

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–NYSEArca–2011–89 and should be submitted on or before December 30, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2011–31605 Filed 12–8–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65888; File No. SR–Phlx–2011–160]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Firm Related Equity Option Cap

December 5, 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 November 22, 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 Section II of the Fee Schedule entitled “Equity Options Fees” to apply the Firm Related Equity Option Cap to certain proprietary orders of affiliated member organizations.

While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on December 1, 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, 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 this proposed rule change is to apply the Firm Related Equity Option Cap to proprietary orders of certain affiliates of member organizations. Currently, Firms are subject to a maximum fee of \$75,000 (“Firm Related Equity Option Cap”). Firm equity option transaction fees and QCC Transaction Fees³, in the aggregate, for one billing month will not exceed the Firm Related Equity Option Cap per member organization when such members are trading in their own proprietary account.⁴ The Firm equity options transaction fees⁵ will be waived for members executing facilitation orders⁶ pursuant to Exchange Rule 1064

³ QCC Transaction Fees apply to QCC Orders as defined in Exchange Rule 1080(o) and 1064(e). For QCC Orders as defined in Exchange Rule 1080(o), and Floor QCC Orders, as defined in 1064(e), a Service Fee of \$0.05 per side will apply once a Firm has reached the Firm Related Equity Option Cap. This \$0.05 Service Fee will apply to every contract side after a Firm has reached the Firm Related Equity Option Cap.

⁴ Once Firms reach the Firm Related Equity Option Cap by incurring qualifying fees, they will not incur additional transaction fees beyond the \$75,000 Firm Related Equity Option Cap for that month as long as those transactions occurred in their own proprietary account. Member organizations must notify the Exchange in writing of all accounts in which the member is not trading in its own proprietary account. The Exchange will not make adjustments to billing invoices where transactions are commingled in accounts which are not subject to the Firm Related Equity Option Cap.

⁵ See Section II of the Exchange’s Fee Schedule for equity option transaction fees.

⁶ A facilitation occurs when a floor broker holds an options order for a public customer and a contra-side order for the same option series and, after providing an opportunity for all persons in the trading crowd to participate in the transaction, executes both orders as a facilitation cross. See

when such members are trading in their own proprietary account.⁷

The Exchange proposes to apply the Firm Related Equity Option Cap to proprietary orders effected for the purpose of hedging the proprietary over-the-counter trading of an affiliate of a member organization that qualifies for the Firm Related Equity Option Cap (“Qualifying Member Organization”). A Qualifying Member Organization would be a 100% wholly-owned affiliate or subsidiary of a member organization that is not a Phlx member organization and is registered as a United States or foreign broker-dealer. In other words, a Qualifying Member Organization must be either a wholly-owned subsidiary of a Phlx member organization or a wholly-owned subsidiary of the parent company of a Phlx member organization. These orders must clear in the customer range at The Options Clearing Corporation and be subject to the fees assessed to Broker-Dealers in order for the trade to be eligible for the Firm Related Equity Option Cap. The Exchange would aggregate the Qualifying Member Organization’s fees in Multiply-Listed options⁸ on the Exchange with the transaction fees of affiliated member organizations in Multiply-Listed options on the Exchange for purposes of determining whether the Qualifying Member Organization has reached the Firm Related Equity Option Cap.

A member organization would be required to certify the affiliate status of any Qualifying Member Organization whose trading activity it seeks to aggregate and to certify that the trades identified as eligible for the Firm Related Equity Option Cap were made for the purposes of hedging proprietary over-the counter [sic] trading of the member organization or its affiliates. The member organization would be required to inform the Exchange immediately of any event that causes an entity to cease to be an affiliate. In addition, member organizations must notify the Exchange in writing of the account(s) designated for purposes of hedging the proprietary over-the-counter trading of the Qualifying Member Organization or its affiliates.⁹

Exchange Rule 1064 entitled “Crossing, Facilitation and Solicited Orders.”

⁷ The waiver would not apply to orders where a member is acting as agent on behalf of a non-member.

⁸ 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.

⁹ The Exchange assesses a \$50 Account Fee for each account beyond the number of permits billed to the member organization.

¹³ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

The Exchange would require member organizations to segregate other orders from that of its affiliates for those orders to be eligible for the Firm Related Equity Option Cap by placing such orders in a separate house account. If the member organization does not segregate the transactions into the specified house account which was designated by the member organization for the purpose of affiliated eligible transactions, the Exchange will not make any adjustments to the billing invoice to account for those transactions not placed in the specified account and those transactions will not be subject to the Firm Related Equity Option Cap. The Exchange believes that this practice would not create an undue burden on its member organizations and would ensure a more efficient billing process.

The Exchange also proposes to rename the "Firm Related Equity Option Cap" as the "Monthly Firm Fee Cap" to more accurately describe the cap. The Exchange also proposes to amend a reference to "members and member organizations" in Section II of the Fee Schedule as only "member organizations" for clarity.

While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on December 1, 2011.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act¹¹ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

Specifically, the Exchange believes the proposed rule change is reasonable because it would allow aggregation of the trading activity of a member organization and its Qualifying Member Organization for purposes of the Firm Related Equity Option Cap only in very narrow circumstances, namely, where the Qualifying Member Organization is an affiliate, as defined herein, and the trading activity of the Qualifying Member Organization, which would be included in the calculation of the Firm Related Equity Option Cap, is limited to proprietary orders of the Qualifying Member Organization effected for purposes of hedging the proprietary over-the-counter trading of the member organization or its affiliates. Furthermore, other exchanges have rules that permit the aggregation of the trading activity of affiliated entities for

the purposes of calculating and assessing certain fees.¹² The Exchange believes that it is reasonable to require member organizations to segregate these transactions in a separate account to create an effective way to account and bill for these transactions.

