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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66145; File No. SR-Phlx-2011-189)

January 11, 2012

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 December 30, 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 create a tiered rebate for Qualified Contingent Cross orders (“QCC Orders”).

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.

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.

¹ 15 U.S.C. 78s(b)(1).

² 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the rebate applicable to both electronic QCC Orders ("eQCC")³ and Floor QCC Orders,⁴ in order to create a tiered rebate structure. The Exchange believes that offering tiered rebates for QCC Orders will create an

³ A QCC Order is comprised of an order to buy or sell at least 1,000 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).

⁴ 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), 76 FR 36606 (June 22, 2011) (SR-Phlx-2011-56).

additional incentive for market participants to execute QCC Orders on the Exchange in Multiply Listed Securities.⁵

There are currently several categories of market participants: Customers, Directed Participants,⁶ Specialists,⁷ Registered Options Traders,⁸ SQTs,⁹ RSQTs,¹⁰ Broker-Dealers, Firms and Professionals.¹¹ The Exchange proposes to amend the current rebates applicable to both eQCC Orders and Floor QCC Orders, for the above categories of market participants, applicable

⁵ 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.

⁶ A Directed Participant is a Specialist, SQT, or RSQT that executes a customer order that is directed to them by an Order Flow Provider and is executed electronically on PHLX XL II.

⁷ A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

⁸ A Registered Options Trader (“ROT”) includes a Streaming Quote Trader (“SQT”), a Remote Streaming Quote Trader (“RSQT”) and a Non-SQT ROT, which by definition is neither a SQT or 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).

⁹ 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.

¹⁰ 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.

¹¹ 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”).

to both Sections I¹² and II¹³ of the Fee Schedule. Currently, the Exchange pays a rebate of \$0.07 per contract for all executed eQCC Orders and Floor QCC Orders.¹⁴

The Exchange proposes to offer a tiered rebate structure for both eQCC Orders and Floor QCC Orders. The Exchange proposes to pay a rebate of \$0.07 per contract on all qualifying executed QCC Orders up to 1,000,000 contracts in a month. If a member exceeds 1,000,000 contracts in a month of qualifying executed QCC Orders, the Exchange would pay \$0.10 per contract on all qualifying executed QCC Orders in a given month. In other words, the Exchange would either pay a \$0.07 or \$0.10 rebate depending on the number of qualifying contracts for that month. With respect to a Floor QCC Order, the Exchange will continue to offer the rebate to the Floor Broker.

The Exchange does not offer a rebate on executed eQCC Orders or Floor QCC Orders where the transaction is either: (i) Customer-to-Customer; or (ii) a dividend,¹⁵ merger¹⁶ or short

¹² Section I of the Fee Schedule is entitled “Rebates and Fees for Adding and Removing Liquidity in Select Symbols.” The Section I fees and rebates are applicable to certain select symbols which are defined in that section.

¹³ Section II of the Fee Schedule is entitled “Equity Options Fees.” Section II includes options overlying equities, ETFs, ETNs, indexes and HOLDERS which are Multiply Listed.

¹⁴ QCC Transaction Fees for a Specialist, ROT, SQT, RSQT, Professional, Firm and Broker-Dealer are \$0.20 per contract. QCC Transaction Fees apply to QCC Orders, as defined in Exchange Rule 1080(o), and Floor QCC Orders, as defined in 1064(e).

¹⁵ A dividend strategy is defined as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend. See Section II of the Fee Schedule.

¹⁶ A merger strategy is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed the first business day prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock. See Section II of the Fee Schedule.

stock interest strategy¹⁷ and executions subject to the Reversal and Conversion Cap.¹⁸ These exceptions will remain the same. Currently, QCC Transaction Fees apply to Sections I and II of the Fee Schedule and are subject to the Monthly Firm Fee Cap¹⁹ and the Monthly Market Maker Cap.²⁰ This will also remain the same.

The Exchange also proposes to add additional language to Section I, Part C to clarify which QCC Orders are qualifying orders. The proposed language that is added to Section I conforms the text related to the QCC rebate to Section II text. The proposed text is being added to clarify the exceptions to the rebate, which exceptions apply to both Sections I and II.

