

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59641; File No. SR-Phlx-2009-26)

March 27, 2009

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

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 March 24, 2009, NASDAQ OMX PHLX, Inc. (“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: (i) increase the Order Flow Provider Permit fee to \$500 and eliminate the distinctions related to trading venues; (ii) increase the Other Permit Holder fee to \$500; and (iii) eliminate the Excess Permit Holder fee. Additionally, the Exchange proposes to delete immaterial language in endnotes related to permit fees.

While changes to the Exchange’s fee schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be implemented beginning April 1, 2009.

The text of the proposed rule change is available on the Exchange’s Website at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, at the principal office of the Exchange, 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 parts 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 simplify the Order Flow Provider Permit fee³ by eliminating the distinctions related to trading venues, which distinctions are no longer necessary as the Exchange will no longer assess permit fees based on the number of trading venues. Additionally, the Exchange proposes to increase both the Order Flow Provider Permit fee and the Other Permit Holders fee to \$500. The Exchange believes that it can continue to attract business even with a modest increase, which should raise revenue.

Currently, the Exchange assesses members who use an Order Flow Provider Permit fee to submit orders to the foreign currency options trading floor or options trading floor a fee of \$200. A member who uses the Order Flow Provider Permit fee [sic] to submit orders to more than one trading venue is assessed a fee of \$300. The Exchange proposes to increase the Order Flow Provider Permit fee to \$500 for any order submitted regardless of the number of trading venues.

³ This fee applies to a permit holder who does not have physical access to the Exchange's trading floor, is not registered as a Floor Broker, Specialist or ROT (on any trading floor) or Off-Floor Trader, and whose member organizations submits orders to the Exchange. See Exchange Rule 620.

The Exchange also proposes to increase the Other Permit Holder fee.⁴ The Other Permit Holder category was adopted for billing purposes to address the limited situation where permit holders did not fall under one of the existing permit fee categories. The Other Permit Holder Fee is currently \$200. The Exchange proposes to similarly increase this fee to \$500 to align this fee with the proposed increase to the Order Flow Permit fee.

The Exchange proposes to eliminate the Excess Permit Holders fee⁵ of \$200, as the Exchange believes that this category of Excess Permit Holders is no longer necessary. The Excess Permit Holder category was intended to cover permit holders who did not fall within an existing category to ensure that each permit is subject to a permit fee. This separate category is no longer necessary as all members are currently captured by either the Order Flow Permit Fee or the Floor Broker, Specialist, ROT, Off-Floor Trader, or Market Maker Authorized Traders Permit Fee or Other Permit Fee categories.

⁴ Status as an Other Permit Holder requires that a permit holder or the member organization for which they solely qualify has no transaction activity for the applicable monthly billing period. Should a permit holder actively transact business during a particular month, the highest applicable monthly permit fee will apply to such permit holder and the member organization for that monthly period. The “other” status only applies to permit holders who solely qualify their member organization, or in other words there is just one permit holder in that member organization. If there is more than one permit holder in a member organization and that permit holder does not fit within any of the existing permit fee categories, then this “other” category does not apply. Such permit holder or the member organization they solely qualify for must apply for such “other” status in writing to the Membership Department.

⁵ Permit holders are designated as “excess” permit holders in cases where the permit holders in the same organization, other than the permit holder who qualifies the member organization, are either (1) not Floor Brokers, Specialists or ROTs (on any trading floor) or Off-Floor Traders; or (2) not associated with a member organization that meets the definition of an order flow provider. The highest applicable permit fee will be assessed each month. Therefore, in the same month, if one was a floor broker and then became a clerk (and therefore, an “excess” permit holder, if one kept his or her permit) for the same member organization, such person would be charged the higher of the possible applicable fees.

The Exchange proposes to delete the following immaterial language from both endnotes 45a and 45b “[t]hese policies will be effective as of February 2, 2004.” The Exchange believes that this statement, as to the effectiveness of the policies related to those endnotes, is irrelevant.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act⁷ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the above proposals are equitable in that they propose to assess the same fee on members who pay either the Order Flow Provider Permit Fee or the Other Permit Holders Fee. Additionally, the elimination of the Excess Permit Holder fees should not impact members. The Exchange believes that all members should be captured under a remaining permit fee category.

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

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and paragraph (f)(2) of Rule 19b-4⁹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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. Please include File Number SR-Phlx-2009-26 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-2009-26. 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

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

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 inspection and copying 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 the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-2009-26 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.¹⁰

Florence E. Harmon
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).