The Exchange believes that its proposal is equitable and not unfairly discriminatory because any member organization may request that the Exchange aggregate its trading activity with the trading activity of a Qualifying Member Organization for purposes of calculating the Firm Related Equity Option Cap. The Exchange believes that it is equitable and not unfairly discriminatory to require member organizations to segregate these transactions in a separate account as this requirement would apply to all member organizations.

The Exchange also believes that the amendments to rename the Firm Related Equity Option Cap and change a reference from "members and member organizations" to "member organizations" are reasonable, equitable and not unfairly discriminatory because these amendments will more accurately describe the cap and the member that is being billed.

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.

¹² See the Chicago Board Options Exchange, Incorporated ("CBOE") Fees Schedule (CBOE's application of its Fee Cap and Scale to order to certain non-Trading Permit Holder affiliates of a clearing trading permit holder). See also NASDAQ Stock Market LLC's ("NASDAQ") Rule 7027 (a NASDAQ pricing rule which allows affiliated members to aggregate their activity under certain provision of NASDAQ's fee schedule that make fees dependent upon the volume of their activity). See also the Chicago Stock Exchange, Inc. ("CHX") Fee Schedule at Section P entitled "Aggregation of Activity of Affiliated Participants" (CHX allows a participant to request the aggregation of its activity with the activity of its affiliates). See also the International Securities Exchange, LLC's ("ISE") Fee Schedule at footnote 2 (ISE permits Non-ISE Market-Maker transaction fees that are part of the originating or contra side of a crossing transaction to be included in the calculation of the monthly fee cap).

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.¹³ 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-2011-160 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-2011-160. 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

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2011-160 and should be submitted on or before December 30, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2011-31603 Filed 12-8-11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65885; File No. SR-BSECC-2011-03]

Self-Regulatory Organizations; Boston Stock Exchange Clearing Corporation; Order Approving Proposed Rule Change With Respect to an Amendment to the By-Laws of The NASDAQ OMX Group, Inc.

December 5, 2011.

I. Introduction

On October 11, 2011, Boston Stock Exchange Clearing Corporation ("BSECC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-BSECC-2011-03 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder. The proposed rule change was published for comment in the **Federal Register** on October 28, 2011.³ The Commission received no comment letters regarding the proposal. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The rule change will permit an amendment to the by-laws of BSECC's parent corporation, The NASDAQ OMX Group, Inc. ("NASDAQ OMX"). NASDAQ OMX is seeking to amend provisions of its by-laws pertaining to the composition of committees of the NASDAQ OMX Board of Directors. First, NASDAQ OMX is amending the compositional requirements of its Audit Committee in Section 4.13(g) to provide that the committee shall include three or more directors. Currently, the provision provides that the Audit Committee shall be composed of either four or five directors. Second, NASDAQ OMX is proposing to amend the compositional requirements of the Nominating & Governance Committee in Section 4.13(h) to replace a requirement that the committee comprise four or five members with a requirement to include two or more members. Third, NASDAQ OMX proposes to delete a paragraph of the by-laws (Section 4.13(k)) that pertains to the qualifications of committee members who are not directors. Finally, NASDAQ OMX is correcting a typographical error in the numbering of the provisions of Section 4.13(h) of the by-laws.

III. Discussion

Section 19(b)(2)(B) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.⁴ In particular, Section 17A(b)(3)(A)⁵ of the Act requires, among other things, that the clearing agency be so organized and have the capacity to facilitate the prompt and accurate clearance and settlement of securities transactions, to safeguard the securities and funds which are in the custody or control of such clearing agency or for which it is responsible, and to comply with the provisions of the Act and the rules and regulations thereunder.

The proposed change would allow the NASDAQ OMX Board of Directors ("Board") to determine the size of its Audit Committee, so long as the Audit Committee includes at least three directors, as well as the size of its Nominating & Governance Committee, so long as the Nominating & Governance Committee includes at least two directors. The proposal is intended to provide greater flexibility to the NASDAQ OMX Board to determine the

appropriate size for these committees. The proposal does not change any other compositional requirements of either the Audit Committee or the Nominating & Governance Committee, including independence requirements. Moreover, the Commission notes that the proposal does not alter the application of Section 10A of the Exchange Act⁶ and Rule 10A-3 thereunder⁷ to the NASDAQ OMX Audit Committee.

The proposal also deletes an obsolete section from, and corrects a typographical error in, the NASDAQ OMX by-laws, which are clarifying revisions. For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act. The proposal also deletes an obsolete section from, and corrects a typographical error in, the NASDAQ OMX by-laws, which are clarifying revisions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2)⁸ of the Act, that the proposed rule change (File No. SR-BSECC-2011-03) be, and hereby is, approved.⁹

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2011-31601 Filed 12-8-11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65883; File No. SR-Phlx-2011-154]

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

December 5, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

⁶ 15 U.S.C. 78j-1.

⁷ 17 CFR 240.10A-3.

⁸ 15 U.S.C. 78s(b)(2).

⁹ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

¹⁰ 17 CFR 200.30-3(a)(12).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 34-65613 (October 24, 2011), 76 FR 67007 (October 28, 2011). In its filing with the Commission, BSECC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements is incorporated into the discussion of the proposed rule change in Section II below.

⁴ 15 U.S.C. 78s(b)(2)(B).

⁵ 15 U.S.C. 78q-1(b)(3)(A).