

monthly fee of \$5000. The Exchange proposed to establish the same fees for non-co-located customers with a 10Gb circuit connection.<sup>4</sup>

NASDAQ represented that it also already makes available to both co-located and non-co-located customers direct connections capable of supporting up to 1Gb, with per connection monthly fees of \$500 for co-located customers and \$1000 for non-co-located customers. According to the Exchange, monthly fees are higher for non-co-located customers because direct connections require NASDAQ to provide cabinet space and middleware for those customers' third-party vendors to connect into the datacenter and, ultimately, to the trading system. Finally, the Exchange represented that for non-co-located customers, it charges an optional installation fee of \$925 if the customer chooses to use an on-site router.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>5</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>6</sup> which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,<sup>7</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposed fees for 10Gb and 1Gb direct circuit connections are reasonable and equitably allocated insofar as they are applied on the same terms to similarly-situated market participants. In

addition, the Commission believes that the connectivity options described in the proposed rule change are not unfairly discriminatory because NASDAQ makes the 10Gb and 1Gb direct circuit connections uniformly available to all non-co-located customers who voluntarily request them and pay the fees as detailed in the proposal. As represented by NASDAQ, these fees are uniform for all such customers and are either the same as fees charged to co-located customers, or vary due to different costs incurred by NASDAQ associated with providing service to the two different customer types. Finally, the Commission believes that the proposal will further the protection of investors and the public interest because it will provide greater transparency regarding the connectivity options available to market participants.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-NASDAQ-2010-077) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-19972 Filed 8-12-10; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62661; File No. SR-Phlx-2010-110]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Billing Policies

August 6, 2010.

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 August 4, 2010, NASDAQ OMX PHLX, Inc. ("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.

<sup>1</sup> 15 U.S.C. 78s(b)(2).

<sup>2</sup> 17 CFR 200.30-3(a)(12).

<sup>3</sup> 15 U.S.C. 78s(b)(1).

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

### 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: (i) Require members and member organizations to identify accounts to properly identify joint back-office ("JBO") participant transactions; (ii) specify certain policies to dispute billing invoices; and (iii) amend the index to rearrange the order of fees on the Fee Schedule.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, at the principal office of the Exchange, on the Commission's Web site 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 Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of the proposed rule change is to memorialize current practices for the Exchange to clearly identify orders that are not subject to the Firm Related Equity Option Cap in order to ensure that members and member organizations are being properly billed the Exchange fees and also to modify the time requirements to dispute Exchange dues and fees to reduce the Exchange's operational costs. The Exchange proposes to memorialize an existing process that requires members and member organizations to identify certain trades which are not subject to the Firm Related Equity Option Cap and to set concrete timelines to dispute any assessed Exchange dues and fees.

Currently, the Firms are subject to a maximum fee of \$75,000 also known as the Firm Related Equity Option Cap. Firm equity option transaction charges, in the aggregate, for one billing month cannot exceed the Firm Related Equity

<sup>4</sup> According to the Exchange, NASDAQ provides an additional 1Gb copper connection option for co-located customers. NASDAQ represented that, given the technological constraints of copper connections over longer distances, it does not offer a copper connection option to users outside of its datacenter.

<sup>5</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

Option Cap per member organization, except for orders of JBO Participants.<sup>3</sup> Therefore, Exchange accounts used for JBO Participant orders are not subject to the Firm Related Equity Option Cap. The Exchange proposes to memorialize the current practice of requiring members and member organizations to notify the Exchange in writing<sup>4</sup> and indicate which accounts are used to segregate orders of JBO participants from other Firm orders. The Exchange believes that memorializing the policy within the Fee Schedule will eliminate any confusion as to which orders are JBO Participant orders and not subject to the Firm Related Equity Option Cap. Further the Exchange proposes to create a new billing practice with respect to JBO transactions. The Exchange proposes to indicate on the Fee Schedule that the Exchange will not make any adjustments to billing invoices where JBO transactions are commingled with other Firm orders in Exchange accounts, which are designated by the member organization as not subject to the Firm Related Equity Option Cap. The Exchange believes that this practice would not create an undue burden on its members and/or member organizations and would ensure a more efficient billing process.

The Exchange also proposes to establish a billing practice to prevent members and member organizations from disputing billing invoices after sixty (60) days. The Exchange proposes to state on its Fee Schedule that all billing disputes must be submitted to the Exchange in writing<sup>5</sup> and must be accompanied by supporting documentation. All disputes must be submitted no later than sixty (60) days after receipt of an Exchange invoice. The Exchange proposes to exclude the following types of fee disputes: NASDAQ OMX PSX Fees, Proprietary Data Feed Fees and Co-Location Services Fees.<sup>6</sup> The Exchange is

excluding these types of fees because these fees are billed separately to Exchange members and Exchange members do not have the same type of notice as all other fees on the Fee Schedule, as they do not receive reports for certain fees. The Exchange believes that members and member organizations should be aware of any billing errors within two months of receiving an invoice.<sup>7</sup> The Exchange further believes that this practice will conserve Exchange resources which are expended when untimely billing disputes require staff to research applicable fees and order information beyond two months after the transaction occurred.

