

competition that is not necessary or appropriate in furtherance of the purposes of the Act.⁸

The Commission has reviewed the proposal using the approach set forth by the Commission for non-core market data fees, and finds that the proposal meets the criteria for approval. Because Nasdaq was subject to significant competitive forces in setting the terms of the proposal, the Commission will approve the proposal in the absence of a substantial countervailing basis to find that the terms of the proposal fail to meet the applicable requirements of the Act or the rules thereunder. An analysis of the proposal does not provide such a basis.

Nasdaq has represented that the Service is a voluntary one, and that the information provided is not comprised of data that Nasdaq receives because of Nasdaq's status as a self-regulatory organization. Because the Service is voluntary, Nasdaq has met the statutory standard by pricing the Service according to free market principles; indeed, if Nasdaq priced the Service too high, those in the marketplace could simply opt not to purchase the Service. The Commission believes that Nasdaq's fees for the Service are reasonable and equitably allocated.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act⁹, that the proposed rule change (SR-NASDAQ-2010-052), as modified by Amendment No. 1, be, and it hereby is, approved.

⁸ The proposal meets the criteria, formulated by the Commission in connection with the petition filed by NetCoalition, for approval of proposed rule changes concerning the distribution of non-core market data. See Securities Exchange Act Release Nos. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21) and 55011 (December 27, 2006) (order granting petition for review of SR-NYSEArca-2006-021). In its order issued in connection with the NetCoalition petition, the Commission stated that "reliance on competitive forces is the most appropriate and effective means to assess whether the terms for the distribution of non-core data are equitable, fair and reasonable, and not unreasonably discriminatory." 73 FR at 74781-82. As such, the "existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory." *Id.* at 74782. If an exchange "was subject to significant competitive forces in setting the terms of a proposal," a proposal will be approved unless the Commission determines that "there is a substantial countervailing basis to find that the terms nevertheless fail to meet an applicable requirement of the Exchange Act or the rules thereunder." *Id.* at 74781.

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62379; File No. SR-Phlx-2010-87]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees for FLEX Equity Options

June 25, 2010.

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 June 21, 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.

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

The Exchange proposes to assess a transaction charge for members trading Flexible Exchange® Options ("FLEX Options").³

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be effective for trades settling on or after July 1, 2010.

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>.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A FLEX option is a customized option that provides parties to the transaction with the ability to fix terms including the exercise style, expiration date, and certain exercise prices. See Exchange Rule 1079. FLEX Options are a trademark of the Chicago Board Options Exchange.

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 establish a new fee for equity options transactions executed pursuant to Exchange Rule 1079 ("FLEX equity options"). The Exchange believes that the proposed fee reduction for trading FLEX equity options will encourage members to trade additional FLEX equity options contracts on the Exchange, resulting in additional order flow to the Exchange. Currently, the fees which members are assessed when trading FLEX equity options are the standard equity option fees.

Currently, members who trade FLEX equity options are assessed the standard equity options fees delineated in Section II of the Fee Schedule. The Exchange is proposing to reduce transaction fees to \$0.10 per contract side for FLEX equity options for all participants, except Customers.⁴ Specifically, the Exchange proposes to assess a \$.10 transaction charge on Professionals⁵, Specialists⁶, Registered Options Traders⁷, Streaming Quote

⁴ At this time the Exchange is not proposing to otherwise amend its equity option fees.

⁵ Rule 1000(b)(14) provides in relevant part: "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)."

⁶ A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

⁷ 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. A ROT includes a SQT, a RSQT and a Non-SQT, which by definition is neither a SQT or a RSQT. See Exchange Rule 1014 (b)(i) and (ii).

Traders ("SQT")⁸, Remote Streaming Quote Traders ("RSQT")⁹, Broker-Dealers and Firms. Customers would continue to remain free in FLEX equity options as they currently are in equity option products.

The Exchange currently waives the Firm equity options transaction fees for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account.¹⁰ Similar to the equity option fees, which are currently subject to the aforementioned waiver, the Exchange would continue to apply the waiver to members executing facilitation orders pursuant to Exchange Rule 1064 to FLEX equity option transactions.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be effective for trades settling on or after July 1, 2010.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹² in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the proposed fees for FLEX options are equitable and reasonable because all participants will equally be assessed \$.10 per contract and Customers will continue to remain free for equity options transactions executed pursuant to Exchange Rule 1079.

Additionally, the Exchange's proposal to extend the current waiver for members executing facilitation orders pursuant to Exchange Rule 1064 to FLEX equity options is reasonable and

⁸ An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. See Exchange Rule 1014(b)(ii)(A).

⁹ An RSQT is 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 through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Exchange Rule 1014(b)(ii)(B).

¹⁰ The waiver does not apply to orders where a member is acting as agent on behalf of a non-member. See Securities Exchange Act Release No. 60477 (August 11, 2009), 74 FR 41777 (August 18, 2009) (SR-Phlx-2009-67).

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

equitable because it would continue to allow members the benefit of a waiver they receive today.

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 Act¹³ and paragraph (f)(2) of Rule 19b-4¹⁴ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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 e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2010-87 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2010-87. 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

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 240.19b-4(f)(2).

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 publicly available. All submissions should refer to File Number SR-Phlx-2010-87 and should be submitted on or before July 22, 2010.

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

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62382; File No. SR-CBOE-2010-058]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Conforming Changes in Connection With Demutualization

June 25, 2010.

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 June 18, 2010, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.