

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 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 Act⁵ and Rule 19b-4(f)(6) thereunder.⁶

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.⁷ However, Rule 19b-4(f)(6)(iii)⁸ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may be operative in conjunction with the release of the Primary Until 9:45 Order in order to eliminate potential confusion associated with the GTC or GTD designation of a Primary Until 9:45 Order. The Commission believes such waiver is consistent with the protection of investors and the public interest.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 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-NYSEArca-2009-69 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-NYSEArca-2009-69. 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 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-NYSEArca-2009-69 and should be

submitted on or before September 1, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60431; File No. SR-Phlx-2009-59]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, Relating to the Exchange's By-Laws, Regulatory Oversight Committee and Referee Program

August 4, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that, on July 27, 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. On July 30, 2009, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend its By-Laws to establish a regulatory oversight committee of the Board of Governors (the "Board"); describe the office and responsibilities of the chief regulatory officer in the By-Laws; eliminate the audit committee and compensation committee of the Board, with their duties being assigned to other board committees of Phlx or its parent corporation, The NASDAQ OMX Group, Inc. ("NASDAQ OMX"); amend the Exchange's By-Laws to delete the Referee process and establish a new Options Trade Review Committee in

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(6).

⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 complied with this requirement.

⁸ *Id.*

⁹ For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ By Amendment No. 1, the Exchange updated its proposal to reflect that The NASDAQ Stock Market LLC and NASDAQ OMX BX, Inc. have already eliminated their audit committees.

lieu thereof; and make conforming changes to the Exchange's Rules and Options Floor Procedure Advice.

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 aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Modifications to the Regulatory Oversight Structure of the Board of Governors

On July 24, 2008, Phlx was acquired by NASDAQ OMX. Following that acquisition, Phlx has been assessing means to improve its governance structure and conform it more closely to that of The NASDAQ Stock Market LLC (the "NASDAQ Exchange"), an effort that has already resulted in the submission of several proposed rule changes to the Commission.⁴ In addition, Phlx—together with the NASDAQ Exchange and NASDAQ OMX BX, Inc. (formerly the Boston Stock Exchange, and also an exchange subsidiary of NASDAQ OMX)—has been evaluating means to realize synergies in the operations of these three exchanges while maintaining the separate identity and member representation structures of each.

⁴ See Securities Exchange Act Release No. 59764 (April 20, 2009), 74 FR 18761 (April 24, 2009) (SR-Phlx-2009-17) (approving proposal to modify the process for nominating Governors of the Exchange); Securities Exchange Act Release No. 59697 (April 4, 2009), 74 FR 16249 (April 9, 2009) (SR-Phlx-2009-23) (proposing to eliminate various standing committees of the Exchange and making other miscellaneous changes). The Commission notes that the latter filing was approved by the Commission on May 14, 2009. See Securities Exchange Act Release No. 59924 (May 14, 2009), 74 FR 23759 (May 20, 2009).

In making this evaluation, Phlx and its sister exchanges have given consideration to the experiences of their respective boards and have reviewed the governance documents of other exchanges. In particular, Phlx and the other exchanges have reviewed the board structures established by NYSE Euronext and its exchange subsidiaries. In Securities Exchange Act Release No. 55293,⁵ the Commission approved a structure in which certain committees of the board of directors of NYSE Euronext, the public holding company, perform functions for exchange subsidiaries, which do not themselves have these committees. Specifically, the Commission's approval order states that "the NYSE Euronext board of directors will have an audit committee, a human resource and compensation committee, and a nominating and governance committee. Each of the audit committee, human resource and compensation committee, and nominating and governance committee of the NYSE Euronext board of directors will consist solely of directors meeting the independence requirements of NYSE Euronext.

These committees also will perform relevant functions for NYSE Group,⁶ the Exchange,⁷ NYSE Market,⁸ NYSE Regulation,⁹ Archipelago,¹⁰ NYSE Arca,¹¹ and NYSE Arca Equities,¹² as well as other subsidiaries of NYSE Euronext, except that the board of directors of NYSE Regulation will continue to have its own compensation committee and nominating and governance committee."

Phlx and the other exchanges owned by NASDAQ OMX have also considered the experience of the NASDAQ Exchange in operating as a subsidiary of a public company since 2006. During the period, the board of each of the NASDAQ Exchange and its parent corporation (currently NASDAQ OMX, and formerly The Nasdaq Stock Market,

⁵ Securities Exchange Act Release No. 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR-NYSE-2006-120).

⁶ NYSE Group, Inc., the former public holding company of NYSE Euronext's U.S. exchanges.

