

applies uniformly to all Members. Based on these comparisons, the Exchange believes that the rate is reasonable as it is line with the fees assessed by BATS BZX Exchange.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is 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*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

### **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) of the Act<sup>16</sup> and Rule 19b-4(f)(2)<sup>17</sup> thereunder. At any time within 60 days of the filing of such 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-EDGA-2011-10 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-EDGA-2011-10. 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,<sup>18</sup> 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-EDGA-2011-10 and should be submitted on or before May 5, 2011.

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

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011-9045 Filed 4-13-11; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>18</sup> The text of the proposed rule change is available on Exchange's Web site at <http://www.directedge.com>, on the Commission's Web site at <http://www.sec.gov>, at EDGA, and at the Commission's Public Reference Room.

<sup>19</sup> 17 CFR 200.30-3(a)(12).

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-64286; File No. SR-Phlx-2011-50]

### **Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Singly Listed and Multiply Listed Indexes**

April 8, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on April 8, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission (the "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 Exchange's Fee Schedule to discontinue assessing an Options Surcharge Fee for RMN.<sup>3</sup>

The Exchange also proposes to remove specific symbol references to certain indexes in the title of Section II of the Exchange's Fee Schedule captioned, "Equity Options Fees (Includes options overlying equities, ETFs, ETNs, HOLDRS, BKX, RUT, RMN, MNX, NDX which are Multiply Listed)" and instead substitute the word "indexes." The Exchange proposes to make other conforming changes in 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, 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

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

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

<sup>3</sup> RMN represents options on the one-tenth value Russell 2000® Index (the "Reduced Value Russell Index" or "RMN").

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

<sup>17</sup> 17 CFR 19b-4(f)(2).

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 discontinue assessing an Options Surcharge for RMN because that index is no longer Multiply Listed and the license fee costs would be absorbed in the fees assessed on Singly Listed products.<sup>4</sup> The Exchange currently assesses an Options Surcharge for RUT,<sup>5</sup> RMN, MNX<sup>6</sup> and NDX<sup>7</sup> of \$.15 per contract for Specialists, ROTs, SQTs<sup>8</sup> and RSQTs,<sup>9</sup> Broker Dealers and Firms. The Exchange will continue to assess an Options Surcharge for RUT, MNX, NDX and BKK.

The purpose of this rule change is also to make the title of Section II of the Fee Schedule more general to address when a particular option switches from a Multiply Listed to a Singly Listed product. Specifically, the Exchange is amending Section II of the Fee Schedule, titled "Equity Options Fees (Includes options overlying equities, ETFs, ETNs, HOLDRS, BKK, RUT, RMN, MNX, NDX which are Multiply Listed)" to "Equity Options Fees (Includes options overlying equities, ETFs, ETNs, indexes and HOLDRS, which are Multiply Listed)." The Exchange is proposing to remove specific references to certain index symbols, namely

<sup>4</sup> RMN recently became a Singly Listed index option. The Exchange assesses higher fees for Singly Listed options as there are increased costs associated with those products.

<sup>5</sup> RUT represents the options on the Russell 2000® Index (the "Full Value Russell Index" or "RUT").

<sup>6</sup> MNX represents options on the one-tenth value of the Nasdaq 100 Index traded under the symbol MNX ("MNX").

<sup>7</sup> NDX represents options on the Nasdaq 100 Index traded under the symbol NDX ("NDX").

<sup>8</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>9</sup> A RSQT is defined 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 quotations electronically from off the floor of the Exchange.

BKK,<sup>10</sup> RUT, RMN, MNX and NDX, in the heading and instead use the broader term "indexes" in order to account for a circumstance where one of these named index options becomes Singly Listed.<sup>11</sup> The broader term "indexes" would clarify that only index options that are Multiply Listed would be assessed the fees in Section II. Index options that are Singly Listed options would continue to be assessed the fees in Section III, which applies to options overlying currencies, equities, ETFs, ETNs, indexes and HOLDRs not listed on another exchange.

The Exchange is proposing to make this change in the Preface Section of the Fee Schedule as well as references to Section II fees in Section IV, titled "PIXL Pricing."

##### 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>12</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>13</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 it is reasonable to not assess an Options Surcharge on RMN, a Singly Listed index option, because the license costs, which are recouped by the Options Surcharge Fee, are absorbed in the higher fees assessed to Singly Listed index options.

The Exchange believes that it is reasonable to remove the specific references to certain index symbols and instead insert the reference to "indexes" because the reference to the category of products is consistent with the remainder of the Fee Schedule<sup>14</sup> and more accurately describes the category of products applicable to Section II of the Fee Schedule.

