

options transaction charges are waived for members executing facilitation orders¹⁵ pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account.¹⁶ Additionally, dividend, merger and short stock interest strategies are capped at \$25,000 per member organization per month when such members are trading in their own proprietary accounts.¹⁷

The Exchange operates in a highly competitive market in which sophisticated and knowledgeable market participants can readily send orders to buy and sell options to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that the proposed modification to the Firm Related Equity Option Cap is necessary to remain competitive with fees charged by other venues and therefore continues to be reasonable and equitably allocated to those member organizations that opt to direct orders to the Exchange rather than competing venues.

The Exchange believes that its proposal to expand the applicability of the Cap for Active SQF Port Fees is both reasonable and equitable because it would allow members additional time to transition from SQF 5.0 to SQF 6.0.

The Exchange believes that its various proposals to amend the text of the Fee Schedule to clarify the applicability of certain fees, amend typographical errors and remove irrelevant text is both reasonable and equitable because members would benefit from clear guidance in the rule text describing the manner in which the Exchange would assess fees.

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.

¹⁵ A facilitation occurs when a floor broker holds an options order for a public customer and a contra-side order for the same option series and, after providing an opportunity for all persons in the trading crowd to participate in the transaction, executes both orders as a facilitation cross. See Exchange Rule 1064.

¹⁶ See Securities Exchange Act Release No. 60477 (August 11, 2009), 74 FR 41777 (August 18, 2009) (SR-Phlx-2009-67).

¹⁷ See Securities Exchange Act Release Nos. 61115 (December 4, 2009), 74 FR 65571 (December 10, 2009) (SR-Phlx-2009-97) and 63712 (January 12, 2011) (SR-Phlx-2011-01).

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.¹⁸ 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-2011-07 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-2011-07. 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

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

printing in the Commission's Public Reference Room. 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-2011-07 and should be submitted on or before February 23, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Elizabeth M. Murphy,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63781; File No. SR-Phlx-2011-09]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Order Entry Port Fee

January 26, 2011.

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 January 21, 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 the applicability of the Order Entry Port Fee.³ 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, and at

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Order Entry Port Fee is a connectivity fee assessed on members in connection with routing orders to the Exchange via an external order entry port. Members access the Exchange's network through order entry ports. A member organization may have more than one order entry port.

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 amend the applicability of the Order Entry Port Fee. The Exchange currently assesses an Order Entry Port Fee per month per mnemonic⁴ of \$500. This fee is assessed on members regardless of whether the order entry mnemonic is active⁵ during the billing month. The fee is assessed regardless of usage, and solely on the number of order entry ports assigned to each member organization.

The Exchange is proposing to modify the manner in which members are assessed the Order Entry Port Fee as related to complex order.⁶ The Exchange proposes to waive the \$500 per month per mnemonic Order Entry Port Fee for mnemonics used exclusively for complex orders where one of the components of the complex order is the underlying security.⁷

⁴ Order entry mnemonics are codes that identify member organization order entry ports.

⁵ An order entry mnemonic is considered active if a member organization sends at least one order to the Exchange using that order entry mnemonic during the applicable billing month. See Securities Exchange Act Release No. 58728 (October 3, 2008), 73 FR 59695 (October 9, 2008) (SR-Phlx-2008-70).

⁶ A complex order is a spread, straddle, combination, ratio or collar order, all of which consist of more than one component, priced like a single order at a net debit or credit based on the prices of the individual components. See Exchange Rule 1080, Commentary .08(a)(i).

⁷ The Exchange recently filed a proposed rule change to add complex orders where one component is the underlying stock or ETF to the functionality on its electronic trading platform for options, Phlx XL. The Exchange also amended its definition of complex orders in Exchange Rule 1080 as follows: Complex Orders is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual

The Exchange believes that members who transact complex orders may require an increased number of ports due to the member's stock clearance arrangements, which may require additional mnemonics. The Exchange is proposing to limit the fees that would be assessed on members requiring additional ports to transact stock-option orders.⁸

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁰ 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 proposal is equitable and reasonable because all members would be able to limit fees related to order entry ports for such complex orders that are stock-option orders, which may require additional mnemonics.

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.¹¹ 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

components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or ETF coupled with the purchase or sale of options contract(s). The Exchange also proposed to permit complex orders consisting of up to six components. See Securities Exchange Act Release No. 63509 (December 9, 2010), 76 FR 2733 (January 14, 2011) (SR-Phlx-2010-157) [sic].

⁸ A complex order with one component that is the underlying stock or Exchange Traded Fund Share ("ETF") is also referred to as a stock-option order.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2011-09 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-2011-09. 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. 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-

2011-09 and should be submitted on or before February 23, 2011.

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

Elizabeth M. Murphy,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63784; File No. SR-FINRA-2010-052]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change Adopting FINRA Rules Regarding Books and Records in the Consolidated FINRA Rulebook

January 27, 2011.

I. Introduction

On October 20, 2010, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change adopting FINRA rules regarding books and records in the consolidated FINRA Rulebook. The proposed rule change was published for comment in the **Federal Register** on November 1, 2010.³ The Commission received three comments on the proposed rule change.⁴ On January 13, 2011, FINRA responded to the comments.⁵ This order approves the proposed rule change.

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 63181 (October 26, 2010), 75 FR 67155 (November 1, 2010).

