

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60587; File No. SR-Phlx-2009-73)

August 28, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Standard and Poor's Depository Receipts/SPDRs ("SPY") Equity Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 20, 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 assess a \$.05 per contract fee for Standard and Poor's Depository Receipts/SPDRs ("SPY")<sup>3</sup> equity options that are directed to specialists, Streaming Quote Traders ("SQTs")<sup>4</sup> and Remote Streaming Quote Traders ("RSQTs")<sup>5</sup> by a member or

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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> SPY options are based on the SPDR exchange-traded fund ("ETF"), which is designed to track the performance of the S&P 500 Index.

<sup>4</sup> 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).

<sup>5</sup> 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

member organization and are executed electronically in lieu of the existing specialist and Registered Options Trader (on-floor) equity options transaction fees.

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 25, 2009.

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 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 create incentives for specialists, SQTs and RSQTs that receive directed order flow to provide liquidity in SPY equity options contracts sent to the Exchange for execution. The Exchange believes this incentive will allow the Exchange to remain competitive, while encouraging additional order flow in options overlaying SPY. The

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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).

Exchange proposes to assess a \$.05 per contract fee in SPY equity options that are directed to specialists, SQTs and RSQTs (“Directed Participants” or “Directed Specialists, RSQTs, or SQTs”<sup>6</sup>) by a member or member organization (“Order Flow Provider” or “OFP”)<sup>7</sup>, and executed electronically on the Exchange’s electronic trading platform for options, the Phlx XL II system. The \$.05 per contract rate would be assessed to the Direct Participants, in lieu of the equity options transactions fees of \$.22 per contract side for Registered Option Traders (“ROTs”) (on-floor) and \$.21 per contract side for specialists on contracts executed electronically. Customers who are on the contra-side of a trade involving Directed Orders would not be subject to a fee and will remain free of charge.

The Exchange currently provides a discount for ROTs (on-floor) and specialists that exceed 4.5 million contracts in a given month (the "Volume Threshold") by assessing \$ 0.01 per contract on contract volume above the Volume Threshold instead of the applicable options transaction charges. The Exchange aggregates the trading activity of separate ROTs (on-floor) and specialists for purposes of the Volume Threshold if there is at least 75% common ownership between the member organizations as reflected on each member organization’s Form BB, Schedule A. The Exchange proposes to assess a \$0.01 per contract instead of a \$0.05 per contract fee for SPY equity option transactions when the Directed Participant exceeds the 4.5 million contracts Volume Threshold in a given month. The contract volume associated with SPY equity options contracts, including the proposal to assess a \$.05 per contract fee in SPY

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<sup>6</sup> 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.

<sup>7</sup> 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.”

equity options, would therefore be included in the Volume Threshold calculation and the \$0.01 per contract rate would apply in the event a Directed Participant reaches the 4.5million contracts Volume Threshold.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>9</sup> 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 SPY equity options contracts sent to the Exchange for execution, in that any specialist, SQT or RSQT [sic]

### 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 Act<sup>10</sup> and paragraph (f)(2) of Rule 19b-4<sup>11</sup> thereunder. At any time within 60 days of the filing

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

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

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

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2009-73 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-2009-73. 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 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 offices 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-2009-73, 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>

Florence E. Harmon  
Deputy Secretary

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