

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58755; File No. SR-Phlx-2008-71)

October 8, 2008

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the NASDAQ OMX PHLX, Inc. Relating to Deleting Unnecessary Fees

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 October 1, 2008, the 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, pursuant to Section 19(b)(1) of the Act<sup>3</sup> and Rule 19b-4 thereunder,<sup>4</sup> proposes to update its fee schedules by deleting fees that the Exchange has deemed no longer necessary.

Specifically, the Exchange proposes to delete its Summary of Physical Delivery Currency Option Charges fee schedule. The Exchange also proposes to delete the following fees from Appendix A of its fee schedule: Foreign Currency User Fee; Transfer Fee for Foreign Currency Options ("FCO") Participant; Direct Wire to the Floor; Wireless Telephone System; Tether Initial Connectivity Fee;<sup>5</sup> Execution Services/Communication Charge; Phlx CCH Wall Street

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

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

<sup>5</sup> The \$150 Tether Monthly Service Fee will continue to be assessed.

("CCH") Guide; Option Report Service (New York and Chicago); Instinet, Reuters Equipment; and the Hyperfeed fee.

While changes to the fee schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to become effective on October 1, 2008.

The text of the proposed rule change is available on the Exchange's Website at [http://www.phlx.com/regulatory/reg\\_rulefilings.aspx](http://www.phlx.com/regulatory/reg_rulefilings.aspx).

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 update the Exchange's fee schedule to delete fees that the Exchange believes are no longer necessary. Specifically, the Exchange no longer provides a trading venue for physical delivery FCOs. Thus, the Summary of Physical Delivery Currency Option Charges no longer applies to products traded at the Exchange.<sup>6</sup>

Additionally, the Exchange no longer offers FCO participations. Therefore, the Foreign Currency User Fee and the Transfer Fee for FCO Participants are no longer necessary.

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<sup>6</sup> Exchange members, however, may still trade foreign currency options. The Exchange currently has a separate fee schedule for U.S. dollar-settled foreign currency options.

For business purposes, the Exchange has determined not to assess the following fees: Direct Wire to the Floor; Wireless Telephone System; and Execution Service/Communication Charges. These fees, which relate generally to telephone access to the floor, are not deemed necessary at this time. Additionally, the Exchange believes the Tether Initial Connectivity Fee, which refers to establishing a hardwire connection to an existing communication network on the trading floor, is no longer necessary at this time. Currently, there is not a significant demand for this type of telephone access to the floor or for establishing a hardwire connection to an existing communication network on the trading floor.

With respect to the Phlx CCH Guide, which includes Phlx By-Laws and rules, the Exchange will no longer supply members with a hard copy of the Phlx CCH Guide because the guide is now available on-line through the Phlx website.<sup>7</sup> The fees relating to the Option Report Service (New York and Chicago), Instinet, Reuters Equipment, and Hyperfeed are not required because these services are no longer being offered by the Exchange.

While changes to the fee schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to become effective on October 1, 2008.

## 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. The Exchange believes that updating its fee schedules to delete the above-referenced fee will more accurately reflect the fees that are currently assessed by the Exchange,

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<sup>7</sup> There is no fee to access the Phlx CCH Guide on-line.

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

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

which should, in turn, help to eliminate any member confusion as to which fees apply.

Additionally, members who were assessed any of the applicable fees set forth above, such as the fees relating to telephone access to the floor, should benefit financially from the elimination of these fees.

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

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

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2008-71 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2008-71. 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 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-2008-71 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  
Acting Secretary

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