⁴ See Letter from Holly H. Smith and Susan S. Krawczyk, Sutherland Asbill & Brennan LLP, for the Committee of Annuity Insurers, to Elizabeth M. Murphy, Secretary, SEC, dated November 22, 2010 ("CAI"); Letter from William A. Jacobson, Associate Clinical Professor of Law and Director, the Cornell Securities Law Clinic, Cornell University Law School, to Elizabeth M. Murphy, Secretary, SEC, dated November 22, 2010 ("Cornell"); and Letter from Melissa MacGregor, Managing Director and Associate General Counsel, the Securities Industry and Financial Markets Association, to Elizabeth M. Murphy, Secretary, SEC, dated November 23, 2010 ("SIFMA"). (Available at <http://www.sec.gov/comments/sr-finra-2010-052/finra2010052.shtml>).

⁵ See Letter from Afshin Atabaki, FINRA, to Elizabeth M. Murphy, Secretary, SEC, dated January 13, 2011 ("Response to Comments").

II. Description of Proposed Rule Change

FINRA is proposing to adopt certain paragraphs, as specified below, of NASD Rule 3110 (Books and Records), subject to certain amendments, as FINRA Rules in the consolidated FINRA rulebook and to adopt Incorporated NYSE Rule Interpretations 410/01 (Pre-Time Stamping) and 410/02 (Allocations of Block Orders), subject to certain amendments, as FINRA Rules in the consolidated FINRA rulebook.

The proposed rule change would delete NASD IM-3110 (Customer Account Information) and Incorporated NYSE Rule 410 (Records of Orders). In addition, the proposed rule change would delete Incorporated NYSE Rule 440 (Books and Records), with the exception of Incorporated NYSE Rules 440.10 (Periodic Security Counts, Verifications, Comparisons, etc.) and 440.20 (Identification of Suspense Accounts and Assignment of Responsibility for General Ledger Accounts) and NYSE Rule Interpretation 440.20/01 (Suspense Accounts).

The proposed rule change would renumber NASD Rule 3110(a) (Requirements) as FINRA Rule 4511 (General Requirements), NASD Rule 3110(c) (Customer Account Information) as FINRA Rule 4512 (Customer Account Information), NASD Rules 3110(d) (Record of Written Complaints) and 3110(e) ("Complaint" Defined) as FINRA Rule 4513 (Records of Written Customer Complaints), NASD Rule 3110(f) (Requirements When Using Predispute Arbitration Agreements for Customers Accounts) as FINRA Rule 2268 (Requirements When Using Predispute Arbitration Agreements for Customer Accounts), NASD Rule 3110(g) (Negotiable Instruments Drawn From A Customer's Account) as FINRA Rule 4514 (Authorization Records for Negotiable Instruments Drawn From a Customer's Account), NASD Rule 3110(h) (Order Audit Trail System Record Keeping Requirements) as paragraph (a)(4) of FINRA Rule 7440 (Recording of Order Information) and NASD Rule 3110(j) (Changes in Account Name or Designation) as FINRA Rule 4515 (Approval and Documentation of Changes in Account Name or Designation) in the consolidated FINRA rulebook. The proposed rule change also would renumber NYSE Rule Interpretation 410/01 as FINRA Rule 5340 (Pre-Time Stamping) and NYSE Rule Interpretation 410/02 as FINRA Rule 4515.01 (Allocations of Orders Made by Investment Advisers).

A. Background

1. Purpose

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),⁶ FINRA is proposing to adopt NASD Rules 3110(a), 3110(c), 3110(d) and (e), 3110(f), 3110(g), 3110(h) and 3110(j) as FINRA Rules 4511, 4512, 4513, 2268, 4514, 7440(a)(4) and 4515, respectively, in the Consolidated FINRA Rulebook, with certain changes as described below.⁷ FINRA also is proposing to adopt Incorporated NYSE Rule Interpretations 410/01 and 410/02 as FINRA Rules 5340 and 4515.01,⁸ respectively, in the Consolidated FINRA Rulebook.⁹ FINRA is proposing to delete NASD IM-3110 and NYSE Rules 410 and 440, provided, however, NYSE Rules 440.10 and 440.20 and NYSE Rule Interpretation 440.20/01 are being addressed as part of a separate proposal.¹⁰

Current NASD Rules and NYSE Rules require members to make and preserve

⁶ 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).

⁷ NASD Rule 3110(b) (Marking of Customer Order Tickets) requires that members indicate on the order ticket for each transaction in a non-exchange-listed security the name of each dealer contacted and the quotations received to determine the best inter-dealer market as required by NASD Rule 2320(g) (commonly referred to as the "Three Quote Rule"), unless the member can establish and document its reliance on the exclusions to the Three Quote Rule. FINRA is proposing to replace NASD Rule 3110(b) with a more general documentation requirement in the supplementary material to proposed FINRA Rule 5310. See *Regulatory Notice* 08-80 (December 2008) (Proposed FINRA Rule Addressing Best Execution). NASD Rule 3110(i) (Holding of Customer Mail) specifies the circumstances under which members may hold mail for a customer. FINRA is proposing that NASD Rule 3110(i) be rewritten as a standalone rule and relocated to the supervision section of the Consolidated FINRA Rulebook. See *Regulatory Notice* 08-24 (May 2008) (Proposed Consolidated FINRA Rules Governing Supervision and Supervisory Controls).

⁸ For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.

⁹ NYSE Rule Interpretation 410(a)(ii)(5)/01 was deleted as part of a prior rule change. See Securities Exchange Act Release No. 61473 (February 2, 2010), 75 FR 6422 (February 9, 2010) (Order Approving File No. SR-FINRA-2009-087).

¹⁰ See *Regulatory Notice* 09-03 (January 2009) (Proposed Consolidated FINRA Rules Governing Financial Responsibility and Operational Requirements).