

of the filing of such 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.

#### 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 Number SR-EDGX-2011-13 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-EDGX-2011-13. 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 Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission,<sup>11</sup> 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-EDGX-2011-13 and should be submitted on or before June 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64446; File No. SR-Phlx-2011-62]

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

May 9, 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 April 29, 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 amend Section VIII of its Fee Schedule titled the "Options Floor Broker Subsidy."

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on May 2, 2011.

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, at the Commission's Public Reference Room, and on the Commission's Web site at <http://www.sec.gov>.

#### **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: (i) Eliminate the threshold requirement that a member organization with Exchange registered floor brokers must have more than an average of 100,000 executed contracts per day in the applicable month; (ii) amend the computation for eligible contracts; and (iii) amend the eligible contracts per tier and monthly volume subsidy payments. The Exchange believes that the proposed amendments could enable a member organization to receive a higher subsidy because the Exchange is changing from a daily average to a monthly total calculation to determine the number of contracts traded.

##### *Eliminating a Threshold*

The Exchange currently pays an Options Floor Broker Subsidy to member organizations with Exchange registered floor brokers that enter eligible contracts into the Exchange's Floor Broker Management System ("FBMS").<sup>3</sup> To qualify for the per contract subsidy, a member organization with Exchange registered floor brokers must have more than 100,000 average executed contracts per day in the month ("100,000 contract threshold").<sup>4</sup> Only the volume from orders entered by floor brokers into FBMS and subsequently executed on the Exchange qualifies. The

<sup>3</sup> FBMS is designed to enable floor brokers and/or their employees to enter, route, and report transactions stemming from options orders received on the Exchange. FBMS also is designed to establish an electronic audit trail for options orders represented and executed by floor brokers on the Exchange. See Exchange Rule 1080, commentary .06.

<sup>4</sup> For purposes of calculating the 100,000 threshold, customer-to-customer transactions, customer-to-non-customer transactions, and non-customer-to-non-customer transactions are currently included.

<sup>11</sup> The text of the proposed rule change is available on the Exchange's Web site at <http://www.directedge.com>, on the Commission's Web site at <http://www.sec.gov>, at EDGX, and at the Commission's Public Reference Room.

<sup>12</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.

100,000 contract threshold is calculated per member organization floor brokerage unit. Where two or more member organizations with Exchange registered floor brokers each entered one side of a transaction into FBMS, the executed contracts are divided equally among qualifying member organizations that participate in that transaction.<sup>5</sup>

The Exchange is proposing to eliminate the 100,000 contract threshold. The Exchange believes that this threshold is no longer necessary because the Exchange is changing to a monthly total calculation. In the future, all eligible contracts will qualify for a subsidy rather than just those that are entered by members exceeding the 100,000 contract threshold.

#### Computation for Eligible Contracts

Currently, customer-to-customer transactions qualify towards the 100,000 contract threshold, but do not qualify for the subsidy. Dividend, merger and short stock interest strategies do not qualify towards the 100,000 contract threshold or the per contract subsidy.

The largest component of a Complex Order counts toward the 100,000 contract threshold but neither that component nor any other component of the Complex Order qualifies for the per contract subsidy. Firm facilitation transactions count towards reaching the 100,000 contract threshold, but no per contract subsidy is paid for a firm facilitation transaction.

The Exchange is proposing to amend the computation of eligible contracts. Customer-to-customer executions, dividend, merger and short stock interest strategies and firm facilitation transactions will be excluded from the eligible contract computations.

The Exchange is deleting the references to the 100,000 contract threshold as proposed herein. Therefore, the Exchange is eliminating the consideration of the largest component of a Complex Order (i.e., the component that includes the greatest number of contracts) counting toward the 100,000 contract threshold; the 100,000 contract threshold would no longer exist. The Options Floor Broker Subsidy would

now apply to any contracts that are executed as part of a Complex Order.

#### Eligible Contracts per Tier/Monthly Volume Subsidy Payments

Currently, a per contract subsidy is paid based on the average daily contract volume for that month, which includes customer-to-non-customer transactions that are in excess of 100,000 contracts. These contracts may include customer-to-customer transactions for the purposes of reaching a tier, but as stated above, a per contract subsidy would not be paid on these executions.

The Exchange is amending the Options Floor Broker Subsidy to change the "Per Contract Average Daily Volume Subsidy Payment" to a "Per Eligible Contract Monthly Volume Subsidy Payment." In other words, the computation would not be an average daily computation but a monthly total of all eligible contracts as proposed herein.

