

Commissioner Casey, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, May 12, 2011 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Adjudicatory matters; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

Dated: May 5, 2011.

**Elizabeth M. Murphy,**  
Secretary.

[FR Doc. 2011-11422 Filed 5-5-11; 4:15 pm]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64381; File No. SR-Phlx-2011-57]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Active SQF Port Fees

May 3, 2011.

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 April 25, 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 Section VI of the Exchange’s Fee Schedule pertaining to the Active SQF Port Fee.

While changes to the Fee Schedule pursuant to this proposal are effective

upon filing, the Exchange has designated these changes to be operative on May 2, 2011.

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, at the Commission’s Public Reference Room, and on the Commission’s Web site at <http://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 Exchange proposes to amend the Active SQF Port Fee in Section VI of the Exchange’s Fee Schedule, titled “Access Service, Cancellation, Membership, Regulatory and Other Fees,” in order that the Exchange may provide an equal opportunity to all members to access the Specialized Quote Feed (“SQF”) data at a lower cost. Specifically, the Exchange proposes to cap Active SQF Ports at \$500 per month for member organizations that meet the following criteria: (i) Are not members of another national securities exchange (“Phlx Only Members”); and (ii) have 50 or less Streaming Quote Trader (“SQT”) <sup>3</sup> assignments <sup>4</sup> affiliated with the member organization.

SQF is an interface that enables specialists, SQTs and Remote Streaming Quote Traders (“RSQTs”) <sup>5</sup> to connect

<sup>3</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>4</sup> See Exchange Rules 1014(b) and 507 for qualifications relating to assignments.

<sup>5</sup> A RSQT is defined in 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

and send quotes into Phlx XL.<sup>6</sup> Active SQF ports are ports that receive inbound quotes at any time within that month.<sup>7</sup> The Exchange currently assesses the following Active SQF Port Fees:

Number of active SQF ports	Cost per port per month
0-4 .....	\$350
5-18 .....	1,250
19-40 .....	2,350
41 and over .....	3,000

The Exchange currently caps the Active SQF Port Fees at \$40,000 per month.<sup>8</sup> The Exchange proposes to cap the Active SQF Port Fee at \$500 per month for member organizations that: (i) Are Phlx Only Members, as defined above; and (ii) have 50 or less SQT assignments affiliated with their member organization. All other member organizations would continue to be capped at \$40,000 per month. The Exchange proposes to add text to the Fee Schedule to define a Phlx Only Member and indicate which caps apply to which categories and member organizations.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on May 2, 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>9</sup>

quotations electronically from off the floor of the Exchange.

<sup>6</sup> See Securities Exchange Act Release No. 63034 (October 4, 2010), 75 FR 62441 (October 8, 2010) (SR-Phlx 2010-124).

<sup>7</sup> The current version, SQF 6.0, allows member organizations to access, information such as execution reports, execution report messages, auction notifications, and administrative data through a single feed. Other data that is available on SQF 6.0 includes: (1) Options Auction Notifications (e.g., opening imbalance, market exhaust, PIXL or other information currently provided on SQF 5.0); (2) Options Symbol Directory Messages (currently provided on SQF 5.0); (3) System Event Messages (e.g., start of messages, start of system hours, start of quoting, start of opening); (4) Complex Order Strategy Auction Notifications (COLA); (5) Complex Order Strategy messages; (6) Option Trading Action Messages (e.g., trading halts, resumption of trading); and (7) Complex Strategy Trading Action Message (e.g., trading halts, resumption of trading).

<sup>8</sup> This cap expires on November 30, 2011. See Securities Exchange Act Release Nos. 63619 (December 29, 2010), 76 FR 614 (January 5, 2011) (SR-Phlx-2010-181); and 63780 (January 26, 2011), 76 FR 5846 (February 2, 2011) (SR-Phlx-2011-07). Also, the Exchange does not assess the above fees to a member organization for the use of SQF 5.0 active ports to the extent that the member organization is paying for the same (or greater) number of SQF 6.0 active ports.

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

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

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

in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>10</sup> in 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 amendments to the Active SQF Port Fees are equitable, reasonable and not unfairly discriminatory, because the Exchange's member organizations with significantly smaller operations are provided an equal opportunity to be subject to this fee cap. Today, all member organizations are able to cap fees at \$40,000, but this \$40,000 cap mostly benefits larger Exchange members with greater system usage. The Exchange believes that its proposal should enable smaller Exchange member organizations,<sup>11</sup> defined as Phlx Only Members with 50 or less SQT assignments, to take advantage of the proposed \$500 cap and thereby limit costs.

The Exchange believes that this proposal is equitable and reasonable because Phlx Only Members on the Exchange's trading floor are typically one to four person member organizations. Today, less than 3% of the Exchange's market making membership<sup>12</sup> are Phlx Only Members that stream less than 50 options classes. The Exchange believes that the Phlx Only Member qualifier is reasonable because it impacts the segment of the Exchange that is typically a small proprietary market maker doing business on the Exchange's trading floor. The Exchange believes that this qualifier is equitable and not unfairly discriminatory because, as explained below, this is directly related to the member's system usage that directly impacts Exchange costs.

