

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60547; File No. SR-Phlx-2009-70)

August 20, 2009

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Eliminate Late Charges and Provide for Suspension or Termination for Failure to Pay Dues, Fees, or Assessments Owed

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 August 12, 2009, NASDAQ OMX PHLX, Inc. (“Phlx” or “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 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

NASDAQ OMX PHLX, Inc., pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)³ and Rule 19b-4 thereunder,⁴ proposes to amend Exchange By-Law 14-1 to eliminate the reference to late charges for failure to pay any fees, dues or charges owed to the Exchange. The Exchange also proposes to amend Exchange By-Law 14-5 to dispose of the foreign currency options participation of a member, member organization, participant or participant organization if monies due and owed are not paid within 90 days. Additionally, the Exchange proposes to amend Exchange Rule 50 to eliminate the assessment of late charges for dues, fees and other charges not made to the Exchange as required and provide for suspension or

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

termination of membership of any member or member organization or any person associating with any member that fails to pay, after written notice, any required dues, fees or other charges or fails to submit a required report or information related to the required dues, fees or other charges. The Exchange also proposes to amend Exchange Rule 960.6 to extend the requirement that the respondents may file a written reply to a summary decision within 21 days instead of 15 days.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>.

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

Generally the Exchange proposes to amend its rules relating to the failure to pay dues, fees and other charges to harmonize the Exchange rules with Equity Rule 9553 of The NASDAQ Stock Market LLC ("NASDAQ"). To effectuate the proposal, a series of minor amendments are introduced. More specifically, the Exchange proposes to amend Exchange By-Law 14-1 to eliminate the reference to late charges for failure to pay any fees, dues or charges owed to the

Exchange. The Exchange is proposing to no longer charge a late charge for the failure to pay any fees, dues or charges owed to the Exchange.

The Exchange also proposes to amend Exchange By-Law 14-5 to change the length of time allowed to dispose the foreign currency options participation of a member, member organization, participant or participant organization if monies due and owing are not paid. More specifically the proposed amendment will change the termination of a foreign currency options participation of a member, member organization, participant or participant organization if monies due and owing are not paid from within one year to within 90 days to comport with more efficient processing of regular membership or participation.

Additionally, the Exchange proposes to amend Exchange Rule 50 to eliminate the assessment of late charges for dues, fees and other charges not made to the Exchange as required. Instead, the proposal provides for suspension of membership of any member or member organization or suspension any person associating with any member or member organization that fails to pay, within 21 days of service of written notice of suspension, any required dues, fees or other charges. The proposal also provides for termination of membership of any member or member organization or termination any person associating with any member or member organization that fails to pay, within 21 days of service of written notice of termination, any required dues, fees or other charges. Certain Exchange dues, fees or other charges are based upon self-reported information.⁵ For this reason, the proposal also provides suspension of membership of any member or member organization or suspension any person associating with any member or member organization that fails to submit the required report or information

⁵ For a list of fees, see the NASDAQ OMX PHLX Fee Schedule at www.nasdaqtrader.com/Micro.aspx?id=phlx, Equity Options Customer Fees, NASDAQ OMX PHLX Fee Schedule. Also see NASDAQ OMX PHLX Rules 703(e), Due Dates, Fees for Late Filing, and 712, Independent Audit.

related to the dues, fees or other charges within 21 days of service of written notice of suspension. Similarly, the proposal also provides for termination of membership of any member or member organization or termination any person associating with any member or member organization that fails to submit any report or information related to the dues, fees or other charges within 21 days of service of written notice of termination. The proposed changes will result in a more efficient systematic process of the collection of fees, dues and other charges owed the Exchange and comports with NASDAQ Equity Rule 9553. The proposed changes also provide guidance regarding service of notice of suspension or termination; contents of the notice; effective date of suspension or termination; request for hearing; the failure to request a hearing; and a request for termination of the suspension.

The Exchange also proposes to amend Exchange Rule 960.6 to change the requirement that the respondents may file a written reply to a summary decision within 21 days of service of written notice instead of 15. This proposal is similar to the requirements of the NASDAQ Equity Rule 9553(f).

2. Statutory Basis

The Exchange believes that its proposal to amend By-Laws 14-1 and 14-5 and to eliminate Rule 50 and amend Rule 960.6 is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(7) of the Act⁷ in particular in that the proposed amendments provide a fair procedure for the disciplining of members and persons associated with members and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange of a member, member organization, participant or participant organization thereof. The Exchange believes that the proposal is consistent with

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(7).

these obligations in that the amendments provide that members, member organizations, participants, participant organizations or persons associated with such may be suspended or terminated, after written notice, for the failure to pay dues, fees and other charges owed to the Exchange. The Exchange believes that eliminating references to charges for the failure to pay fees, dues and other charges owed the Exchange and to provide for a systematic process to suspend or terminate members or persons associated with members provides for a fair and efficient process for handling the collection of dues , fees and other charges owed to the Exchange. The Exchange’s proposal is similar to that of the NASDAQ Stock Market LLC.

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 proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

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

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 C.F.R. 240.19b-4(f)(6).

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-2009-70 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2009-70. 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 publicly available. All submissions should refer to File Number SR-Phlx-2009-70 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.¹⁰

Florence E. Harmon
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).