

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60771; File No. SR-Phlx-2009-85)

October 2, 2009

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Discontinuation of the Specialist Fee Credit Pilot Program

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 September 24, 2009, NASDAQ OMX PHLX, Inc. (“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 discontinue its current pilot program relating to specialist fee credits for linkage orders.

While changes to the Exchange’s fee schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be effective on September 28, 2009.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 discontinue the current pilot program related to a specialist fee credit for linkage is because the pilot is no longer necessary. On June 17, 2008, the Exchange filed an executed copy of the Options Order Protection and Locked/Crossed Market Plan ("Plan"), joining all other approved options markets in adopting the Plan.³ The Plan requires each options exchange to adopt rules implementing various requirements specified in the Plan.⁴ The Plan replaces the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan").⁵ That Plan requires its participant exchanges to operate a stand-alone system or "Linkage" for sending order-flow between exchanges to limit trade-throughs.⁶ The Options Clearing Corporation ("OCC") operates the

³ See Securities Exchange Act Release Nos. 60405 (July 20, 2009) (National Market System Plan Relating to Options Order Protection and Locked/Crossed Markets).

⁴ See Securities Exchange Act Release No. 60363 (July 22, 2009), 74 FR 37270 (July 28, 2009) (SR-Phlx-2009-61). Linkage was governed by the Options Linkage Authority under the conditions set forth under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage approved by the Commission. The registered U.S. options markets are linked together on a real-time basis through a network capable of transporting orders and messages to and from each market.

⁵ See footnote 4.

⁶ See footnote 4.

Linkage system (the “System”).⁷ The Exchange adopted various new rules in connection with the Plan to avoid trade-throughs and locked markets, among other things.⁸ The Exchange currently offers private routing as opposed to utilizing the Linkage Plan for routing. In light of this change, the Exchange proposes to terminate the specialist option transaction charge credit pilot program for trades executed via Intermarket Options Linkage (“Linkage”) as the credit will no longer be necessary since the specialists will no longer utilize Linkage to route trades.

The current pilot, which is set to expire on July 31, 2010⁹, relates to: (1) an option transaction charge credit of \$0.21 per contract for Exchange specialist units¹⁰ that incur options transaction charges when a customer order is delivered electronically via Phlx XL¹¹ or via the Exchange’s Options Floor Broker Management Systems (“FBMS”)¹² and then is executed via the Linkage as a Principal Acting as Agent Order (“P/A Order”)¹³; and (2) the Floor Broker Linkage P/A fee and Options Specialist Unit Credit, which charges floor brokers an amount

⁷ See footnote 4.

⁸ See footnote 4.

⁹ See Securities Exchange Act Release No. 60209 (July 1, 2009), 74 FR 33006 (July 9, 2009) (SR-Phlx-2009-55).

¹⁰ The Exchange uses the terms “specialists” and “specialists units” interchangeably herein.

¹¹ See Exchange Rule 1080.

¹² 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 trails for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. See Exchange Rule 1080, Commentary .06.

¹³ A P/A Order is an order for the principal account of a specialist (or equivalent entity on another participant exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent. See Exchange Rule 1088, a temporary linkage rule.

equal to the transaction fee(s) assessed on options specialist units by another exchange in connection with customer orders that are delivered to the limit book via FBMS and executed via Linkage as P/A Orders. The Exchange provides to options specialists units a credit in an amount equal to the transaction fee(s) assessed on them by another exchange in connection with executing customer orders that are delivered to the limit order book via FBMS and executed via Linkage as P/A Orders. The current pilot program has been in effect for several years.¹⁴

The pilot program which relates to transaction fees applicable to the execution of P/A Orders and Principal Orders (“P Orders”)¹⁵ sent to the Exchange via Linkage pursuant to the Linkage Plan¹⁶ will remain in effect until such time as all participant exchanges to the Linkage Plan no longer send Linkage P or P/A orders via the Linkage Plan. At such time the Exchange intends to file a proposed rule change with the Commission to request the discontinuation of that pilot as well.¹⁷

¹⁴ See Securities Exchange Act Release Nos. 58234 (July 25, 2008), 73 FR 45263 (August 4, 2008) (SR-Phlx-2008-55); 56101 (July 19, 2007), 72 FR 40920 (July 25, 2007) (SR-Phlx-2009-50 [sic]); 54257 (August 1, 2006), 71 FR 45089 (August 8, 2006) (SR-Phlx-2006-46); 53761 (May 5, 2006), 71 FR 27768 (May 12, 2006) (SR-Phlx-2006-20).

¹⁵ A principal Order is an order for the principal account of an Eligible Market Maker and is not a P/A Order. See Exchange Rule 1088.

¹⁶ See Securities Exchange Act Release No. 59891 (May 8, 2009), 74 FR 22990 (May 15, 2009) (SR-Phlx-2009-24).

¹⁷ Currently, the Exchange has a temporary linkage rule, Exchange Rule 1088, which provides that the Exchange will continue to accept P and P/A Orders from options exchanges that continue to use such orders to address trade-throughs via the existing linkage for a temporary period. See Securities Exchange Act Release No. 60363 (July 22, 2009), 74 FR 37270 (July 28, 2009) (SR-Phlx-2009-61). See also Exchange Rule 1088.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act¹⁸ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁹ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. In particular, the Exchange believes that the pilot program is no longer necessary because the specialists no longer utilize Linkage to route trades.

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 that is not necessary or appropriate in furtherance of the purposes of the Exchange 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 proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act²⁰ and Rule 19b-4(f)(2) thereunder,²¹ because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the Exchange. 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.

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(4).

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

²¹ 17 CFR 240.19b-4(f)(2).

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-2009-85 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-2009-85. 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 inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also 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-2009-85 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Florence E. Harmon
Deputy Secretary

²² 17 CFR 200.30-3(a)(12).