Finally, the Exchange proposes to rearrange its Fee Schedule to relocate the Routing Fees and PSX Fees in the Fee Schedule to eliminate sequential numbering discrepancies in the Index which arose when the Fee Schedule was reformatted.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>9</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the proposal to memorialize the current practice concerning JBO accounts is reasonable to ensure that the Firm Related Equity Option Cap is properly applied in billing members and member organizations. The Exchange believes that the proposal is equitable because the process of notifying the Exchange of accounts used for JBO orders is currently being employed and would therefore not create an undue burden.

The Exchange believes that the proposed amendment to billing practices, the proposal to not adjust commingled JBO orders, is reasonable because members and member

organizations are currently required to properly account for these type of orders. The proposal is equitable because this practice will apply to all members and member organizations transacting JBO business.

Additionally, the Exchange believes the requirement that all billing disputes must be submitted within 60 days from receipt of the invoice, with the exception of certain fees, is reasonable because the Exchange provides ample tools to properly and swiftly monitor and account for various charges incurred in a given month. Also, the proposal is equitable because it equally applies to all members and member organizations. The Exchange's administrative costs would also be lowered as a result of this policy. Finally the Exchange believes that the proposal to rearrange the Fee Schedule is both reasonable and equitable because it clarifies the Fee Schedule.

## 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>10</sup> and subparagraph (f) of Rule 19b-4<sup>11</sup> thereunder. 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.

## 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>3</sup> A JBO participant is a Member, Member Organization or non-member organization that maintains a JBO arrangement with a clearing broker-dealer ("JBO Broker") subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System. See also Exchange Rule 703. JBO participant orders are not subject to the Firm Related Equity Option Cap because the Exchange is unable to differentiate orders of a JBO participant from orders of its JBO Broker and therefore is unable to aggregate the JBO participant's orders. JBO participant orders may employ the F-account type and qualify for the Firm charge, but are not eligible for the Monthly Firm Cap.

<sup>4</sup> The Exchange will issue an Options Regulatory Alert to specify the proper Exchange contacts to notify the Exchange.

<sup>5</sup> The Exchange invoice specifies the Exchange contact persons with whom to dispute the invoice.

<sup>6</sup> These fees are not included in the reports described in footnote 7.

<sup>7</sup> The Exchange provides members and member organizations the ability to sign-up to receive certain daily reports (i.e. daily traded against report, daily cancel fees, etc. \* \* \*), which provides the members and member organizations with trade data to determine fees prior to receiving a billing invoice. In addition, members and member organizations have access to *myphlx.com*, a password protected Web site, which provides members an electronic copy of current and historical invoices, as well as the supporting details for assessed charges. Members will have the ability to retrieve trade information from this Web site on a T +1 basis no later than September 30, 2010. This new enhancement will provide members and member organizations the ability to see information about their trades and billing information prior to receiving the final month-end invoice.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

*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-2010-110 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-2010-110. 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 Web site (<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 Web site 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 a.m. and 3 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-2010-110 and should be submitted on or before September 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. 2010-19971 Filed 8-12-10; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-62670; File No. SR-NYSEArca-2010-77]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Its Fee Schedule**

August 9, 2010.

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 August 4, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II 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 Schedule of Fees and Charges for Exchange Services (the "Schedule"). While changes to the Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on August 4, 2010. The amended section of the Schedule is included as Exhibit 5 to the 19b-4 form. A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office, on the Commission's Web site 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 self-regulatory organization 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 those 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 parts 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 this filing is to amend the Schedule to reflect new transaction pricing that will become operative on August 4, 2010.

The Exchange proposes to eliminate the fees charged to Firms that manually facilitate their customer order flow. Currently, all Firm proprietary manual transactions are charged \$0.18 per contract and are further capped at \$2,000 per issue per day.

NYSE Arca proposes to eliminate fees charged for any transaction involving a Firm's proprietary trading account that has a customer of that same Firm on the contra side of the transaction. Under the revised Schedule, all such transactions, known as Firm Facilitation—Manual trades, will be subject to a rate of \$0.00 per contract.

With the reduction of Firm Facilitation—Manual trades to \$0.00 the transaction fee for all other Firm proprietary manual trades will be \$0.25 per contract. The fee for Firm proprietary electronic transactions will continue to be \$0.50 per contract. Firm transaction fees will be applied on the same basis as all other Broker Dealer transaction fees.

Additionally, there will no longer be a daily cap on Firm proprietary manual transactions in the same option class.

The fees for electronic complex orders, where two complex orders trade against each other, will be reduced to \$0.00 when the same Firm represents both sides.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>3</sup> in general, and Section 6(b)(4) of the Act,<sup>4</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

*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 that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

<sup>3</sup> 15 U.S.C. 78f(b).

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

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