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.

¹⁷ A short stock interest strategy is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class. See Section II of the Fee Schedule.

¹⁸ Specialists, ROTs, SQTs and RSQTs, Professionals, Firms and Broker-Dealers options transaction fees in Multiply Listed Options are capped at \$500 per day for reversal and conversion strategies executed on the same trading day in the same options class.

¹⁹ Firms are subject to a maximum fee of \$75,000 (“Monthly Firm Fee Cap”). Firm equity option transaction fees and QCC Transaction Fees in the aggregate, for one billing month may not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. All dividend, merger, short stock interest and reversal and conversion strategy executions are excluded from the Monthly Firm Fee Cap. The Firm equity options transaction fees are waived for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account. QCC Transaction Fees are included in the calculation of the Monthly Firm Fee Cap.

²⁰ ROTs and Specialists are currently subject to a Monthly Market Maker Cap of \$550,000. The trading activity of separate ROTs and Specialist member organizations will be aggregated in calculating the Monthly Market Maker Cap if there is at least 75% common ownership between the member organizations. In addition, ROTs and Specialists that (i) are on the contra-side of an electronically-delivered and executed Customer complex order; and (ii) have reached the Monthly Market Maker Cap will be assessed a \$0.05 per contract fee. See Securities Exchange Act Release No. 64113 (March 23, 2011), 76 FR 17468 (March 29, 2011) (SR-Phlx-2011-36).

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act²¹ in general, and furthers the objectives of Section 6(b)(4) of the Act²² 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 both eQCC Orders and Floor QCC Orders in Multiply Listed securities²³ by paying a tiered rebate of \$0.07 per contract on all qualifying executed QCC Orders up to 1,000,000 contracts in a month or a rebate of \$0.10 per contract for members with qualifying executed QCC Orders exceeding 1,000,000 contracts in a month. The Exchange believes that paying a tiered rebate will sufficiently incentivize its members to send both eQCC Orders and Floor QCC Orders to the Exchange. The Exchange believes that offering a tiered rebate, as compared to a flat rate, is reasonable because the Exchange is paying a rebate on every contract, similar to the flat rate, and the Exchange is also incentivizing members to execute an even greater number of qualifying executed QCC Orders to achieve a higher rebate on all contracts in that given month. In other words, the proposal offers members more incentive to send a greater number of QCC Orders, while still paying a \$0.07 rebate below 1,000,000 contracts. The proposed tiered rebate structure

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(4).

²³ 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.

is within the range of rebates paid by other exchanges²⁴ 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.

With respect to the Floor QCC Order, the Exchange will also continue to offer the rebate to the Floor Broker. The Floor Broker is in receipt of the Floor QCC Orders and enters those orders into FBMS. The Exchange believes it is necessary from a competitive standpoint to offer this rebate to the executing Floor Broker on a Floor QCC Order. The Exchange expects that the rebate offered to executing Floor Brokers will allow them to price their services at a level that will enable them to attract Floor QCC order flow from participants who would otherwise enter these orders electronically from off the floor to the PHLX XL II System. To the extent that Floor Brokers are able to attract these Floor QCC orders, they will gain important information that will allow them to solicit the parties to the Floor QCC orders for participation in other trades, which will in turn benefit all other Exchange participants through the additional liquidity and price discovery that may occur as a result.

The Exchange believes it continues to be reasonable to not offer a rebate for eQCC Orders and Floor QCC Orders for Customer-to-Customer executions because members executing Customer orders are not assessed a QCC Transaction Fee²⁵ and therefore do not need to be incentivized to send QCC Orders to the Exchange. Likewise, the Exchange believes that it is reasonable to not offer a rebate for dividend, merger and short stock interest strategies and executions subject to the Reversal and Conversion Cap because the Exchange already provides a

²⁴ See NYSE Arca, Inc.'s ("NYSE Arca") Fee Schedule. NYSE Arca pays a \$0.10 per contract rebate for executed QCC orders entered by a Floor Broker.

