

complex orders to receive an execution, while also enhancing execution quality for orders in the regular market.

In particular, the Exchange believes that automatically generating legging orders, which will only be executed after all other executable interest at the same price (including non-displayed interest) is executed in full, will provide additional execution opportunities for complex orders, without negatively impacting any investors in the regular market. In fact, the generation of legging orders may enhance execution quality for investors in the regular market by improving the price and/or size of the ISE BBO and by providing additional execution opportunity for resting orders on the regular order book.

The Exchange also believes that the generation of legging orders is fully compliant with all regulatory requirements. In particular, legging orders are firm orders that will be displayed at the ISE BBO. A legging order will be automatically removed if it is no longer displayable at the ISE BBO or if the net price of the complex order can no longer be achieved. Moreover, to assure compliance with intermarket rules, a legging order will not be generated at a price that would lock or cross another market. Finally, the generation of legging orders is limited in scope, as they may be generated only for complex options orders with two legs. Additionally, the Exchange will closely manage and curtail the generation of legging orders to assure that they do not negatively impact system capacity and performance.

#### *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**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) As the Commission may designate if it finds such longer

period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be 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 Number SR-ISE-2011-82 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-ISE-2011-82. 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 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-ISE-2011-82 and should be submitted on or before January 3, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011-31736 Filed 12-9-11; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-65897; File No. SR-Phlx-2011-163]**

### **Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Options Regulatory Fee**

December 6, 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 23, 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 increase its Options Regulatory Fee ("ORF").

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

<sup>9</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.

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 ORF to increase it from \$0.0035 per contract to \$0.004 per contract in order to recoup increased regulatory expenses while also ensuring that the ORF will not exceed costs.

The ORF is assessed to each member for all options transactions executed or cleared by the member that are cleared by The Options Clearing Corporation ("OCC") in the customer range (i.e., that clear in the customer account of the member's clearing firm at OCC). The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. The ORF is imposed upon all [sic] transactions executed by a member, even if such transactions do not take place on the Exchange.<sup>3</sup> The ORF also includes options transactions that are not executed by an Exchange member but are ultimately cleared by an Exchange member.<sup>4</sup> The ORF is not charged for member options transactions because members incur the costs of owning memberships and through their

<sup>3</sup> The ORF applies to all "C" account origin code orders executed by a member on the Exchange. Exchange rules require each member to record the appropriate account origin code on all orders at the time of entry in order to allow the Exchange to properly prioritize and route orders and assess transaction fees pursuant to the rules of the Exchange and report resulting transactions to the OCC. See Exchange Rule 1063, Responsibilities of Floor Brokers, and Options Floor Procedure Advice F-4, Orders Executed as Spreads, Straddles, Combinations or Synthetics and Other Order Ticket Marking Requirements. The Exchange represents that it has surveillances in place to verify that members mark orders with the correct account origin code.

<sup>4</sup> In the case where one member both executes a transaction and clears the transaction, the ORF is assessed to the member only once on the execution. In the case where one member executes a transaction and a different member clears the transaction, the ORF is assessed only to the member who executes the transaction and is not assessed to the member who clears the transaction. In the case where a non-member executes a transaction and a member clears the transaction, the ORF is assessed to the member who clears the transaction.

memberships are charged transaction fees, dues and other fees that are not applicable to non-members. The dues and fees paid by members go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation. The ORF is collected indirectly from members through their clearing firms by OCC on behalf of the Exchange.

The ORF is designed to recover a portion of the costs to the Exchange of the supervision and regulation of its members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, do not exceed regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission.

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>5</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>6</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the fee change is reasonable because the Exchange desires to recoup its regulatory expenses while also ensuring that the revenue collected from the ORF does not exceed regulatory costs.

The Exchange believes that the ORF is equitable and not unfairly discriminatory because it is objectively allocated to Exchange members in that it would continue to be charged to all members on all of their transactions that clear as customer at OCC. The Exchange is assessing higher fees to those member firms that require more Exchange regulatory services based on the amount of customer options business they conduct. In addition, the ORF seeks to

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

recover the costs of supervising and regulating members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The ORF is not charged for member options transactions because members incur the costs of owning memberships and through their memberships are charged transaction fees, dues and other fees that are not applicable to non-members. Additionally, the dues and fees paid by members go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation.

*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>7</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

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

• Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2011-163 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-2011-163. 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 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-2011-163 and should be submitted on or before January 3, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

[FR Doc. 2011-31734 Filed 12-9-11; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65898; File No. SR-ISE-2011-78]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Threshold Levels for Tier-Based Rebates for Qualified Contingent Cross Orders and Solicitation Orders Executed on the Exchange

December 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on November 22, 2011, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II 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 ISE is proposing to amend the threshold levels for tier-based rebates for Qualified Contingent Cross ("QCC") orders and Solicitation orders. The text of the proposed rule change is available on the Exchange's Web site (<http://www.ise.com>), 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 self-regulatory organization 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 self-regulatory organization 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 this proposed rule change is to amend the threshold contract levels to encourage members to submit greater numbers of QCC orders and Solicitation orders to the Exchange. The Exchange currently provides a rebate to Members who reach a certain volume threshold in QCC orders and/or Solicitation orders during a month.<sup>3</sup> Once a Member reaches the volume threshold, the Exchange provides a rebate to that Member for all of its QCC and Solicitation traded contracts for that month. The rebate is paid to the Member entering a qualifying order, *i.e.*, a QCC order and/or a Solicitation order. The rebate applies to QCC orders and Solicitation orders in all symbols traded on the Exchange. Additionally, the threshold levels are based on the originating side so if, for example, a Member submits a Solicitation order for 1,000 contracts, all 1,000 contracts are counted to reach the established threshold even if the order is broken up and executed with multiple counter parties.

The current volume threshold and corresponding rebate per contract is:

Originating contract sides	Rebate per contract
0-99,999 .....	\$0.00
100,000-1,699,999 .....	0.01
1,700,000-2,499,999 .....	0.03
2,500,000-3,499,999 .....	0.05
3,500,000+ .....	0.07

The Exchange now proposes to amend the current tiers by: (1) Increasing the threshold for Members to qualify for a rebate, from a minimum of 100,000 qualifying contracts to 200,000 qualifying contracts. While the Exchange proposes to increase the minimum threshold level, the Exchange also proposes to increase the rebate payable for this tier, from \$0.01 per contract to \$0.02 per contract; (2) lowering the contract threshold level for the middle tier while maintaining the rebate at \$0.03 per contract; (3) lowering the contract threshold and the per contract rebate for the fourth tier; and (4) lowering the amount of qualifying contracts a Member must trade to qualify for the maximum per contract

<sup>3</sup> See Exchange Act Release Nos. 65087 (August 10, 2011), 76 FR 50783 (August 16, 2011) (SR-ISE-2011-47); 65583 (October 18, 2011), 76 FR 65555 (October 21, 2011) (SR-ISE-2011-68); and 65705 (November 8, 2011), 76 FR 70789 (November 15, 2011) (SR-ISE-2011-70).

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

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

<sup>8</sup> 17 CFR 200.30-3(a)(12).