Currently, the Exchange pays an average daily volume subsidy payment as follows:

#### PER CONTRACT AVERAGE DAILY VOLUME SUBSIDY PAYMENT

Tier I	Tier II	Tier III
100,001 to 200,000 ..... \$0.02 per contract .....	200,001 to 300,000 ..... \$0.08 per contract .....	300,001 and greater. \$0.09 per contract.

The Exchange is proposing to amend the tiers and payments as follows:

#### PER ELIGIBLE CONTRACT MONTHLY VOLUME SUBSIDY PAYMENT

Tier I	Tier II	Tier III	Tier III
0 to 1,250,000 ..... \$0.00 per contract .....	1,250,001 to 2,250,000 ..... \$0.03 per contract .....	2,250,001 to 5,250,000 ..... \$0.05 per contract .....	5,250,001 and greater. \$0.09 per contract.

The Exchange is proposing to amend the remainder of the Fee Schedule to conform to the proposed rule changes.

The Exchange is also proposing to remove the following text from the Fee Schedule: "based on the amount of customer-to-customer contracts, a member organization could enter Tier II or a higher tier due to the amount of customer-to-customer contract volume," because the Exchange believes that language is unnecessary.

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

designated these changes to be operative on May 2, 2011.

#### 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>7</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the proposed amendments to the Options Floor Broker Subsidy are equitable and reasonable because member

organizations with Exchange registered floor brokers would continue to be provided an equal opportunity to receive a subsidy. Additionally, any member organization is free to establish floor brokerage operations on the floor of the Exchange, and, as such, would have more opportunity to earn additional payments for attracting additional order flow to the Exchange.

The Exchange believes that rewarding members that contribute the most liquidity or executions to the Exchange is reasonable and equitable and therefore the tiered fees will continue to uniformly benefit all market

<sup>5</sup> When computing the threshold amount, the Exchange would first count all customer-to-customer transactions and then all other customer-to-non-customer transactions. *See also* Securities Exchange Act Release Nos. 57253 (February 1,

2008), 73 FR 7352 (February 7, 2008) (SR-Phlx-2008-08) (adopting a tiered per contract floor broker options subsidy payable to member organization with Exchange registered floor brokers), 62403 (June 30, 2010), 75 FR 39301 (July

8, 2010) (SR-Phlx-2010-80) (an amendment to the threshold volume requirements and per contract average daily volume subsidy payment).

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

participants. The Exchange believes that by amending the computation from an average daily computation to a monthly computation and also amending the tier levels, because the computation is based on a total monthly volume, additional member organizations could benefit from the ability to obtain greater subsidy payments. The Exchange also believes that the proposed amendments to the rates paid to member organizations are both reasonable and equitable because the Exchange continues to pay member organizations the subsidy. Although the rates are lowered, the Exchange added an additional tier which provides member organizations the ability to obtain the same or larger subsidy payments based on volume, potentially with lower volume.

The Exchange also believes that the amendments to the computations to exclude customer-to-customer executions, dividend, merger and short stock interest strategies, and firm facilitation transactions are reasonable because the proposal to compute the monthly total eligible contracts, which could result in a greater number of eligible contracts, may still provide member organizations with the same or greater benefits as the previous subsidy. In addition, the proposals to amend the computation are equitable because the computations apply uniformly to all member organizations.

Finally, the Exchange does not believe that this subsidy is unreasonable or discriminatory because any floor broker is capable of meeting the volume criteria.

#### *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>8</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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2011-62 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-2011-62. 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 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-Phlx-2011-62 and should be submitted on or before June 3, 2011.

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

**Cathy H. Ahn,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-64444; File No. SR-BYX-2011-012]**

### **Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add BYX Rule 11.22, Entitled "Data Products"**

May 9, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 5, 2011, BATS Y-Exchange, Inc. (the "Exchange" or "BYX") 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 Exchange is proposing to continue to make available those data feeds provided by the Exchange to data recipients<sup>3</sup> without charge and to start making available the Latency Monitoring feed, which will also be available without charge. The Exchange also proposes to add language to its Rules to memorialize those data feeds that have already been approved by the Commission.<sup>4</sup>

The text of the proposed rule change is available at the Exchange's Web site

<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.

<sup>3</sup> Exchange data recipients include Members of the Exchange as well as non-Members that have entered into an agreement with the Exchange that permits them to receive Exchange data.

<sup>4</sup> BATS has separately filed a rule proposal and received approval to offer certain data products for which it assesses a fee but, outside of its fee schedule, did not propose written rules related to such data products. See Securities Exchange Act Release No. 61885 (April 9, 2010), 75 FR 10332 (April 16, 2010).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).