²⁵ Specialists, ROTs, SQTs, RSQTs, Professionals, Firms and Broker-Dealers are assessed a QCC Transaction Fee of \$0.20 per contract.

cap today on the transaction fees associated with these strategies and therefore does not believe an additional incentive is required.

The Exchange believes that it is equitable and not unfairly discriminatory to pay a tiered rebate for executed QCC Orders because all market participants will continue to be eligible for the \$0.07 rebate, as they are today, unless they are able to exceed 1,000,000 contracts of qualifying executed QCC Orders in a given month, then the member would be entitled to a higher rebate of \$0.10 per contract on all qualifying executed QCC Orders. This benefit is intended to incentivize members to transact a greater number of contracts and qualifying QCC Orders in order to take advantage of the higher rebate. Additionally, the proposed rebate is within the range of tiered rebates offered by the International Securities Exchange, LLC (“ISE”).²⁶ Also, all members are equally eligible to transact Multiply Listed securities.

The Exchange believes that it continues to be equitable and not unfairly discriminatory to pay the rebate for Floor QCC Orders to Floor Brokers because it would uniformly apply to all Floor QCC Orders entered by a Floor Broker into FBMS for execution based on volume. The rebate is not unfairly discriminatory to firms that enter eQCC Orders directly into PHLX XL II, because the transaction fees and rebates are the same whether the order is entered electronically or through a Floor Broker. In addition, pursuant to Exchange Rule 1080(o)(3), only Floor

²⁶ See ISE’s Schedule of Fees. ISE provides a rebate to members who reach a certain volume threshold in QCC orders and/or solicitation orders during a month. Once a member reaches the volume threshold, ISE pays a rebate to that member for all qualified contingent cross and solicitation traded contracts for that month. The rebate is paid to the member entering a qualifying order, i.e., a qualified contingent cross order and/or a solicitation order. The rebate applies to qualified contingent cross orders and solicitation orders in all symbols traded on the Exchange. Additionally, the threshold levels are based on the originating side. Specifically, the following rebates apply: for -0-199,999 originating contract sides ISE pays no rebate; for 200,000 to 999,999 originating contract sides ISE pays \$0.02 per contract; for 1,000,000 to 1,699,999 originating contract sides ISE pays \$0.03 per contract; for 1,700,000 to 1,999,999 ISE pays \$0.04 per contract; and for 2,000,000 or more originating contract sides ISE pays \$0.05 per contract.

Brokers may enter a Floor QCC Order from the floor of the Exchange; therefore, providing the rebate to Floor Brokers does not discriminate against eQCC orders entered into PHLX XL II. Any participant will be able to engage a rebate-receiving Floor Broker in a discussion surrounding the appropriate level of fees that they may be charged for entrusting the entry of the Floor QCC Order to the Floor Broker into FBMS for execution. The additional order flow attracted by this rebate should benefit all participants. The rebate is meant to assist Floor Brokers to recruit business on an agency basis. The Floor Broker may use all or part of the rebate to offset its fees.

The Exchange believes it is equitable and not unfairly discriminatory to not offer a rebate for eQCC Orders and Floor QCC Orders for Customer-to-Customer executions and for dividend, merger and short stock interest strategies and executions subject to the Reversal and Conversion Cap because the Exchange would not offer a rebate for these two types of transactions for any QCC Order uniformly. Neither Customer-to-Customer executions nor dividend, merger and short stock interest strategies and executions subject to the Reversal and Conversion Cap will receive the rebate. Also, Customers are not assessed a QCC Transaction Fee.

The Exchange believes that the technical amendments proposed herein are reasonable, equitable and not unfairly discriminatory because they would add clarity to the Fee Schedule and conform the Fee Schedule.

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 rebates for eQCC Orders and Floor QCC Orders must be competitive with rebates offered at other options exchanges. The Exchange

believes that this competitive marketplace impacts the rebates and fees 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.

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.²⁷ 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

²⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2011-189 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-2011-189. 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 Number SR-Phlx-2011-189 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.²⁸

Kevin M. O'Neill
Deputy Secretary

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²⁸ 17 CFR 200.30-3(a)(12).