

proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Specifically, the Exchange believes that allowing for liquidations at a price less than \$1 per option contract pursuant to the pilot program will better facilitate the closing of options positions that are worthless or not actively trading, especially in Penny Pilot issues where cabinet trades are not otherwise permitted. The Exchange believes the extension is of sufficient length to permit both the Exchange and the Commission to assess the impact of the Exchange's authority to allow transactions to take place in open outcry at a price of at least \$0 but less than \$1 per option in accordance with its attendant obligations and conditions.

#### *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, as amended.

#### *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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Such waiver will allow the benefits of the pilot program to continue uninterrupted, thereby avoiding any investor confusion that could result from a temporary interruption in the pilot program, while the Exchange considers whether to seek permanent approval of the temporary procedures. Therefore, the Commission designates the proposal operative upon filing.<sup>14</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.

### 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2011-156 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-2011-156. This file number should be included on the subject line if email 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

as designated by the Commission. The Exchange has satisfied this requirement.

<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 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 publicly available. All submissions should refer to File Number SR-Phlx-2011-156 and should be submitted on or before December 27, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65853; File No. SR-Phlx-2011-157]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Active Specialized Quote Feed Port Fee

November 30, 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 November 17, 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.

<sup>15</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.

### 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 modify the Active Specialized Quote Feed ("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 January 3, 2012.

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 the 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." SQF is an interface that enables specialists, SQTs and Remote Streaming Quote Traders ("RSQTs")<sup>3</sup> to connect and send quotes into Phlx XL.<sup>4</sup> Active SQF ports are ports that receive inbound quotes at any time within that month.<sup>5</sup> The Exchange

<sup>3</sup> A RSQT is defined in Exchange Rule 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.

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

<sup>5</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

intends to amend the tier structure, eliminate the \$500 per month cap applicable to certain member organization and establish a new monthly cap now that all firms have transitioned from SQF 5.0 to SQF 6.0. The Exchange proposes these amendments to recoup fees.

The Exchange currently has a tiered Active SQF Port Fee as follows:

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

Today, the Exchange caps 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>6</sup> assignments<sup>7</sup> affiliated with the member organization. Also, Active SQF Port Fees are capped at \$40,000 per month ("Cap") until December 30, 2011 for all member organizations other than those member organizations who meet the requirements of the \$500 per month cap. The purpose of the Cap was to ensure member organizations were not assessed fees in excess of the Active SQF Port Fees while they transitioned from SQF 5.0 to SQF 6.0 ports.<sup>8</sup> The Cap is not in effect beyond December 30, 2011.<sup>9</sup>

The Exchange is proposing to amend the four SQF tiers to three SQF tiers and assess the following Active SQF Port Fees:

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>6</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>7</sup> See Exchange Rules 1014(b) and 507 for qualifications relating to assignments.

<sup>8</sup> See Securities Exchange Release No. 65046 (August 5, 2011), 76 FR 49821 (August 5, 2011) (SR-Phlx-2011-105).

<sup>9</sup> See Securities Exchange Release No. 65046 (August 5, 2011), 76 FR 49821 (August 5, 2011) (SR-Phlx-2011-105).

Number of Active SQF Ports	Cost per port per month
0-4 .....	\$350
5-18 .....	1,350
19 and over .....	2,500

The Exchange also proposes to eliminate the \$500 per month cap that was applicable to certain member organizations that met the above listed criteria and replace the \$40,000, per month cap that is set to expire after December 30, 2011, with a \$41,000 monthly cap. The Exchange will also remove the restriction that it will not assess the Active SQF Port Fee for the use of active SQF 5.0 ports to the extent that the member organization is paying for the same (or greater) number of active SQF 6.0 ports.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on January 3, 2012.

##### 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>11</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that it is reasonable to modify the Active SQF Fee to amend the tiers and remove the caps because the release of SQF 6.0 is complete<sup>12</sup> and the Exchange believes it has provided members ample opportunity to transition to SQF 6.0.<sup>13</sup> The Exchange believes that the new tier structure is reasonable because the lower tier fee (0-4 ports) will remain the same and only the next two tiers, 5-18 and 19 and over, will increase. SQF 6.0 offers users increased efficiency by allowing them to access in a single feed, rather than through accessing multiple feeds, information such as execution reports and other relevant data.<sup>14</sup> In

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

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> The Exchange released SQF 6.0 on October 11, 2010.

<sup>13</sup> The Exchange anticipated that member organizations would utilize both SQF 5.0 and SQF 6.0 for a period of time. The Exchange believes that by January 3, 2012 all members should have transitioned and ample time was provided in 2011 to complete the transition.

<sup>14</sup> See Securities Exchange Act Release No. 63034 (October 4, 2010), 75 FR 62441 (October 8, 2010) (SR-Phlx-2010-124). Data proposed for SQF 6.0 includes the following: (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)

addition, non quoting firms that would like to receive the relevant information available over SQF will be allowed to connect to the SQF interface, but not send quotes.<sup>15</sup> The tiers are designed to recoup costs associated with the ports while providing increased efficiency with the new release.

The Exchange also believes that it is reasonable to eliminate the \$500 per month cap for Phlx Only Members that have 50 or less SQT assignments affiliated with member organizations because there are no members today which meet the criteria for this cap.

The Exchange believes that the amended tiers, which are increased for two categories, are equitable and not unfairly discriminatory because the features of SQF 6.0 are available to all participants. In addition, the member organizations with the greater number of ports, and therefore the greater system usage, will experience the increase.

The Exchange believes that eliminating the \$500 per month cap for the smaller organizations, defined as Phlx Only Members with 50 or less SQT assignments, is equitable and not unfairly discriminatory because there are no member organizations that will be impacted today by the elimination of this cap. There are no member organizations today that are eligible for the cap.

The Exchange believes that adopting a \$41,000 monthly cap is equitable and not unfairly discriminatory because all members utilizing SQF 6.0 ports may take advantage of the \$41,000 cap without limitation. The Exchange believes that the member organizations with the greatest number of ports will benefit from the proposed \$41,000 monthly cap. These are also the member organizations with the greatest system usage and therefore the largest costs.

Finally, the Exchange believes that it is reasonable, equitable and not unfairly discriminatory to discontinue the practice of only billing member organizations for the use of active SQF 5.0 ports to the extent the member organization was paying is paying the same (or greater) number of active SQF 6.0 ports. As mentioned herein, the Exchange believes that it has provided member organizations ample time to transition and this practice is no longer

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., halts, resumes); and (7) Complex Strategy Trading Action Message (e.g., halts, resumes).

<sup>15</sup> See Securities Exchange Act Release No. 63034 (October 4, 2010), 75 FR 62441 (October 8, 2010) (SR-Phlx-2010-124).

necessary as there should be no member organizations utilizing SQF 6.0 [sic] by January 3, 2012.

#### *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>16</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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-Phlx-2011-157 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-2011-157. This file number should be included on the subject line if email is used. To help the

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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 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-2011-157 and should be submitted on or before December 27, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## **DEPARTMENT OF STATE**

[Public Notice 7709]

### **Privacy Act; System of Records: State-78, Risk Analysis and Management Records**

**SUMMARY:** Notice is hereby given that the Department of State proposes to create a system of records, Risk Analysis and Management Records, State-78, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a) and Office of Management and Budget Circular No. A-130, Appendix I.

**DATES:** This system of records will be effective on January 17, 2012, unless we receive comments that will result in a contrary determination.

**ADDRESSES:** Any persons interested in commenting on the new system of

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