⁷ New York Stock Exchange LLC ("NYSE"), a registered national securities exchange.

⁸ NYSE Market, Inc., a subsidiary of NYSE to which it has delegated certain operational authority.

⁹ NYSE Regulation, Inc., a subsidiary of NYSE to which it has delegated certain operational authority.

¹⁰ Archipelago Holdings, Inc., formerly the public holding company of the entities now known as NYSE Arca, Inc. and NYSE Arca Equities, Inc.

¹¹ NYSE Arca, Inc., a registered national securities exchange.

¹² NYSE Arca Equities, Inc., a subsidiary of NYSE Arca to which it has delegated certain operational authority.

Inc.) has appointed its own audit committee and management compensation committee. However, these committees at the NASDAQ Exchange level have generally found themselves duplicating the work of other committees at the exchange or holding company level. The NASDAQ OMX audit committee has broad authority to review the financial information that will be provided to shareholders and others, systems of internal controls, and audit, financial reporting and legal and compliance processes. Because NASDAQ OMX's financial statements are prepared on a consolidated basis that includes the financial results of NASDAQ OMX's subsidiaries, including Phlx and the other exchange subsidiaries, the NASDAQ OMX audit committee's purview necessarily includes these subsidiaries. The committee is composed of four or five directors, all of whom must be independent under the standards established by Section 10A(m) of the Act¹³ and Rule 4200(a) of the NASDAQ Exchange. All committee members must be able to read and understand financial statements, and at least one member must have past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background that results in the individual's financial sophistication.

By contrast, the audit committee of the NASDAQ Exchange has a more limited role, focused solely on the exchange entity and its subsidiaries that operate as facilities of the NASDAQ Exchange. As described in the current By-Laws of the NASDAQ Exchange (which are, in this respect, virtually identical to the current By-Laws of Phlx), the primary functions of the audit committee are (i) oversight over financial reporting, (ii) oversight over the systems of internal controls established by management and the Board and the legal and compliance process, (iii) selection and evaluation of independent auditors, and (iv) direction and oversight of the internal audit function. However, to the extent that the committee reviews financial and accounting matters, its activities are duplicative of the activities of the NASDAQ OMX audit committee, which is also charged with providing oversight over financial reporting and independent auditor selection for NASDAQ OMX and all of its subsidiaries, including the NASDAQ Exchange, BX, and Phlx and their subsidiaries. Similarly, the NASDAQ

¹³ 15 U.S.C. 78j-1(m).

OMX audit committee has general responsibility for oversight over internal controls and direction and oversight over the internal audit function for NASDAQ OMX and all of its subsidiaries. Thus, the responsibilities of the exchanges' audit committees are fully duplicated by the responsibilities of the NASDAQ OMX audit committee. Accordingly, the NASDAQ Exchange has eliminated its audit committee by amending Article III, Section 5 of the By-Laws.¹⁴

Similarly, drawing upon the model established by NYSE Euronext and the experience of the NASDAQ Exchange, Phlx is proposing to amend Section 10–9 of its By-Laws to eliminate its audit committee. While the committee formerly played a vital role in oversight of the preparation of Phlx's financial statements when Phlx was owned by a group of investors and sat at the top of a holding company structure, that role has been assumed by the NASDAQ OMX audit committee now that Phlx is a wholly owned subsidiary. Moreover, since Phlx does not currently have a regulatory oversight committee, Phlx is now proposing to establish such a committee so that regulatory oversight functions formerly performed by the audit committee may be assumed by the new committee.¹⁵ The new committee will oversee the adequacy and effectiveness of Phlx's regulatory and self-regulatory organization responsibilities; assess Phlx's regulatory performance; and assist the Board and its standing committees in reviewing the regulatory plan and the overall effectiveness of Phlx's regulatory functions. In furtherance of its functions, the committee shall (a) review Phlx's regulatory budget and specifically inquire into the adequacy of resources available in the budget for regulatory activities; (b) meet regularly with Phlx's chief regulatory officer in executive session; and (c) be informed about the compensation and promotion or termination of the chief regulatory officer and the reasons therefor.¹⁶ The committee shall consist of three

