

(f)(2) of Rule 19b-4⁹ thereunder. 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-Phlx-2009-66 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Commission, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-Phlx-2009-66. 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-Phlx-2009-66 and should be submitted on or before September 8, 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. 34-60468; File No. SR-NYSEArca-2009-52]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change To Amend the Schedule of Fees and Charges for Exchange Services

August 10, 2009.

I. Introduction

On June 10, 2009, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") through its wholly-owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change amending its Schedule of Fees and Charges for Exchange Services ("Fee Schedule") to revise the Listing Fees applicable to Derivative Securities Products. The proposed rule change was published in the **Federal Register** on July 7, 2009.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes amending its Fee Schedule to revise the Listing Fees applicable to Derivative Securities Products listed under NYSE Arca Rules 5.2(j)(3) (Investment Company Units), 8.100 (Portfolio Depository Receipts), 8.200 (Trust Issued Receipts), 8.201 (Commodity-Based Trust Shares), 8.202 (Currency Trust Shares), 8.203 (Commodity Index Trust Shares), 8.204 (Commodity Futures Trust Shares), 8.300 (Partnership Units), 8.500 (Trust Units), and 8.600 (Managed Fund Shares) on NYSE Arca, LLC, the equities

facility of NYSE Arca Equities. Specifically, the Exchange proposes to add a new provision to the Fee Schedule which states that in the case where a sponsor, managing owner, general partner or equivalent (collectively, the "Sponsor") is listing a new Derivative Securities Product on the Exchange for the first time, the Sponsor will be charged a one time consultation fee in the amount of \$20,000.

The proposed consulting charge would apply to all new Sponsors listing a new Derivative Securities Product for the first time on the Exchange. Therefore, under the proposal Sponsors who have previously issued a new Derivative Securities Product would not be charged the proposed consulting fee. Moreover, the current Listing and Annual Fees applicable to Derivative Securities Products would remain unchanged and be applicable to all Sponsors of Derivative Securities Products.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with Sections 6(b)(4) and (b)(5) of the Act,⁴ which require, among other things, that the rules of an exchange (i) provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and (ii) are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

According to the Exchange, the imposition of the proposed one-time consulting charge to new Sponsors of new Derivative Securities Products is necessary to adequately compensate the Exchange for all of the additional resources dedicated to such new Sponsors, such as the additional legal and business resources required to properly advise novice Sponsors through the listing process.⁵ The Exchange believes that the proposed consulting fee would enable the Exchange to continue to provide new issuers with the level of service necessary to successfully navigate an initial launch of a Derivative Securities Product. Moreover, the Exchange has represented that the proposed new Sponsor Fee is substantially below the

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 60184 (June 29, 2009), 74 FR 32209 (July 7, 2009) (hereinafter referred to as "Notice").

⁴ 15 U.S.C. 78f(b)(4) and (b)(5).

⁵ See Notice, *supra* note 3.

⁹ 17 CFR 240.19b-4(f)(2).

initial listing fee for issuers of traditional equity securities, *e.g.*, common stock.⁶

Accordingly, the Commission believes that the Exchange's proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among issuers and further, does not unfairly discriminate between issuers given the additional time and resources dedicated to new Sponsors of Derivative Securities Products and given that the listing fees, including the one-time consulting fee, for Derivative Securities Products is substantially below the listing fee for traditional equity securities.⁷ Further, the Commission believes that the proposed one time consulting fee is equitable in that it applies uniformly to all new issuers of Derivative Securities Products. For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act.⁸

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NYSEArca-2009-52) be, and it hereby is, approved.

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

Elizabeth M. Murphy,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60466; File No. SR-Phlx-2009-65]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Strike Price Intervals of \$0.50 for Options on Stocks Trading at or Below \$3.00

August 10, 2009.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (the "Act") ² and Rule 19b-4 thereunder,³

⁶ *Id.*

⁷ The Commission notes that the current listing fee for Derivative Securities Products is \$5,000, while the lowest listing fee for common stock is \$100,000. See NYSE Arca Equities, Inc. Schedule of Fees and Charges for Exchange Services.

⁸ 15 U.S.C. 78f(b)(4). In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

notice is hereby given that, on July 31, 2009, NASDAQ OMX PHLX, Inc. ("Phlx" or "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, pursuant to Section 19(b)(1) of the Act ⁴ and Rule 19b-4 thereunder,⁵ proposes to amend Rule 1012, Series of Options Open for Trading, Commentary .05, in order to establish strike price intervals of \$0.50, beginning at \$1, for certain options classes whose underlying security closed at or below \$3 in its primary market on the previous trading day.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, 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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to expand the ability of investors to hedge risks associated with stocks trading at or under \$3. Currently, Commentary .05(a)(ii) to Phlx Rule 1012 provides that the interval of strike prices of series of options on individual stocks may be \$2.50 or greater where the strike price is \$25 or less. Additionally, Commentary .05(a)(i) to Phlx Rule 1012 allows the Exchange to establish \$1

strike price intervals (the "\$1 Strike Program") on options classes overlying no more than fifty-five individual stocks designated by the Exchange. In order to be eligible for selection into the \$1 Strike Program, the underlying stock must close below \$50 in its primary market on the previous trading day. If selected for the \$1 Strike Program, the Exchange may list strike prices at \$1 intervals from \$1 to \$50, but no \$1 strike price may be listed that is greater than \$5 from the underlying stock's closing price in its primary market on the previous day. The Exchange may also list \$1 strikes on any other option class designated by another securities exchange that employs a similar \$1 Strike Program its own rules.⁶ The Exchange is restricted from listing any series that would result in strike prices being within \$0.50 of a strike price set pursuant to Commentary .05(a)(ii) to Phlx Rule 1012 at intervals of \$2.50.

The Exchange is now proposing to establish strike prices of \$1, \$1.50, \$2, \$2.50, \$3 and \$3.50 for certain stocks that trade at or under \$3.00.⁷ The listing of these strike prices will be limited to options classes whose underlying security closed at or below \$3 in its primary market on the previous trading day, and which have national average daily volume that equals or exceeds 1000 contracts per day as determined by The Options Clearing Corporation during the preceding three calendar months. The listing of \$0.50 strike prices would be limited to options classes overlying no more than 5 individual stocks (the "\$0.50 Strike Program") as specifically designated by the Exchange. The Exchange would also be able to list \$0.50 strike prices on any other option classes if those classes were specifically designated by other securities exchanges that employed a similar \$0.50 Strike Program under their respective rules.

Currently, the Exchange may list options on stocks trading at \$3 at strike prices of \$1, \$2, \$3, \$4, \$5, \$6, \$7 and \$8 if they are designated to participate

⁶ The Exchange may not list long-term option series ("LEAPS") at \$1 strike price intervals for any class selected for the Program.

⁷ The Exchange recently amended Exchange Rule 1010, Withdrawal of Approval of Underlying Securities or Options, to eliminate the \$3 market price per share requirement for continued approval for an underlying security. The amendment eliminated the prohibition against listing additional series or options on an underlying security at any time when the price per share of such underlying security is less than \$3. The Exchange explained in that proposed rule change that the market price for a large number of securities has fallen below \$3 in the current volatile market environment. See Securities Exchange Act Release No. 59346 (February 3, 2009), 74 FR 6681 (February 10, 2009).

⁴ 15 U.S.C. 78s(b)(1).

⁵ 17 CFR 240.19b-4.