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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65925; File No. SR-Phlx-2011-166)

December 9, 2011

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

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 28, 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 Permit Fee in Section VI of its Fee Schedule.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated the amendments entitled "Permit Fees" to be operative on January 3, 2012.

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 the Commission's website at <http://www.sec.gov> and at the Commission's Public Reference Room.

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

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

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Permit Fee in Section VI, entitled "Access Service, Cancellation, Membership, Regulatory and Other Fees" to recoup costs associated with the administration of its members. The Exchange also proposes a clarifying amendment to the applicability of the Permit Fees to both Clearing Members of The Options Clearing Corporation ("OCC Clearing Members")<sup>3</sup> and Floor Brokers.

The Exchange assesses two different Permit Fees based on whether a member is transacting business on the Exchange. The Exchange assesses members who are transacting business on the Exchange a Permit Fee of \$1,100 per month. A member or member organization is assessed the \$1,100 monthly Permit Fee if that member or member organization: (1) transacts its option orders in its assigned Phlx house account in a particular month; or (2) for those member organizations which are under common ownership, transacts at least one options trade in a Phlx house account that is assigned to one of the member organizations under common

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<sup>3</sup> These OCC Clearing Members are also Phlx Members.

ownership.<sup>4</sup> Members who are not transacting business on the Exchange are assessed a Permit Fee of \$7,500 per month. A member or member organization is assessed the \$7,500 Permit Fee for not transacting business on the Exchange if that member is either: (i) not a PSX Participant;<sup>5</sup> or not engaged in an options business at the Exchange in a particular month. 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.

#### Permit Fees

The Exchange is proposing to increase the \$1,100 monthly Permit Fee for members transacting business on the Exchange to \$2,000. The Exchange is seeking to recoup costs incurred from the membership administration function.<sup>7</sup> While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this amendment entitled "Permit Fees" to be operative on January 3, 2012.

#### Application of Permit Fees

The Exchange is proposing a clarifying amendment regarding the applicability of the \$1,100 Permit Fee to certain types of members, namely OCC Clearing Members and Floor

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<sup>4</sup> For purposes of the Permit Fee, "common ownership" shall be defined as at least 75% common ownership between the member organizations.

<sup>5</sup> Applicants that apply for membership solely to participate in the NASDAQ OMX PSX equities market are not assessed a Permit Fee, Application Fee, Initiation Fee, or Account Fee. See Securities Exchange Act Release No. 61863 (April 7, 2010), 75 FR 20021 (April 16, 2010) (SR-Phlx-2010-54).

<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> The Exchange is not amending the Permit Fee for members who are not transacting business on the Exchange.

Brokers.<sup>8</sup> Both OCC Clearing Members and Floor Brokers conduct business on an agency basis, in other words they enter trades on behalf of another person or entity and not for their own account. OCC Clearing Members may never trade, but are required to be a member of the Exchange in order to clear for a Phlx member.<sup>9</sup> As both these members are not transacting options for their own account, they are not conducting business in an assigned house account and therefore would not be eligible for the \$1,100 Permit Fee. The Exchange proposes to amend its Fee Schedule to indicate that both OCC Clearing Members and Floor Brokers would be assessed the \$1,100 Permit Fee. It was not the intent of the Exchange in requiring members to transact business in their house account to prevent OCC Clearing Members and Floor Brokers from being eligible for the \$1,100 Permit Fee. The Exchange amended its Rules to require trading in the house account in order that the Exchange may automate its billing process.<sup>10</sup> With respect to OCC Clearing Members and Floor Brokers, the Exchange is able to identify these members and member organizations and, through its automated billing, assess them the \$1,100 Permit Fee. The Exchange intends that this section entitled “Clarifying Amendment” will be effective upon filing.

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<sup>8</sup> The Exchange is able to verify OCC Clearing Members from information provided by OCC. Pursuant to Rule 1061, entitled “Registration of Floor Brokers”, Floor Brokers are required to register with the Exchange.

<sup>9</sup> See Exchange Rules 911 entitled “Member and Member Organization Participation” and “Rule 1052 entitled Responsibility of Clearing Options Members For Exchange Options Transactions.”

<sup>10</sup> See Securities Exchange Act Release No. 65574 (October 14, 2011), 76 FR 65228 (October 20, 2011) (SR-Phlx-2011-134).

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>11</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>12</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that proposed amendment to the Permit Fee is reasonable because the Exchange is seeking to recoup costs related to membership administration. The proposed fee is in the range of similar fees at other exchanges and less than other fees.<sup>13</sup> In addition, the Exchange believes that the Permit Fee is equitable and not unfairly discriminatory, because unlike other exchanges, Phlx's Permit Fees are the same for every options permit holder that is conducting business at the Exchange.

The Exchange believes that its clarifying amendment is reasonable the Exchange recognizes that the members and member organizations that are registered as OCC Clearing Members and Floor Brokers facilitate transactions for others at the Exchange and are therefore unable to utilize the house account in the same way as other members. In addition, the Exchange

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<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> See the Chicago Board of Trade, Incorporated's Fees Schedule. Per month a Market Maker Trading Permit is \$6,000, a SPX Tier Appointment is \$3,000, a VIX Tier Appointment is \$1,000, Floor Broker Trading Permit is \$6,000, Electronic Access Permit is \$1,600 and there is no access fee for a CBSX Trading Permit. See also the International Securities Exchange LLC's Schedule of Fees. Per month a EAM is \$500.00 and a market maker ranges from \$2,000 to \$4,000. See also C2, Inc.'s Fee Schedule. Per month, a market-maker permit is \$5,000, an Electronic Access Permit is \$1,000 and a SPXM Tier appointment is \$4,000 after November 30, 2011. See also NYSE Arca, Inc.'s Fee Schedule. Per month, a Floor Broker, Office and Clearing Firm is \$1,000 and a market maker is \$4,000. See also NYSE Amex, LLC's Fee Schedule. Per month, Per month, a Floor Broker, Order Routing and Clearing Firm is \$500 and a market maker is \$5,000.

believes that it is reasonable to assess a \$1,100 Permit Fee for OCC Clearing Members and Floor Brokers that are transacting business at the Exchange in a capacity that facilitates trading.

The Exchange believes that it is equitable and not unfairly discriminatory to assess OCC Clearing Members and Floor Brokers the \$1,100 as compared to other members who may not transact business, because the OCC Clearing Member and Floor Broker are trading for others as compared to the member who chooses whether to transact business in his/her own account. Other members are only required to transact one trade in their house account in order to be assessed the lower Permit Fee.

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>14</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.

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

#### 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 No. SR-Phlx-2011-166 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 No. SR-Phlx-2011-166. 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 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 No. SR-Phlx-2011-166 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.<sup>15</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).