The Exchange also believes that the second qualifier, that the member organization have 50 or less SQT assignments affiliated with their member organization, is equitable and not unfairly discriminatory because a smaller member organization, described above as a Phlx Only Member, typically quotes less than 50 symbols daily, in some cases less. Smaller member organizations generate significantly less quote traffic, as compared to larger, sophisticated member organizations with multiple memberships at other

options exchanges and drastically more quote traffic.

The Exchange believes that this proposal is also reasonable because it is consistent with the system usage<sup>13</sup> of smaller versus larger member organizations and therefore allows all member organizations the ability to cap and thereby reduce their Active SQF Port Fees. Smaller member organizations, that only transact business on the Exchange and quote less than 50 symbols, do not utilize system resources to the same extent as a larger member organization. This fee proposal should allow smaller member organizations the opportunity to limit costs by capping fees at \$500 and to maintain cost-effective business operations. The proposal is equitable and not unfairly discriminatory because the fees incurred by smaller member organizations would more closely reflect the expenses incurred by the Exchange for their system usage as compared to larger member organizations who use more system resources and are subject to a higher fee cap under the proposal.<sup>14</sup>

The Exchange believes that the two qualifiers which determine the fee cap, (1) being a Phlx Only Member; and (2) quoting less than 50 symbols, are equitable and not unfairly discriminatory because the qualifiers serve to benefit the smaller member organization. The Exchange seeks to provide the smaller member organization an opportunity to take advantage of a fee cap, similar to a larger member organization, given that member organization's business model, which results in less system usage as compared to a larger member organization.

#### *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.

<sup>13</sup> The Exchange notes that smaller member organizations generally have fewer Active SQF Ports, less robust technology and therefore less system usage. Larger member organizations, generally have multiple affiliations with several options exchanges and more than 50 SQT assignments.

<sup>14</sup> The current cap is in effect until November 30, 2011.

### **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>15</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-2011-57 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-2011-57. 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

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

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> Typically, a smaller member organization currently has between one and six ports depending on certain technology factors.

<sup>12</sup> 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)).

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-2011-57 and should be submitted on or before May 31, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011-11193 Filed 5-6-11; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64386; File No. SR-FINRA-2011-018]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 to Adopt NASD Rule 2830 as FINRA Rule 2341 (Investment Company Securities) in the Consolidated FINRA Rulebook

May 3, 2011.

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 April 19, 2011, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) 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 FINRA. On May 3, 2011, FINRA filed Amendment No. 1. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt NASD Rule 2830 (Investment Company

Securities) as FINRA Rule 2341 (Investment Company Securities) in the consolidated FINRA rulebook with significant changes. The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA 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

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),<sup>3</sup> FINRA is proposing to adopt NASD Rule 2830 (Investment Company Securities) as FINRA Rule 2341 (Investment Company Securities) in the Consolidated FINRA Rulebook with significant changes, as discussed below. NASD Rule 2830 regulates members' activities in connection with the sale and distribution of securities of companies registered under the Investment Company Act of 1940 ("investment company securities").<sup>4</sup>

###### NASD Rule 2830

In connection with the distribution and sale of investment company securities, NASD Rule 2830 limits the

<sup>3</sup> The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

<sup>4</sup> As with NASD Rule 2830, FINRA Rule 2341 would not regulate members' activities in connection with variable insurance contracts, which are regulated by FINRA Rule 2320 (Variable Contracts of an Insurance Company).

sales charges members may receive, prohibits directed brokerage arrangements, limits the payment and receipt of cash and non-cash compensation, sets conditions on discounts to dealers, and addresses other issues such as members' purchases and sales of investment company securities as principal.

Proposed FINRA Rule 2341 would revise the provisions of NASD Rule 2830 in four areas. First, Rule 2341 would require a member to make new disclosures to investors regarding its receipt of or its entering into an arrangement to receive, cash compensation. Second, Rule 2341 would make a minor change to the recordkeeping requirements for non-cash compensation. Third, Rule 2341 would eliminate a condition regarding discounted sales of investment company securities to dealers. Fourth, Rule 2341 would codify past FINRA staff interpretations regarding the purchases and sales of exchange-traded funds ("ETFs"). These proposed changes are discussed in more detail below.

##### Proposed Changes to the Cash Compensation Disclosure Requirements

NASD Rule 2830(l) governs the payment and acceptance of cash and non-cash compensation in connection with the sale of investment company securities. Among other things, NASD Rule 2830(l)(4) prohibits members from accepting cash compensation from an "offeror" (generally an investment company and its affiliates) unless the compensation is described in the fund's current prospectus. If a member enters into a "special cash compensation" arrangement with an offeror, and the offeror does not make the arrangement available on the same terms to all members that sell the fund's shares, the member's name and the details of the arrangement must be disclosed in the prospectus.<sup>5</sup>

The proposed rule change would modify the disclosure requirements for cash compensation arrangements. As proposed, it would no longer require disclosure of cash compensation arrangements in an investment company's prospectus or SAI. Instead, if within the previous calendar year a member received, or entered into an arrangement to receive, from an offeror any cash compensation other than sales charges and service fees disclosed in the prospectus fee tables of investment

<sup>5</sup> FINRA staff has interpreted this provision as permitting disclosure in a fund's statement of additional information ("SAI"). See *Notice to Members* 99-55 (July 1999) (Questions and Answers Relating to Non-Cash Compensation Rules), Question #18.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

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