

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Kevin M. O'Neill,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66004; File No. SR-Phlx-2011-155]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees for Certain Stock Execution Clerks and the Trading Floor Personnel Registration Fee

December 19, 2011.

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 6, 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 eliminate the Fees for Certain Stock Execution Clerks from Section VI of the Fee Schedule.

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, 2012.³

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, on the Commission's Web site 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate the Fees for Certain Stock Execution Clerks from the Fee Schedule and amend the Trading Floor Registration Fee to clarify that the fee applies to Clerks and Inactive Nominees.

Stock Execution Clerks

A stock execution clerk is currently defined in Exchange Rule 1090 as any clerk other than a specialist clerk on the Exchange trading floor who functions as an intermediary in a transaction (i) consummated on the Exchange; (ii) entered verbally for execution other than on the Exchange; or (iii) entered into a third party system designed to execute transactions other than on the Exchange.⁴ All stock execution clerks must register as such with the Exchange.⁵

Generally, "stock execution" refers to the service used by options traders to hedge their options trades with the

underlying stock. Although stock execution is often done electronically, stock execution clerks provide a service to Exchange members on the options floor by accepting orders for the purchase and sale of securities underlying options transactions. Once such orders are accepted, the stock execution clerk forwards such orders to the appropriate marketplace for execution. The transactions executed are typically hedging transactions in underlying stocks for Exchange specialists and Registered Options Traders.⁶ The transaction may be contingent on an options transaction⁷ or may stand independently ("stand-alone equity orders").

The Exchange established this fee in 2007 to assess fees commensurate with the activities of stock execution clerks that handle stand-alone equity orders (i.e. orders that are not contingent on an options transaction).⁸ For those stock execution clerks that handle orders that are contingent on an options transaction, i.e. orders that are packaged with an options trade, the Exchange filed to assess charges associated with those contingency orders, such as option transaction charges. The Exchange, however, does not assess fees in connection with stand-alone equity orders, which may be handled by a variety of intermediaries and which may be executed on different equity markets. The Exchange established this fee because these clerks generally are not subject to fees for doing business from the Exchange's options floor.

The Exchange is proposing to eliminate this fee because there are no clerks registered as stock execution clerks today.⁹

⁶ A Registered Options Trader ("ROT") includes a SQT, a RSQT and a Non-SQT, which by definition is neither a SQT or a RSQT. A Registered Option Trader 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).

⁷ A contingency order is a limit or market order to buy or sell that is contingent upon a condition being satisfied while the order is at the post. For certain options contingency orders, the contingency involves buying or selling the underlying security (generally called "stock" in this proposal). See Exchange Rule 1066(c).

⁸ See Securities Exchange Act Release No. 56221 (August 8, 2007), 72 FR 45855 (August 15, 2007) (SR-Phlx-2007-48).

⁹ In the instance that a clerk registers as a stock execution clerk in the future, that clerk would be billed the newly named "Clerk Fee." If the Exchange determined to assess Fees for Certain Stock Execution Clerks it would file with the Commission to reinstitute the fee.

³¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission notes that the Exhibit 1 to the proposed rule change stated that December 1, 2011 is the operative date of the proposed rule change. The Exchange represents that the operative date of the proposed rule change is instead January 3, 2012. See email from Angela S. Dunn, Assistant General Counsel, Exchange, to Nicholas Shwayri, Attorney-Advisor, Division of Trading and Markets, Commission, dated December 16, 2011.

⁴ See Exchange Rule 1090, Commentary .01(a). Further, No Stock Execution Clerk shall: (i) act as an intermediary in any transaction other than under the direct supervision of a member; (ii) enter into any clearing transaction or participate in any clearing process; (iii) have discretion or independent authority over any account or transaction. See Exchange Rule 1090, Commentary .01(d).

⁵ Any member or member organization engaged as a stock execution clerk shall register as such with the Exchange's Membership Department. A stock execution clerk that performs any function other than a solely clerical or ministerial function shall, prior to performing any function as a stock execution clerk, (i) comply with the registration requirement(s) set forth in Exchange Rule 604, where applicable; (ii) disclose in detail to the Exchange, on an annual basis, the specific nature of such additional function(s); and (iii) in accordance with Exchange Rule 748, submit to the Exchange written supervisory procedures relating to such member or member organization's activities as a stock execution clerk. See Exchange Rule 1090, Commentary .01(b).

Trading Floor Personnel Registration Fee

The Exchange currently assesses a Trading Floor Personnel Registration Fee of \$100 per month on individuals who are employed by such member organizations and who work on the Exchange's trading floor, such as clerks (for purposes of this fee a clerk includes an Inactive Nominee), interns and stock execution clerks that handle equity orders that are part of an options contingency order and other associated persons. This fee is not imposed on permit holders.

The Exchange proposes to continue assessing the fee as it is being assessed today, except the Exchange proposes to rename the fee as a "Clerk Fee" and also clarify that the fee is imposed on any registered on-floor person employed by or associated with a member or member organization pursuant to Rule 1090, including an Inactive Nominee pursuant to Rule 1090. All non-members and Clerks are required to register pursuant to Rule 620, entitled "Trading Floor Registration."¹⁰ Both Inactive Nominees and interns are clerks pursuant to Rule 1090. This fee will not be imposed on permit holders, as is the case today. The Exchange is proposing this text change to better describe the categories of non-members that are subject to the fee.

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, 2012.¹¹

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹² in general, and furthers the objectives of Section 6(b)(4) of the Act¹³ 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, equitable and not unfairly discriminatory to eliminate the Fees for Certain Stock Execution Clerks because there are no clerks today registered in this capacity. The Exchange also believes that it is reasonable, equitable and not unfairly discriminatory to rename the "Trading Floor Personnel Registration Fee" as the "Clerk Fee" and amend the text of the Fee Schedule to better explain the categories of persons subject to this 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.¹⁴ 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 email to rule-comments@sec.gov. Please include File

No. SR-Phlx-2011-155 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-2011-155. 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 available publicly. All submissions should refer to File No. SR-Phlx-2011-155 and should be submitted on or before January 13, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Kevin M. O'Neill,
Deputy Secretary.

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¹⁰ All trading floor personnel, including clerks, interns, stock execution clerks and any other associated persons, of a member organization not required to register pursuant to Rule 620(a) must: (i) Register as such with the Exchange by completing the appropriate form(s) for non-registered persons (with periodic updates submitted by the member organization, as determined by the Exchange); and (ii) submit hard copy fingerprint cards or results of processed cards to FINRA for processing. Further, the Exchange may require successful completion of an examination, in addition to requirements imposed by other Exchange Rules. The Exchange may also require periodic examinations due to changes in trading rules, products or automated systems. See Exchange Rule 620.

¹¹ The Commission notes that the Exhibit 1 to the proposed rule change stated that January 3, 2011 is the operative date of the proposed rule change. The Exchange represents that the operative date of the proposed rule change is instead January 3, 2012. See *supra* note 3.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁵ 17 CFR 200.30-3(a)(12).