members, each of whom shall be an independent governor.¹⁷

Phlx believes that even in light of the NASDAQ OMX audit committee's overall responsibilities for internal controls and the internal audit function, it is nevertheless important for the Phlx Board to maintain its own independent oversight over Phlx's controls and internal audit matters relating to Phlx's operations. In this regard, Phlx notes that its regulatory oversight committee, like the NASDAQ Exchange's regulatory oversight committee, will have broad authority to oversee the adequacy and effectiveness of Phlx's regulatory and self-regulatory organization responsibilities, and will therefore be able to maintain oversight over controls in tandem with the NASDAQ OMX audit committee's overall control oversight responsibilities. Similarly, it is already the practice of NASDAQ OMX's Internal Audit Department, which performs internal audit functions for all NASDAQ OMX subsidiaries, to report to the Phlx Board on all internal audit matters relating to Phlx. This practice will be formally reflected in the Department's written procedures, which will now direct such reports to the regulatory oversight committee. In addition, to ensure that the Phlx Board retains authority to direct the Department's activities with respect to Phlx, the Department's written procedures will be amended to stipulate that the Phlx regulatory oversight committee may, at any time, direct the Department to conduct an audit of a matter of concern to it and report the results of the audit both to the Phlx regulatory oversight committee and the NASDAQ OMX audit committee. Finally, although language regarding the audit committee's authority to conduct special reviews of any alleged improper conduct is being removed, Phlx believes that such authority is inherent in the powers of its Board, the NASDAQ OMX Board, and their respective committees. Accordingly, retaining this language for a specific committee is unnecessary.¹⁸

Although the position of chief regulatory officer has long existed, Phlx has concluded that the position should

be formally described in the By-Laws. Accordingly, new Section 5–6 of the By-Laws will provide that the chief regulatory officer will have general supervision of Phlx's regulatory operations, including the responsibility for overseeing its surveillance, examination, and enforcement functions and for administering any regulatory services agreements with another self-regulatory organization to which Phlx is a party. The chief regulatory officer shall meet with the regulatory oversight committee in executive session at regularly scheduled meetings, and at any time upon request of the chief regulatory officer or any member of the committee.

Phlx also proposes to amend Section 4–13 of the By-Laws in order to follow the NYSE Euronext model with respect to allowing the elimination of its compensation committee and the performance of its function by the NASDAQ OMX compensation committee and/or subsidiary boards.¹⁹ The NASDAQ OMX By-Laws provide that its compensation committee considers and recommends compensation policies, programs, and practices for employees of NASDAQ OMX. Because many employees performing work for Phlx are also employees of NASDAQ OMX, its compensation committee already performs these functions for such employees. Moreover, certain of its senior officers are also officers of NASDAQ OMX and other NASDAQ OMX subsidiaries because their responsibilities relate to multiple entities within the NASDAQ OMX corporate structure. Accordingly, NASDAQ OMX pays these individuals and establishes compensation policy for them. Most notably, the former Chief Executive Officer of Phlx was also an "executive officer" of NASDAQ OMX within the meaning of NASDAQ Exchange Rule 4350.²⁰ Under that rule, the compensation of executive officers of an issuer of securities, such as the common stock of NASDAQ OMX, that is listed on the NASDAQ Exchange, must be determined by, or recommended to the board of directors for determination by, a majority of independent directors or a compensation committee comprised

¹⁴ Securities Exchange Act Release No. 60276 (July 9, 2009), 74 FR 34840 (July 17, 2009) (SR–NASDAQ–2009–042) ("Release No. 34–60276"). Similarly, BX has eliminated its audit committee. Securities Exchange Act Release No. 60247 (July 17, 2009), 74 FR 33495 (July 13, 2009) (SR–BX–2009–021) ("Release No. 34–60247").

¹⁵ Section 10–9 of the By-Laws.

¹⁶ The audit committee also currently performs functions relating to the Referee, who has authority to review certain decisions of Options Exchange Officials. As described below, the Exchange proposes to replace the Referee with a new Options Trade Review Committee.

¹⁷ An independent governor is one who has no material relationship with Phlx or any affiliate of Phlx, any member of Phlx or any affiliate of such member, or any issuer of securities that are traded on Phlx or a facility of Phlx.

¹⁸ Phlx also notes that authority of the audit committee with respect to the Exchange's Code of Conduct and whistleblowing regarding accounting practices have been assumed by NASDAQ OMX, which, as a public company, maintains a Code of Ethics program and anonymous whistleblower hotline for NASDAQ OMX and its subsidiaries in compliance with the requirements of the Sarbanes-Oxley Act, 15 U.S.C. 78j–1, 7264.

¹⁹ The Commission notes that it recently approved proposals by BX and the NASDAQ Exchange to eliminate their compensation committees. See Release Nos. 34–60247 and 60276, *supra* note 14. These exchanges have eliminated those committees. See e-mail from Edith Hallahan, Counsel, Phlx, to Nancy Burke-Sanow, Assistant Director, Commission, dated August 3, 2009.

