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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65719; File No. SR-Phlx-2011-148)

November 9, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Qualified Contingent Cross Orders

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 November 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 its Fee Schedule to adopt a rebate related to electronic Qualified Contingent Cross orders (“eQCC Orders”).³

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, at the principal office of the Exchange, on

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A QCC Order is comprised of an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. The QCC Order must be executed at a price at or between the National Best Bid and Offer and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the PHLX XL II System. See Rule 1080(o). See also Securities Exchange Act Release No. 64249 (April 7, 2011), 76 FR 20773 (April 13, 2011) (SR-Phlx-2011-47) (a rule change to establish a QCC Order to facilitate the execution of stock/option Qualified Contingent Trades (“QCTs”) that satisfy the requirements of the trade through exemption in connection with Rule 611(d) of the Regulation NMS).

the Commission's website 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Section II of the Exchange's Fee Schedule entitled "Equity Options Fees"⁴ to adopt a \$0.05 per contract rebate to encourage members to submit a greater numbers of eQCC Orders. The proposed \$0.05 per contract rebate will be paid to members entering electronically executed eQCC Orders.⁵ The Exchange believes that this rebate will further incentivize market participants to execute eQCC Orders on the Exchange in Multiply Listed Securities.⁶

⁴ Section II includes options overlying equities, ETFs, ETNs, indexes and HOLDRS which are Multiply Listed.

⁵ Members will be required to contact the Exchange and obtain an "R" account in order to identify these eQCC Orders as orders entered by the member for the purposes of applying the rebate. The Exchange intends to issue an Options Trader Alert to members describing the steps that need to be taken to obtain an "R" account.

⁶ Multiply Listed Securities include those symbols which are subject to rebates and fees in Section I, Rebates and Fees For Adding and Removing Liquidity in Select Symbols, and Section II, Equity Options Fees.

The rebate will not apply to Floor Qualified Contingent Cross Orders (“Floor QCC Orders”).⁷ QCC Transaction Fees for a Specialist,⁸ Registered Options Trader,⁹ SQT,¹⁰ RSQT,¹¹ Professional,¹² Firm and Broker-Dealer are \$0.20 per contract.¹³

The Exchange also proposes to amend Section I of the Fee Schedule entitled “Rebates and Fees for Adding and Removing Liquidity in Select Symbols” to include a reference to the proposed rebate.

⁷ A Floor QCC Order must: (i) be for at least 1,000 contracts, (ii) meet the six requirements of Rule 1080(o)(3) which are modeled on the QCT Exemption, (iii) be executed at a price at or between the National Best Bid and Offer (“NBBO”); and (iv) be rejected if a Customer order is resting on the Exchange book at the same price. In order to satisfy the 1,000-contract requirement, a Floor QCC Order must be for 1,000 contracts and could not be, for example, two 500-contract orders or two 500-contract legs. See Rule 1064(e). See also Securities Exchange Act Release No. 64688 (June 16, 2011) (SR-Phlx-2011-56).

⁸ A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

⁹ A Registered Options Trader (“ROT”) includes a SQT, a RSQT and a Non-SQT ROT, which by definition is neither a SQT nor a RSQT. A ROT 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. See Exchange Rule 1014 (b)(i) and (ii).

¹⁰ 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.

¹¹ An 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.

¹² The Exchange defines a “professional” as 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) (hereinafter “Professional”).

¹³ QCC Transaction Fees apply to QCC Orders, as defined in Exchange Rule 1080(o), and Floor QCC Orders, as defined in 1064(e). The QCC Transaction Fees, defined in Section II, are applicable to Section I entitled “Rebates and Fees for Adding and Removing Liquidity in Select Symbols.”

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹⁴ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁵ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange also believes that there is an equitable allocation of reasonable rebates among Exchange members.

The Exchange believes that it is reasonable to incentivize members to transact eQCC Orders in Multiply Listed securities¹⁶ by paying a \$0.05 per contract rebate to all members entering such orders. The Exchange believes that paying a rebate of \$0.05 will sufficiently incentivize its members to send eQCC Orders to the Exchange. Furthermore, the \$0.05 rebate is within the range of rebates paid by other exchanges and balances the Exchange's desire to incentivize its members to send order flow to the Exchange while considering the costs attributable to offering such rebates. The Exchange also believes that the \$0.05 rebate is reasonable because every eQCC Order is entitled to the rebate and therefore all members are equally eligible to receive the rebate without limitation.

