

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60267; File No. SR-Phlx-2009-42)

July 9, 2009

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change as Modified by Amendment No. 2 Thereto Relating to Complex Orders

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 26, 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. On July 2, 2009, the Exchange filed Amendment No. 1 to the proposed rule change. On July 7, 2009, Phlx filed Amendment No. 2 to the proposed rule change and withdrew Amendment No. 1. 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 assess a \$.01 per contract fee for Complex Orders³ in equity options that are directed to specialists, Streaming Quote Traders ("SQTs")⁴ and Remote

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A Complex Order is composed of two or more components and is priced as a single order (a "Complex Order Strategy") on a net debit or credit basis. See Exchange Rule 1080, Commentary .08. For a complete description of the Exchange's Complex Order System.[sic] See also Securities Exchange Act Release No. 58361 (August 14, 2008), 73 FR 49529 (August 21, 2008) (SR-Phlx-2008-50).

⁴ An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. See Exchange Rule 1014(b)(ii)(A).

Streaming Quote Traders (“RSQTs”)⁵ by a member or member organization and are executed electronically as part of a Complex Order.

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 for trades settling on or after 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.

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 assess a \$.01 per contract fee for Complex Orders⁶ in equity options that are directed to specialists, Streaming Quote Traders (“SQTs”)⁷ and

⁵ An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Exchange Rule 1014(b)(ii)(B).

⁶ A Complex Order is composed of two or more components and is priced as a single order (a “Complex Order Strategy”) on a net debit or credit basis. See Exchange Rule 1080,

Remote Streaming Quote Traders (“RSQTs”) (“Directed Participants” or “Directed Specialists, RSQTs, or SQTs”⁸) by a member or member organization (“Order Flow Provider” or “OFP”)⁹, and executed electronically on the Exchange’s electronic trading platform for options, the Phlx XL II system.¹⁰ The \$0.01 per contract rate would be assessed to the Direct [sic] Participants, in lieu of the equity options transactions fees of \$.22 per contract side for Registered Option Traders (“ROT”) (on-floor) and \$.21 per contract side for specialists on contracts executed electronically as part of a Complex Order.¹¹ This fee assessment would not apply to single sided Directed Orders¹² pursuant to Exchange Rule 1080(l). Customers who are on the contra-side of

Commentary .08. For a complete description of the Exchange’s Complex Order System.[sic] See also Securities Exchange Act Release No. 58361 (August 14, 2008), 73 FR 49529 (August 21, 2008) (SR-Phlx-2008-50).

⁷ An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. See Exchange Rule 1014(b)(ii)(A).

⁸ See Exchange Rule 1080(l), “...The term ‘Directed Specialist, RSQT, or SQT’ means a specialist, RSQT, or SQT that receives a Directed Order.” A Directed Participant has a higher quoting requirement as compared with a specialist, SQT or RSQT who is not acting as a Directed Participant. See Exchange Rule 1014.

⁹ See Exchange Rule 1080(l). “...The term "Order Flow Provider" ("OFP") means any member or member organization that submits, as agent, customer orders to the Exchange.”

¹⁰ See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32).

¹¹ In addition the Exchange notes that currently Registered Option Traders (on-floor) and specialists that exceed 4.5 million contracts (“Volume Threshold”) in a given month are assessed \$.01 per contract on contract volume above the Volume Threshold instead of the applicable options transaction charges.

¹² See Exchange Rule 1080(l), “...The term "Directed Order" means any customer order (other than a stop or stop-limit order as defined in Rule 1066) to buy or sell which has been directed to a particular specialist, RSQT, or SQT by an Order Flow Provider, as defined below. To qualify as a Directed Order, an order must be delivered to the Exchange via AUTOM..” See also See [sic] Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32) (The Exchange replaced

a trade involving Directed Orders would not be subject to a fee. Also, Complex Orders in index and foreign currency options would not be subject to this assessment, but will continue to be assessed the option transaction charges in effect on the Exchange for simple orders for all participants. The Exchange proposes this amendment in order to create incentives for specialists, SQTs and RSQTs that receive directed order flow to provide liquidity in Complex Orders sent to the Exchange for execution and to encourage directed order flow.

Currently, the Exchange assesses an equity option transaction charge of \$.08 per contract side for specialists and ROTs, including SQTs and RSQTs, on contracts executed electronically as part of a Complex Order in equity options. Market participants other than specialists and ROTs are assessed the applicable current equity option transaction charge. Complex Orders are currently assessed on a net debit/credit basis and are billed on a per contract side basis, regardless of the manner in which the order was delivered to the Exchange.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act¹³ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁴ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. Specifically, the Exchange believes that this proposal is equitable because it would apply evenly to specialists, SQTs and RSQTs transacting with Complex Orders sent to the Exchange for execution, in that any specialist, SQT or RSQT may act as a Directed

the terms `AUTOM and AUTO-X with the Phlx XL System, such that references to both terms refer to Phlx XL.)

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4).

Participant and receive the \$.01 per contract fee. Also, the Exchange believes this proposal will increase liquidity in Complex Orders.

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 Act¹⁵ and paragraph (f)(2) of Rule 19b-4¹⁶ 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.

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

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 240.19b-4(f)(2).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2009-42 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-2009-42. 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 No. SR-Phlx-2009-42 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.¹⁷

Elizabeth M. Murphy
Secretary

¹⁷ 17 CFR 200.30-3(a)(12).