²⁰ The position of Chief Executive Officer of Phlx is currently vacant, pending selection of a successor.

solely of independent directors. Accordingly, the NASDAQ OMX board of directors and/or its compensation committee was legally required to establish the compensation for this individual. Although the individual recently resigned his positions with NASDAQ OMX and its subsidiaries in order to pursue another opportunity, it is likely that his successor as Chief Executive Officer of Phlx will serve in a similar position at NASDAQ OMX and therefore be subject to comparable compensation requirements. To the extent that policies, programs, and practices must also be established for any Phlx officers or employees who are not also NASDAQ OMX officers or employees, the Phlx Board will perform such actions without the use of a compensation committee (but subject to the recusal of the Chief Executive Officer and the Stockholder Governor).²¹

Replacement of the Exchange's Referee With an Options Trade Review Committee

The Exchange proposes to replace the current Referee process with an Options Trade Review Committee, which is similar to the processes of other exchanges, including the NASDAQ Exchange.²² As explained further below, the Exchange believes that this committee should effectively provide fair and neutral review of Options Exchange Officials' rulings.

Currently, the Exchange's By-Laws and rules provide that the Referee is an Exchange employee (or independent contractor), supervised by the audit committee,²³ who reviews Options Exchange Official rulings concerning the nullification and/or adjustment of transactions. In addition, the Referee can act in the capacity of an Options Exchange Official respecting initial rulings concerning requests for relief from the requirements of certain

Exchange rules, Equity Floor Procedure Advices and Option Floor Procedure Advices.²⁴

The Exchange proposes to eliminate the Referee and replace that function with an Options Trade Review Committee, which will review Options Exchange Official rulings. Even though the Referee was able to, the Options Trade Review Committee will not act in the capacity of an Options Exchange Official; its function will be limited to reviewing such rulings.

In order to implement the Options Trade Review Committee, the Exchange is proposing to delete the By-Law provision that currently vests supervision over the Referee in the audit committee and generally defines the Referee's role and background.²⁵ Because the Exchange is proposing to eliminate its audit committee, and because appeals will now be handled by a committee, rather than an exchange employee (or independent contractor), the Exchange believes that the Options Trade Review Committee should be sufficiently neutral and independent of the regulatory processes and Options Exchange Officials. The Options Trade Review Committee will be appointed by the Board pursuant to new By-Law Article X, Section 10–10 as a standing committee of the Board and shall include a number of Member Representative members²⁶ that is equal to at least 20 percent of the total number of members of the Committee; furthermore, no more than 50 percent of its members shall be engaged in market making activity or employed by an Exchange Member Organization whose revenues from market making activity exceed ten percent of its total revenues.²⁷

In addition, the Exchange proposes to amend various rules that refer to the Referee, including Rule 124, which currently outlines in detail the responsibilities of the Referee. Specifically, Rule 124 is being amended to establish the Options Trade Review Committee's role. In addition to the language in By-Law Article X, Section 10–10, proposed new language in Rule 124 will state that the Options Trade Review Committee may act through a panel with a minimum of three Committee members, of which no more than 50% can be engaged in market making activity or employed by an Exchange Member Organization whose revenues from market making activity exceed ten percent of its total

revenues.²⁸ The Exchange anticipates that in light of the time sensitivity of rendering decisions in the trading context, neither the entire Options Trade Review Committee nor a quorum thereof should be required. The Exchange also anticipates that the panel will be selected by Exchange regulatory staff from the Committee members on a rotating basis, taking into consideration availability and prompt response as well as frequency of service, keeping in mind the importance of assembling a panel quickly. The staff is likely to use electronic means to do so, and the panels would convene via conference call. In addition, all appeals will be presented to the panel on an anonymous basis to reduce the risk of conflict or bias. The staff would provide to the panel a verbal and/or written information packet containing relevant documents. Member firm-identifying information within the packet would be redacted to make it difficult or impossible to identify the parties to the appeal. Regulatory staff will present the information included in the kit to the participants anonymously, which may include written information provided by any parties to the appeal.

Commentary .02 to Rule 124 is proposed to be deleted, because it details the role of the Referee. The details regarding who can serve as Referee, how the Referee is appointed, designation of a Backup Referee, what additional functions the Referee can perform, and how the Referee is supervised and evaluated are no longer needed.

Other than the role of the Referee, most aspects of the review process in Rule 124 are not being changed; for example, the time period to request a review, the fee for a review that sustains the ruling, and that rulings may be sustained, overturned or modified all remain unchanged. Decisions of the Options Trade Review Committee, like the Referee's decisions, would not be appealable. Because Advice F–27 corresponds to Rule 124, corresponding changes to Advice F–27 are also proposed.