The Exchange is not proposing to pay this rebate for Floor QCC Orders. A member conducting a floor brokerage business has a different business model as compared to members conducting an electronic business.¹⁷ The Exchange believes that it is reasonable to pay a rebate

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4).

¹⁶ The rebate does not apply to Singly Listed Securities. For purposes of this filing, a Singly Listed Option means an option that is only listed on the Exchange and is not listed by any other national securities exchange. See Section III of the Exchange's Fee Schedule entitled Singly Listed Options.

¹⁷ For example, the types of orders that are handled by a floor broker may be larger in size or complex as compared to an order that is processed electronically.

for only eQCC Orders in an attempt to incentivize members to transact eQCC Orders that are processed electronically. In addition, floor brokers, who are the only members that are eligible to enter Floor QCC Orders,¹⁸ which are done through the Exchange's Floor Broker Management System ("FBMS"), are also eligible to receive an Options Floor Broker Subsidy on Floor QCC volume and other executed volume.¹⁹ The Exchange believes that because any floor broker is capable of meeting the volume criteria for the subsidy offered by the Exchange, it is reasonable to offer the proposed rebate only to eQCC Orders, which are submitted electronically from off the floor.

The Exchange believes that utilizing a different rebate structure for eQCC and Floor QCC Orders is reasonable because of the different business models, described herein, that apply to a floor as compared to an electronic business. Furthermore, in assessing whether to offer rebates, the Exchange experiences different competitive pressures from other exchanges with respect to eQCC Orders. The Exchange does not experience the same competitive pressure with rebates for Floor QCC Orders. The Exchange also believes that paying a different rebate for eQCC and Floor QCC Orders is equitable and not unfairly discriminatory because other exchanges distinguish between delivery methods for certain market participants and pay different rebates depending on the method of delivery. This type of distinction is not novel and has long existed within the industry.

The Exchange believes that it is equitable and not unfairly discriminatory to pay a \$0.05 rebate for executed eQCC Orders to the executing member because all market participants, with the exception of floor brokers, as described above, that enter orders on an agency basis are

¹⁸ See the Exchange's Fee Schedule in Section VII for a list of eligible contracts.

¹⁹ See Section VII of the Exchange's Fee Schedule entitled "Options Floor Broker Subsidy." A per contract subsidy is paid based on the contract volume on Customer-to-non-Customer as well as non-Customer-to-non-Customer transactions for that month.

uniformly eligible for the proposed rebate. Additionally, the proposed rebate is within the range of tiered rebates offered by the International Securities Exchange, LLC (“ISE”).²⁰ The Exchange believes that it is equitable and not unfairly discriminatory to pay the \$0.05 rebate for Multiply-Listed options as compared to Singly-Listed options because all market participants are eligible to transact Multiply-Listed options.

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants readily can, and do, send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the proposed rebate for eQCC Orders must be competitive with rebates offered on other options exchanges. The Exchange believes that this competitive marketplace impacts the rebates present on the Exchange today and influences the proposals set forth above.

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.

²⁰ See ISE’s Schedule of Fees. ISE pays members using its qualified contingent cross and/or solicitation order types a rebate according to a table based on the number of originating contract sides. Once a member reaches a certain volume threshold in qualified contingent cross and/or solicitation orders during the month, ISE pays a rebate to that member entering a qualifying order for all qualified contingent cross and/or solicitation traded contracts for that month. For example, for 0 - 1,999,999 originating contract sides ISE pays no rebate; for 2,000,000 to 3,499,999 originating contract sides ISE pays \$0.03 per contract; for 3,500,000 to 3,999,999 originating contract sides ISE pays \$0.05 per contract; and for 4,000,000 or more originating contract sides ISE pays \$0.07 per contract.

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.²¹ 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-2011-148 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-2011-148. 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

²¹ 15 U.S.C. 78s(b)(3)(A)(ii).

comments on the Commission's Internet website (<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 website 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 10:00 a.m. and 3:00 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 Number SR-Phlx-2011-148 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Kevin M. O'Neill
Deputy Secretary

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²² 17 CFR 200.30-3(a)(12).