

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60210; File No. SR-Phlx-2009-53)

July 1, 2009

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of a Pilot Program Relating to Fees Applicable to “P” and “P/A” Orders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on June 29, 2009, NASDAQ OMX PHLX, Inc. (“Phlx” or the “Exchange”) filed with the Securities and Exchange Commission (the “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 extend for a one-year period until July 31, 2010, a pilot program relating to transaction fees applicable to the execution of Principal Acting as Agent Orders (“P/A Orders”)<sup>3</sup> and Principal Orders (“P Orders”)<sup>4</sup> sent to the Exchange via the Intermarket Option Linkage (“Linkage”) under the Plan for the Purpose of Creating and

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 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 1083(k)(i).

<sup>4</sup> 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 1083(k)(ii).

Operating an Intermarket Option Linkage (the “Plan”).<sup>5</sup> The current pilot plan is scheduled to expire July 31, 2009.<sup>6</sup>

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 purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those 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 extend the current pilot program for one year, through July 31, 2010. No substantive changes are being made to the pilot as it currently operates other than to extend the pilot through July 31, 2010.

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<sup>5</sup> See Securities Exchange Act Release Nos. 44482 (July [sic] 27, 2001), 66 FR 35470 (July 5, 2001) (Amendment to Plan to Conform to the Requirements of Securities Exchange Act Rule 11Ac1-7); 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (Notice [sic] of Phlx Joining the Plan); and 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (Approval of the Plan).

<sup>6</sup> See Securities Exchange Act Release No. 58144 (July 11, 2008), 73 FR 41394 (July 18, 2008) (SR-Phlx-2008-49).

Currently, the Exchange charges \$0.45 per option contract for P Orders sent to the Exchange and \$0.30 per option contract for P/A Orders.<sup>7</sup>

By extending the current pilot program, the Exchange should remain competitive with other exchanges that charge fees for P Orders and P/A Orders. Consistent with current practice, the Exchange will charge the clearing member organization of the sender of P Orders and P/A Orders. Also, consistent with current practice, the Exchange will not charge for the execution of Satisfaction Orders sent through Linkage.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act<sup>8</sup>, in general, and furthers the objectives of Section 6(b)(4)<sup>9</sup> of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members and other persons using its facilities. The Exchange believes that its proposal to extend the pilot program relating to transaction fees for Linkage P and P/A Orders provides for the equitable allocation of reasonable dues, fees, and other charges among its members by charging the same fees to all such members using the Exchange's facilities for transaction services relating to Linkage P Orders, and by charging the same fees to all such members using the Exchange's facilities for transaction services relating to Linkage P/A Orders.

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<sup>7</sup> In May, 2009, the Exchange increased its transaction fees for P/A Orders from \$0.15 per option contract to \$0.30 per option contract, and for P Orders from \$0.25 per option contract to \$0.45 per contract. The fee increase was made part of the current pilot program, which is scheduled to expire July 31, 2009. See Securities Exchange Act Release No. 59891 (May 8, 2009), 74 FR 22990 (May 15, 2009) (SR-Phlx-2009-24).

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

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

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 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 with respect to the proposed rule change.

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

Because the foregoing proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

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.

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2009-53 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-2009-53. 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 such 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-2009-53 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.<sup>12</sup>

Elizabeth M. Murphy  
Secretary

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<sup>12</sup> 17 CFR 200.30-3(a)(12).