Minor changes to Rule 124 include: (i) [sic] removing references to Referee decisions from Rule 124(b) in the sentence that deals with rulings being effective immediately and being complied with promptly, because the provision that Options Trade Review Committee decisions are effective immediately and must be complied with promptly will appear instead in the paragraph governing the Options Trade

²¹ Two seats on the Phlx Board are reserved for the Chief Executive Officer and an officer, designee, director, or employee of NASDAQ OMX. To the extent that these Governors are officers or employees of both Phlx and NASDAQ OMX, they would be permitted to participate in discussions concerning compensation of Phlx employees, since the Phlx Board would not be responsible for setting their compensation. They would, however, recuse themselves from a vote on the subject to allow the determination to be made by directors that are not officers or employees of Phlx. If one of these Governors was an officer or employee of Phlx but not of NASDAQ OMX, that Governor would also absent himself or herself from any deliberations regarding his or her compensation.

²² See NASDAQ Exchange By-Laws, Article III, Section 6(d).

²³ For the establishment of the Referee program, see Securities Exchange Act Release No. 54009 (June 16, 2006), 71 FR 36592 (June 27, 2006) (SR–Phlx–2005–42).

²⁴ See Rule 124.02(a)(i)–(iv).

²⁵ See By-Law Article X, Section 10–9(d).

²⁶ See By-Law Article I, Section 1–1(pp).

²⁷ See proposed By-Law Article X, Section 10–10.

²⁸ See NASDAQ Stock Market Rule 11890 and IM–11890–20 (Review by Panels of the MORC).

Review Committee, in proposed subparagraph (d)(v). In addition, subparagraph (d)(vi) is proposed to be deleted, because it duplicates a provision in paragraph (b). The Exchange is deleting the provision that an Options Exchange Official that fails to make any ruling in accordance with Exchange rules may be subject to possible disciplinary action by the Exchange, because this provision governs the Exchange's own personnel policies, which typically do not appear in exchange rules.

Rule 1092 is also being changed to refer to the Options Trade Review Committee, rather than the Referee in paragraphs (f)(iv) and (g), which relate to requesting a review of obvious error and catastrophic error determinations.

The changes to the remaining provisions are minor. Rule 1, Definitions, is being amended to state that the list of Options Exchange Officials will be maintained by the Chief Regulatory Officer rather than the Referee.²⁹ Rule 163, Erroneous Transactions, is also being amended to replace the Referee with the Options Trade Review Committee, but, as a practical matter, is not significant, because the Exchange no longer operates an equity trading system for which Rule 163 was adopted, such that Rule 163 cannot currently be invoked.

In summary, the Exchange believes that, under this proposal, the Options Trade Review Committee should further the goal of impartial, objective decisions, which should, in turn, result in fairness and certainty in the overall process of resolving trading disputes.

2. Statutory Basis

Phlx believes that its proposal is consistent with Section 6(b) of the Act³⁰ in general, and furthers the objectives of: (1) Section 6(b)(1) of the Act,³¹ which requires a national securities exchange to be so organized and have the capacity to carry out purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act; and (2) Section 6(b)(5) of the Act,³² in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices, 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. Specifically, the proposed rule change will eliminate two Board committees whose roles have been diminished by Phlx's new status as a wholly owned subsidiary of NASDAQ OMX, thereby allowing governors to focus greater attention on matters falling directly within the purview of the Board, including regulatory quality, market structure, new product initiatives, and review of proposed rule changes. In addition, the creation of a regulatory oversight committee and the inclusion of the chief regulatory officer in the By-Laws will underscore the importance of Phlx's regulatory function and specifically empower an independent committee of the Board to oversee regulation and meet regularly with the chief regulatory officer. Finally, the Exchange believes that replacing the Referee with a new Options Trade Review Committee should provide a prompt and objective process for reviewing rulings on trading disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in 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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

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-2009-59 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-2009-59. 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 the 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-2009-59 and should be submitted on or before September 1, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Florence E. Harmon,

Deputy Secretary.

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²⁹ Rule 1(pp) is also being amended to delete reference to the specific Web site address where the list of Options Exchange Officials is maintained, which has changed. The Exchange will continue to post the list on its Web site, but would prefer not to put the actual Web site address into the rule text.

³⁰ 15 U.S.C. 78f(b).

³¹ 15 U.S.C. 78(b)(1).

³² 15 U.S.C. 78f(b)(5).

³³ 17 CFR 200.30-3(a)(12).