

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60188; File No. SR-Phlx-2009-48)

June 29, 2009

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

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 June 19, 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 aggregate options orders within a specified time period for the purpose of assessing the Cancellation Fee. In addition, the Exchange proposes several technical amendments to delete obsolete language and further clarify the Fee Schedule.

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 July 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 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 amend the manner in which the Cancellation Fee is assessed on members. In order to calculate the Cancellation Fee, the Exchange proposes to aggregate and count as one executed customer³ option order all customer orders from the same member organization that are executed in the same series on the same side of the market at the same price within a 300 second period. The Exchange believes the level of cancelled orders remains high. Some customers are seeking to avoid the fee by executing large quantities of small orders in out-of-the-money options to offset their cancellation activity in more actively traded options.

The Exchange believes this modification to the calculation of the Cancellation Fee is necessary for the Exchange to recover costs associated with system congestion.

³ See e.g. Exchange Rule 1080(b)(i)(A) which defines customer order as [sic]“...is any order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.”

Currently, the Exchange assesses a Cancellation Fee of \$ 2.10 per order on member organizations for each cancelled electronically⁴ delivered customer order in excess of the number of customer orders executed on the Exchange by that member organization in a given month. The Exchange calculates the Cancellation Fee by aggregating all customer orders and cancels received by the Exchange and totaling those orders by member organization. At least 500 customer cancellations must be made in a given month by a member organization in order for a member organization to be assessed the Cancellation Fee. The Cancellation Fee is not assessed in a month in which fewer than 500 electronically delivered customer orders are cancelled. Simple cancels and cancel-replacement orders are the types of orders that are counted when calculating the number of electronically delivered orders.⁵ The following order activity is exempt from the Cancellation Fee: (i) pre-market cancellations;⁶ (ii) Complex Orders⁷ that are

⁴ The Exchange previously referred to the electronic order delivery, routing, execution and reporting system as AUTOM. This system provided for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. See Exchange Rule 1080. The Exchange filed a rule change which replaced the terms AUTOM and AUTO-X with the Phlx XL System, such that references to both terms refer to Phlx XL. See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32).

Therefore, in light of the rule change references to AUTOM have been replaced with the words electronically delivered in describing the Cancellation Fee.

⁵ A cancel-replacement order is a contingency order consisting of two or more parts which require the immediate cancellation of a previously received order prior to the replacement of a new order with new terms and conditions. If the previously placed order is already filled partially or in its entirety the replacement order is automatically canceled or reduced by such number. See Exchange Rule 1066(c)(7).

⁶ See Securities Exchange Act Release Nos. 53226 (February 3, 2006), 71 FR 7602 (February 13, 2006)(SR-Phlx-2005-92); and 53670 (April 18, 2006), 71 FR 21087 (April 24, 2006) (SR-Phlx-2006-21). See also Securities Exchange Act Release No. 60046 (June 4, 2009), 74 FR 28083 (June 12, 2009) (SR-Phlx-2009-44).

submitted electronically; (iii) unfilled Immediate-or-Cancel⁸ customer orders; and (iv) cancelled customer orders that improved the Exchange's prevailing bid or offer (PBBO) market at the time the customer orders were received by the Exchange.

Additionally, the Exchange proposes to amend the Fee Schedule at endnote 5 to replace the current language: "Firm Proprietary Options Transaction Charge applies to firm proprietary orders ("F" account type) in all products" to state instead that it applies to "...equity option products." The language in the Fee Schedule was amended by a previous rule change⁹ and was inadvertently omitted from the corresponding endnote. The Exchange also proposes to make a technical amendment to the Fee Schedule to replace all references to AUTOM with the words "electronically delivered." As previously stated herein, the Exchange has modified Rule 1080 to replace the terms AUTOM and AUTO-X with the Phlx XL System, such that references to both terms refer to Phlx XL. Therefore, in light of the rule change the Exchange proposes to replace references to AUTOM with the words "electronically delivered" to correspond with Exchange Rule 1080.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(4) of

⁷ A Complex Order is composed of two or more option components and is priced as a single order (a "Complex Order Strategy") on a net debit or net credit basis.

⁸ An Immediate-or-Cancel (IOC) order is a limit order that is to be executed in whole or in part upon receipt. Any portion not so executed shall be cancelled.

⁹ See Securities Exchange Act Release No. 59545 (March 9, 2009); 74 FR 11158 (March 16, 2009) (SR-Phlx-2009-20).

¹⁰ 15 U.S.C. 78f(b).

the Act¹¹ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the proposed amendments to the Cancellation Fee will continue to fairly allocate costs among members according to system use as well as ease system congestion. Additionally, the proposed technical amendments will clarify the Fee Schedule.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹² and paragraph (f)(2) of Rule 19b-4¹³ 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.

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 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-2009-48 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-2009-48. 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, 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 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-2009-48 and should be submitted on or before [insert date 21 days after publication in the Federal Register].

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

Elizabeth M. Murphy
Secretary

¹⁴ 17 CFR 200.30-3(a)(12).