

a national securities exchange.<sup>5</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>6</sup> which requires that the rules of an exchange to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

The Commission finds good cause for approving this proposal before the 30th day after the publication of notice thereof in the **Federal Register**. The proposal seeks to conform Linkage Fees with the fees charged on other Broker Dealer and Firm executions. The Exchange plans to implement this new Linkage Fee in conjunction with the implementation of the new transactions fees on July 1, 2009.<sup>7</sup> The reduction of transactions fees charged on Linkage Orders to conform with the fees charged on other Broker Dealer and Firm executions does not appear to present any new or significant regulatory concerns. Therefore, the Commission believes that accelerating approval of this proposal would allow the Exchange to implement this new lower Linkage Fee in conjunction with the implementation of the new transactions fees on July 1, 2009.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-NYSEAmex-2009-33) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Elizabeth M. Murphy**,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60209; File No. SR-Phlx-2009-55]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of a Pilot Program Related to a Specialist Fee Credit for Linkage Orders

July 1, 2009.

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 June 29, 2009, 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 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 extend for a one-year period until July 31, 2010, its current pilot programs relating to: (1) An option transaction charge credit of \$0.21 per contract for Exchange options specialist units<sup>3</sup> that incur Phlx option transaction charges when a customer order is delivered electronically via Phlx XL<sup>4</sup> or via the Exchange's Options Floor Broker Management Systems ("FBMS"),<sup>5</sup> and is then executed via the Intermarket Option Linkage ("Linkage")<sup>6</sup> as a Principal Acting as

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Exchange uses the terms "specialists" and "specialist units" interchangeably herein.

<sup>4</sup> See Exchange Rule 1080.

<sup>5</sup> FBMS is designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. FBMS also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. See Exchange Rule 1080, Commentary .06.

<sup>6</sup> Linkage is 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 (the "Plan") 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.

Agent Order ("P/A Order"); and (2) the Floor Broker Linkage P/A fee and Options Specialist Unit Credit, which charges floor brokers an amount equal to the transaction fee(s) assessed on options specialist units by another exchange in connection with customer orders that are delivered to the limit order book via FBMS and executed via Linkage as P/A Orders. The Exchange then provides to options specialist units a credit in an amount equal to the transaction fee(s) assessed on them by another exchange in connection with executing customer orders that are delivered to the limit order book via FBMS and executed via Linkage as P/A Orders.

While changes to the fee schedule pursuant to this proposal are effective upon filing, the Exchange has designated the changes to be in effect for transactions settling on or after July 31, 2009.<sup>7</sup>

The text of the proposed rule change is available on the Exchange's Web site 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 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 Exchange currently provides for an option transaction charge credit of \$0.21 per contract for Exchange options specialist units that incur Phlx option transaction charges when a customer order is delivered electronically via Phlx XL or via FBMS and then is

<sup>5</sup> In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> See SR-NYSEAmex-2009-38

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>7</sup> This proposal is scheduled to be in effect for the same time period as a pilot program relating to fees for Linkage Principal Orders and P/A Orders. See Securities Exchange Act Release No. 58144 (July 11, 2008), 73 FR 41394 (July 18, 2008) (SR-Phlx-2008-49). See also, SR-Phlx-2009-53 filed June 29, 2009.

executed via Linkage as a P/A Order. In addition, the Exchange charges floor brokers an amount equal to the transaction fee(s) assessed on options specialist units by another exchange in connection with customer orders that are delivered to the limit order book via FBMS and executed via Linkage as P/A Orders. Options specialist units are then credited an amount equal to the transaction fee(s) assessed on them by another exchange in connection with executing customer orders that are delivered to the limit order book via FBMS and executed via Linkage as a P/A Order.

The purpose of extending the current pilot programs discussed above is to encourage the use of Linkage, remain competitive with other exchanges with respect to the assessment of Linkage-related fees and to help alleviate the potential economic burden of multiple transaction charges imposed on Exchange specialist units in connection with routing these types of Linkage orders. Additionally, the purpose of assessing a fee on floor brokers who send customer orders that are delivered to the limit order book via FBMS and executed via Linkage as P/A Orders is to more equitably assess the applicable transaction fee(s) on the member originally entering the order to be executed. Floor brokers may choose to route these orders through other systems and not place these orders on the limit order book.

The above-referenced pilot programs are currently scheduled to expire on July 31, 2009.<sup>8</sup> This proposal would extend the pilot programs for another year, through July 31, 2010.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>10</sup> of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members and other persons using its facilities. The Exchange believes that these pilot programs, in part, help alleviate the undue financial burden of multiple transaction charges that are incurred by specialist units in connection with P/A orders executed via Linkage. By assessing a fee on floor brokers and giving a corresponding credit to specialist units allows for the

transaction fee(s) to be assessed on the member who submits the order and for the credit to be given to the specialist unit that routed the order to another exchange in order to obtain the National Best Bid or Offer.

### *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 that is 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 with respect to the proposed rule change.

## 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>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</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:

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</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.

## *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-2009-55 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-2009-55. 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 a.m. and 3 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-2009-55 and should be submitted on or before July 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Elizabeth M. Murphy,**  
Secretary.

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<sup>8</sup> See Securities Exchange Act Release No. 58234 (July 25, 2008), 73 FR 45263 (August 4, 2008) (SR-Phlx-2008-55).

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

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> 17 CFR 200.30-3(a)(12).