

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61141; File No. SR-Phlx-2009-101)

December 10, 2009

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing of Proposed Rule Change Relating to Collection of Exchange Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4² thereunder, notice is hereby given that on December 8, 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 amend Exchange Rule 909, Security for Exchange Fees and Other Claims, to require member organizations to provide a clearing account number at the National Securities Clearing Corporation ("NSCC") for purposes of permitting the Exchange to debit any undisputed or final fees, fines, charges and/or other monetary sanctions or monies due and owing to the Exchange.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, on the Commission's Web site at <http://www.sec.gov>, 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 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 create an efficient method of collecting undisputed or final fees, fines, charges and/or other monetary sanctions or monies due and owing to the Exchange.³ This proposal will provide a cost savings to the Exchange in that it will alleviate administrative processes related to the collection of monies owed to the Exchange. Collection matters divert staff resources away from the Exchange's regulatory and business purposes. In addition, the debiting process will prevent member accounts from becoming overdue.

The Exchange proposes to eliminate the requirement to provide and maintain a security deposit. Currently, Rule 909 requires member organizations and applicants for registration to provide and maintain a security deposit in an amount not to exceed \$50,000, unless the member organization maintains excess net capital of at least the amount established by the Exchange in which case a deposit is not required. The Exchange proposes to amend Rule 909 to eliminate all

³ The Exchange will not debit accounts for fees that are unusually large or for special circumstances, unless such debiting is requested by the member.

references to the security deposit and the excess net capital requirements. The security deposit was meant to require adequate financial security for the debts of member corporations and for ensuring that member corporations are generally financially solvent. The Exchange would instead propose to require member organizations and applicants to provide a clearing account number for an account at NSCC in order to permit the Exchange to debit undisputed or final fees, fines, charges and/or other monetary sanctions or monies due and owing to the Exchange or other charges related to Rule 924⁴. The Exchange will send a monthly invoice⁵ to each member organization on approximately the 4th – 6th business day of the following month.⁶ The Exchange will also send a file to NSCC each month on approximately the 23rd of the following month to initiate the debit of the appropriate amount stated on the member's invoice for the prior month. Because the members will receive an invoice well before any monies are debited (normally within two weeks), the members will have adequate time to contact the staff with any questions concerning their invoice. If a member disputes an invoice, the Exchange will not include the disputed amount in the debit if the member has disputed the amount in writing to the Exchange's designated staff by the 15th of the month, or the following business day if the 15th is not a business day, and the amount in dispute is at least \$10,000 or greater.

⁴ Exchange Rule 924 entitled, Obligations of Members and Member Organizations to the Exchange, states, among other things, that members and member organizations shall be liable for such fees, fines, dues, penalties and other amounts imposed by the Exchange.

⁵ The monthly invoice will indicate that the amount on the invoice will be debited from the designated NSCC account. Each month, the Exchange will send a file to the member's clearing firm which will indicate the amounts to be debited from each member. If a member is "self-clearing", no such file would be sent as the member would receive the invoice, as noted above, which would indicate the amount to be debited.

⁶ By way of example, October invoices were sent on November 5th.

Once NSCC receives the file from the Exchange, NSCC would proceed to debit the amounts indicated from the clearing members' account. In the instance where the member clears through an Exchange clearing member, the estimated transactions fees owed to the Exchange are typically debited by the clearing member on a daily basis using daily transaction detail reports provided by the Exchange to the clearing member⁷ in order to ensure adequate funds have been escrowed. The Exchange would debit any monies owed including undisputed or final fees⁸, fines, charges and/or other monetary sanctions or monies due and owing to the Exchange.⁹ The Exchange believes that the debit process eliminates the need to require a security deposit since the Exchange would debit member accounts at NSCC on a given day of each month and such debiting would eliminate the risk of unpaid invoices because of the large amounts of capital held at NSCC by members.

Additionally, the Exchange proposes amending the title of Rule 909 from "Security for Exchange Fees and Other Claims" to "Collection of Exchange Fees and Other Claims" in order to more accurately describe the proposed rule. The Exchange would provide members with a

⁷ The Exchange provides a Daily Transaction Detail Report to Clearing Members on a daily basis.

⁸ Exchange fees are noted on the Exchange Fee Schedule.

⁹ This includes, among other things, fines which result from: violation of Rule 60, Order and Decorum; violations of the Minor Rule Plan pursuant to Rule 970; monetary sanctions imposed by the Business Conduct Committee relating to a Letter of Caution; and monetary sanctions imposed by a Hearing Panel in connection with Disciplinary Violations. With respect to disciplinary sanctions that are imposed by either the Business Conduct Committee or a Hearing Panel, the Exchange would not debit any monies until such action is final. The Exchange would not consider an action final until all appeal periods have run and/or all appeal timeframes are exhausted. With respect to non-disciplinary actions, the Exchange would similarly not take action to debit a member account until all appeal periods have run and/or all appeal timeframes are exhausted. Any uncontested disciplinary or non-disciplinary actions will be debited, and the amount due will appear on the members invoice prior to the actual NSCC debit.

thirty day period, upon approval of this proposal, to provide the Membership Department with an NSCC number, if they have not already provided such a number in the past.¹⁰

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹² in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by providing its members with an alternative to providing a security deposit to the Exchange while also providing members with an efficient process to pay undisputed or final fees, fines, charges and/or other monetary sanctions or monies due and owing to the Exchange. The Exchange believes that this process of debiting NSCC accounts will ease the member's administrative burden in paying monthly invoices, avoid overdue balances and provide same day collection from all members, who owe monies to the Exchange, which results in equitable treatment.

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.

¹⁰ Currently, there are members who have provided the Exchange with an NSCC clearing account number, which accounts are already debited on a monthly basis.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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. Please include File Number SR-Phlx-2009-101 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-2009-101. 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 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-2009-101 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.¹³

Florence E. Harmon
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).