes that the Service Fee is reasonable because the fee would allow the Exchange to defray costs incurred in providing the qualified contingent cross capability in the form of QCC Orders (electronic) and Floor QCC Orders. Specifically, the Exchange is providing trade matching and processing, post trade allocation, submission for clearing and customer service activities related to trading activity on the Exchange. The Exchange also believes that the Service Fee is reasonable because it is comparable to a fee assessed by the International Securities Exchange, LLC (“ISE”). ISE assesses a \$0.05 per side service fee for qualified contingent cross volume once a member reaches the monthly fee cap.⁹

The Exchange believes that the proposed Service Fee is equitable and not unfairly discriminatory because it would be uniformly applied to Firms in the same way that the Cap is uniformly available to these Firms.

⁹ See ISE’s Schedule of Fees. See also Securities Exchange Act Release No. 64270 (April 8, 2011), 76 FR 20754 (April 13, 2011) (SR-ISE-2011-13).

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.¹⁰ 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-2011-93 on the subject line.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2011-93. 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 the 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-2011-93 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.¹¹

Elizabeth M. Murphy
Secretary

¹¹ 17 CFR 200.30-3(a)(12).