

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60477; File No. SR-Phlx-2009-67)

August 11, 2009

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Firm Proprietary Facilitation Orders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,¹ notice is hereby given that on August 5, 2009, NASDAQ OMX PHLX, Inc. ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to waive the Firm Proprietary Options Transaction Charge for members executing facilitation orders² when such members are trading in their own proprietary account.

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 August 11, 2009.

¹ 15 U.S.C. 78s(b)(1).

² A facilitation occurs when a floor broker holds an options order for a public customer and a contra-side order for the same option series and, after providing an opportunity for all persons in the trading crowd to participate in the transaction, executes both orders as a facilitation cross. See Exchange Rule 1064.

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, Phlx 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 Phlx 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, Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to encourage firm facilitation transactions, raise additional revenue for the Exchange and create incentive for Member Organizations to continue to facilitate customer order flow. Currently, the Firm Proprietary Options Transaction Charge is \$.24 per contract. This fee applies to firm proprietary orders ("F" account type) in equity options products. In addition, Firm Proprietary Options Transaction Charges is capped in the aggregate for one billing month at \$75,000 per member organization ("Monthly Firm Cap"), except for orders of joint back-office ("JBO") participants.³

³ A JBO participant is a Member, Member Organization or non-member organization that maintains a JBO arrangement with a clearing broker-dealer ("JBO Broker") subject to the requirements of Regulation T Section 220.7 of the Federal Reserve System. See also Exchange Rule 703. JBO participant orders are excluded from the definition of Firm Proprietary because the Exchange is

The Exchange is proposing to waive the \$.24 Firm Proprietary Options Transaction Charge for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own proprietary account.⁴ The Exchange desires to waive the Firm Proprietary Options Transaction Charge for member transacting proprietary trades in their own account to encourage member firms to facilitate additional customer order flow.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act⁶ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the waiver of the Firm Proprietary Options Transaction Charge is equitable because it uniformly applies to all member organizations. This waiver is consistent with the current fee schedule and industry fee assessments of member firms that allow for different rates to be charged for different order types originated by dissimilarly classified market participants.⁷ For example, the Exchange assesses different transaction fees applicable to the execution of Principal Acting as Agent

unable to differentiate orders of a JBO participant from orders of its JBO Broker and therefore is unable to aggregate the JBO participant's orders for purposes of the defining Firm Proprietary transactions. JBO participant orders may employ the F-account type and qualify for the firm proprietary charge, but would not be eligible for the Monthly Firm Cap.

⁴ The waiver would not apply to orders where a member is acting as agent on behalf of a non-member.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

⁷ NYSE Amex currently charges different rates to different market participants in assessing its firm facilitation fee. See Securities Exchange Act Release No. 60378 (July 23, 2009), 74 FR 38245 (July 31, 2009) (SR-NYSEAmex-2009-38).

Orders (“P/A Orders”)⁸ and Principal Orders (“P Orders”)⁹ sent to the Exchange via the Intermarket Option Linkage (“Linkage”) under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the “Plan”). The Exchange charges \$0.45 per option contract for P Orders sent to the Exchange and \$.30 per contract for P/A Orders.¹⁰ The Exchange believes that waiving the Firm Proprietary Options Transaction Charge for members executing facilitation orders pursuant to Exchange Rule 1064 when such members are trading in their own account is consistent with rate differentials that exist in the current fee schedule and serves to encourage members to facilitate customer order flow.

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)

⁸ 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).

⁹ 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).

¹⁰ See Securities Exchange Act Release No. 60210 (July 1, 2009), 74 FR 32989 (July 9, 2009) (SR-Phlx-2009-53).

of the Act¹¹ and subparagraph (f)(2) of Rule 19b-4¹² 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2009-67 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-2009-67. 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

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(2).

<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 Phlx. 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-2009-67 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).