

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

Securities Exchange Act of 1934  
Release No. 61547 / February 19, 2010

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In the Matter of:	)	
	)	
NASDAQ OMX PHLX, Inc.	)	ORDER
	)	OF
File Nos. SR-Phlx-2009-104,	)	SUMMARY
SR-Phlx-2009-116, &	)	ABROGATION
SR-Phlx-2010-14	)	
	)	
_____	)	

Notice is hereby given that the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(3)(C) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> is summarily abrogating three proposed rule changes of NASDAQ OMX PHLX, Inc. (“Phlx” or “Exchange”).

On December 22, 2009, on December 31, 2009, and on January 26, 2010, Phlx filed proposed rule changes to amend its fee schedule. In SR-Phlx-2009-104, Phlx proposed to amend its fee schedule, to among other things, assess a transaction fee of \$0.05 per contract on Phlx specialists, Streaming Quote Traders (“SQTs”) and Remote Streaming Quote Traders (“RSQTs”)<sup>2</sup> for equity option orders directed to them by an

<sup>1</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>2</sup> Streaming Quote Traders, or “SQTs,” and Remote Streaming Quote Traders, or “RSQTs,” are Phlx market makers who may generate and submit option

order flow provider and executed electronically. A Phlx specialist, SQT, or RSQT would be assessed a transaction fee of \$0.21 per contract when it trades with an order not directed to it. In SR-Phlx-2009-116, Phlx proposed to amend its fee schedule to adopt, for a two-month pilot period expiring March 2, 2010, a per contract transaction fee on market participants who remove liquidity from the Exchange in options on Standard & Poor's Depository Receipts/SPDRs ("SPY") and a per contract rebate or transaction fee for market participants who add liquidity in SPY options.<sup>3</sup> The amount of such transaction fees and rebates vary depending on the type of market participant. In SR-Phlx-2010-14, Phlx proposed to amend its fee schedule to apply, for a pilot period expiring March 2, 2010, the same per contract transaction fees and rebates Phlx adopted in SR-Phlx-2009-116 for transactions in options on SPY to transactions in options overlying the PowerShares QQQ Trust ("QQQQ")®; Ishares Russell 2000 ("IWM"), and Citigroup Inc. ("C").

The proposed rule changes were immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.<sup>4</sup> Pursuant to Section 19(b)(3)(C) of the Act,<sup>5</sup> at any time within 60 days of the date of filing a proposed rule change pursuant to Section 19(b)(1) of the Act,<sup>6</sup> the Commission may summarily abrogate the change in the rules of the self-regulatory organization and require that the

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quotations electronically on the Phlx. RSQTs may only submit quotations from off the floor.

<sup>3</sup> Phlx filed Amendment No. 1 to SR-Phlx-2009-116 on January 5, 2010 to correct a typographical error in the purpose section to make it consistent with the fee schedule provided in Exhibit 5 thereto.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>6</sup> 15 U.S.C. 78s(b)(1).

proposed rule change be re-filed in accordance with the provisions of Section 19(b)(1) of the Act<sup>7</sup> and reviewed in accordance with Section 19(b)(2) of the Act,<sup>8</sup> 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.

The Commission is concerned about whether the proposals are consistent with the statutory requirements applicable to a national securities exchange under the Act, including, among other provisions, Section 6(b)(4) of the Act,<sup>9</sup> which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities; Section 6(b)(5) of the Act,<sup>10</sup> which requires, among other things, that the rules of a national securities exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and Section 6(b)(8) of the Act,<sup>11</sup> which requires that the rules of a national securities exchange do not impose any burden on competition not necessary or appropriate in furtherance of the Act.

Accordingly, the Commission believes that the procedures provided by Section 19(b)(2) of the Act<sup>12</sup> will provide a more appropriate mechanism for determining whether the proposed rule changes are consistent with the Act. Therefore, the Commission finds that it is appropriate in the public interest, for the protection of

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<sup>7</sup> Id.

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78f(b)(8).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

investors, and otherwise in furtherance of the purposes of the Act, to abrogate the proposed rule changes.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(3)(C) of the Act,<sup>13</sup> that File Nos. SR-Phlx-2009-104, SR-Phlx-2009-116, as modified by Amendment No. 1, and SR-Phlx-2010-14, be and hereby are, summarily abrogated. If Phlx chooses to re-file the proposed rule changes, it must do so pursuant to Sections 19(b)(1)<sup>14</sup> and 19(b)(2) of the Act.<sup>15</sup>

By the Commission.

Elizabeth M. Murphy  
Secretary

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>14</sup> 15 U.S.C. 78s(b)(1).

<sup>15</sup> 15 U.S.C. 78s(b)(2).