

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61617; File No. SR-Phlx-2010-22)

March 1, 2010

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Linkage Pilot

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 February 24, 2010, 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 self-regulatory organization. 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 discontinue its current pilot program (the “pilot”) relating to fees applicable to Principal Acting as Agent Orders (“P/A Orders”)<sup>3</sup> and Principal Orders (“P Orders”).<sup>4</sup> The text of the proposed rule change is available on Phlx’s Web site at [www.nasdaqtrader.com](http://www.nasdaqtrader.com), on the Commission’s Web site at [www.sec.gov](http://www.sec.gov), at Phlx, and at the Commission’s Public Reference Room.

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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 1088, Phase Out of Intermarket Linkage Rules.

<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 1088, Phase Out of Intermarket Linkage Rules.

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 self-regulatory organization 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 discontinue the current pilot program related to transaction fees for P/A Orders and P Orders sent to the Exchange via the Intermarket Option Linkage ("Linkage") under the former Plan for the Purpose of Creating and Operating an Intermarket Linkage ("Linkage Plan").<sup>5</sup> The current pilot is set to expire July 31, 2010.<sup>6</sup>

On June 17, 2008, the Exchange filed an executed copy of the Options Order Protection and Locked/Crossed Market Plan ("Plan"), joining all other approved options markets in

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<sup>5</sup> See Securities Exchange Act Release No. 60363 (July 22, 2009), 74 FR 37270 (July 28, 2009) (SR-Phlx-2009-61). Linkage was governed by the Options Linkage Authority under the conditions set forth under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage approved by the Commission. The registered U.S. options markets are linked together on a real-time basis through a network capable of transporting orders and messages to and from each market.

<sup>6</sup> See Securities Exchange Act Release No. 60210 (July 1, 2009), 74 FR 32989 (July 9, 2009) (SR-Phlx-2009-53).

adopting the Plan.<sup>7</sup> The Plan requires each options exchange to adopt rules implementing various requirements specified in the Plan.<sup>8</sup>

The Plan replaces the Linkage Plan. The Linkage Plan required Participating Options Exchanges to operate a stand-alone system or “Linkage” for sending order-flow between exchanges to limit trade-throughs.<sup>9</sup> The Options Clearing Corporation (“OCC”) operated the Linkage system (the “System”).<sup>10</sup> The Exchange adopted various new rules in connection with the Plan to avoid trade-throughs and locked markets, among other things.<sup>11</sup> The Exchange currently offers private routing directly to away markets.<sup>12</sup>

The pilot, which is set to expire on July 31, 2010, relates to fees charged by the Exchange for both P/A and P Orders. The Exchange currently charges \$.45 per option contract for P Orders sent to the Exchange and \$.30 per option contract for P/A Orders. The current pilot

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<sup>7</sup> See Securities Exchange Act Release Nos. 60405 (July 20, 2009) (National Market System Plan Relating to Options Order Protection and Locked/Crossed Markets). The Plan is a national market system plan proposed by the seven existing options exchanges and approved by the Commission. See Securities Exchange Act Release No. 59647 (March 30, 2009), 74 FR 15010 (April 2, 2009) (File No. 4-546) (“Plan Notice”) and 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (File No. 4-546) (“Plan Approval”). The seven options exchanges are: Chicago Board Options Exchange, Incorporated (“CBOE”); International Securities Exchange LLC (“ISE”); NASDAQ OMX BX, Inc. (“BOX”); The NASDAQ Stock Market LLC (“Nasdaq”); NYSE Amex LLC (“NYSE Amex”); NYSE Arca, Inc. (“NYSE Arca”); and Phlx (each exchange individually a “Participant” and, together, the “Participating Options Exchanges”).

<sup>8</sup> See Securities Exchange Act Release No. 60363 (July 22, 2009), 74 FR 37270 (July 28, 2009) (SR-Phlx-2009-61). Linkage was governed by the Options Linkage Authority under the conditions set forth under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage approved by the Commission. The registered U.S. options markets are linked together on a real-time basis through a network capable of transporting orders and messages to and from each market.

<sup>9</sup> See footnote 7.

<sup>10</sup> See footnote 7.

<sup>11</sup> See footnote 7.

<sup>12</sup> See Exchange Rule 1080(m).

program has been renewed periodically over several years.<sup>13</sup> Because there are no longer any participant exchanges to the Linkage Plan who send Linkage P or P/A Orders, the Exchange proposes to discontinue the pilot.

The Exchange also proposes to amend its Fee Schedule to remove all references to Linkage fees.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>15</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by removing all references to Linkage in the Fee Schedule and to clarify that Linkage fees are no longer applicable.

### 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.

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<sup>13</sup> See Securities Exchange Act Release Nos. 60210 (July 1, 2009), 74 FR 32989 (July 9, 2009) (SR-Phlx-2009-53); 58144 (July 11, 2008), 73 FR 41394 (July 18, 2008) (SR-Phlx-2008-49); 56166 (July 30, 2007), 72 FR 43312 (August 3, 2007) (SR-Phlx-2007-52); 54233 (July 27, 2006), 71 FR 44070 (August 3, 2006) (SR-Phlx-2006-44); 51257 (February 25, 2005), 70 FR 10736 (March 4, 2005) (SR-Phlx-2005-10); 50125 (July 30, 2004), 69 FR 47479 (August 5, 2004) (SR-Phlx-2004-44); 49163 (January 30, 2004), 69 FR 5885 (February 6, 2004) (SR-Phlx-2003-89); and 47953 (May 30, 2003), 68 FR 34027 (June 6, 2003) (SR-Phlx-2003-16).

<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

### 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>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</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.

### 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

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</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.

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2010-22 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-2010-22. 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 Web site viewing and printing 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 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-2010-22 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>18</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).