The Exchange believes that the proposals to not assess an Options Surcharge on RMN and remove specific references to index symbols and insert the reference to "indexes" are equitable because these proposals would uniformly apply to members and member organizations trading Singly Listed and Multiply Listed products.

<sup>10</sup> BKK represents the KBW Bank Index.

<sup>11</sup> RMN recently became a Singly Listed index option. This proposed amendment would remove RMN from Section II of the Fee Schedule as well as the other specifically named index symbols and instead refer to indexes generally.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(4).

<sup>14</sup> See Section III of the Fee Schedule titled "Singly Listed Options (Includes options overlying currencies, equities, ETFs, ETNs, indexes and HOLDRs not listed on another exchange), where the broader term "indexes" is utilized.

#### 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>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-2011-50 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-2011-50. 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

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

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-2011-50 and should be submitted on or before May 5, 2011.

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

**Cathy Ahn,**

*Deputy Secretary.*

[FR Doc. 2011-9073 Filed 4-13-11; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64265; File No. SR-Phlx-2011-43]

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

April 8, 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 1, 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 Exchange's Fee Schedule to waive Permit Fees for existing Exchange members or member organizations that cease to conduct an options business, but continue to conduct an equities business.

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 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 extend the waiver of Permit Fees to existing members or member organizations that cease to conduct an options business on Phlx XL II,<sup>3</sup> but continue to conduct business on NASDAQ OMX PSX ("PSX")<sup>4</sup> under a market participant identifier ("MPID")<sup>5</sup> registered to the member or member organization. The Exchange is proposing this waiver to incentivize existing members and member organizations to continue to transact an equities business at the Exchange.

The Exchange currently assesses members and member organizations who are transacting business on the Exchange a Permit Fee of \$1,100 per month. The Exchange assesses members

<sup>3</sup> Phlx XL II is the Exchange's electronic options trading platform.

<sup>4</sup> PSX is the Exchange's cash equities market electronic trading platform.

<sup>5</sup> An MPID is a four-letter code used by a member to categorize its trading activity for a specific purpose.

and member organizations who are not transacting business on the Exchange a Permit Fee of \$7,500 per month. A member or member organization would not be assessed the \$7,500 Permit Fee for not transacting business on the Exchange if that member is either: (i) Solely a PSX Participant or (ii) engaged in any options business at the Exchange in a particular month. If the Exchange member or member organization meets the exemption criteria related to the \$7,500 Permit Fee, the member or member organization would be assessed the \$1,100 Permit Fee. In addition, a member or member organization that sponsors an options participant<sup>6</sup> would pay an additional Permit Fee for each sponsored options participant.<sup>7</sup>

At the time PSX began operations in October 2010, the Exchange filed a rule change to waive the Application Fee, Initiation Fee, Permit Fee and Account Fee for applicants applying to participate in PSX ("October 2010 Rule Change").<sup>8</sup> The October 2010 Rule Change applied the waivers to new Exchange members applying solely to participate in PSX.<sup>9</sup> Also, the October 2010 Rule Change did not apply the waivers to an applicant seeking approval to participate solely in the options market, or to an applicant seeking to participate in both the equities and the options markets.<sup>10</sup> Finally, the October 2010 Rule Change did not apply the waivers to members or member organizations that ceased their options operations, but remained solely as PSX Participants.

This filing proposes to extend the October 2010 Rule Change waiver of the Permit Fee to those Exchange members and member organizations that cease an options business, but continue to conduct an equities business.<sup>11</sup>

<sup>6</sup> See Exchange Rule 1094 titled Sponsored Participants. A Sponsored Participant may obtain authorized access to the Exchange only if such access is authorized in advance by one or more Sponsoring Member Organizations. Sponsored Participants must enter into and maintain participant agreements with one or more Sponsoring Member Organizations establishing a proper relationship(s) and account(s) through which the Sponsored Participant may trade on the Exchange.

<sup>7</sup> See Securities Exchange Act Release No. 63569 (December 17, 2010), 75 FR 81323 (December 27, 2010) (SR-Phlx-2010-178).

<sup>8</sup> See Securities Exchange Act Release No. 63351 (November 19, 2010), 75 FR 73140 (November 29, 2010) (SR-Phlx-2010-54).

<sup>9</sup> See Securities Exchange Act Release No. 63351 (November 19, 2010), 75 FR 73140 (November 29, 2010) (SR-Phlx-2010-54).

<sup>10</sup> See Securities Exchange Act Release No. 63351 (November 19, 2010), 75 FR 73140 (November 29, 2010) (SR-Phlx-2010-54).

<sup>11</sup> These members and member organizations would not be assessed an Application Fee or Initiation Fee because they are already Exchange

<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.