

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59566; File No. SR-Phlx-2009-18)

March 12, 2009

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Caps on Equity Option Transaction Charges on Dividend, Merger and Short Stock Interest Strategies

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4 thereunder,² notice is hereby given that on February 24, 2009, 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 proposes to make permanent the pilot program for the \$1,000 and \$25,000 fee caps on equity option transaction charges on dividend,³ merger,⁴ and short stock interest⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ For purposes of this proposal, the Exchange defines a "dividend strategy" as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed prior to the date on which the underlying stock goes ex-dividend. See e.g., Securities Exchange Act Release No. 54174 (July 19, 2006), 71 FR 42156 (July 25, 2006) (SR-Phlx-2006-40).

⁴ For purposes of this proposal, the Exchange defines a "merger strategy" as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock. Id.

⁵ For purposes of this proposal, the Exchange defines a "short stock interest strategy" as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class. Id.

strategies (“Pilot”)⁶. This Pilot previously included \$1,000 and \$25,000 fee caps on transaction and comparison charges on dividend, merger and short stock interest strategies as well as a license fee of \$0.05 per contract side imposed on dividend and short stock interest strategies. The comparison charges as well as a license fee of \$0.05 per contract side were subsequently eliminated.⁷ Other than requesting to make the Pilot permanent, no other changes to the Exchange’s current dividend, merger and short stock interest strategy program are being proposed at this time.

The text of the proposed rule change is available on the Exchange’s Website 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 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

⁶ The current fee caps are in effect as a pilot program that is scheduled to expire on March 1, 2009. See Securities Exchange Act Release No. 57420 (March 3, 2008), 73 FR 12790 (March 10, 2008) (SR-Phlx-2008-16).

⁷ See Securities Exchange Act Release Nos. 59243 (January 13, 2009), 74 FR 4272, (January 23, 2009) (SR-Phlx-2008-86) (eliminating the comparison charge); 58772 (October 10, 2008), 73 FR 63037 (October 22, 2008)(SR-Phlx-2008-72)(eliminating reference to the \$ 0.05 per contract side license fee for dividend strategies and short stock interest strategies).

Currently, the Exchange imposes a fee cap on equity option transaction charges on dividend, merger and short stock interest strategies executed on the same trading day in the same options class. Specifically, Registered Options Trader (“ROT”) and specialist net equity option transaction charges are capped at \$1,000 for dividend, merger and short stock interest strategies executed on the same trading day in the same options class.⁸ In addition, there is a \$25,000 per member organization fee cap on equity option transaction charges incurred in one month for dividend, merger and short stock interest strategies combined. The purpose of making the Pilot permanent for the fee caps on equity option transaction charges on dividend, merger and short stock interest strategies is to continue to attract additional liquidity to the Exchange and to remain competitive with other options exchanges in connection with these types of options strategies.

The Exchange’s Pilot also included fee caps on comparison charges on dividend, merger and short stock interest strategies, however the comparison charges were eliminated by a previous rule filing.⁹ Additionally, the Pilot also included a license fee of \$0.05 per contract side imposed on dividend and short stock interest strategies, which was also eliminated by a previous rule filing.¹⁰

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹² in

⁸ Id.

⁹ See footnote 7.

¹⁰ See footnote 7.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that its proposal to make the Pilot permanent is beneficial to its members by providing additional trading opportunities at an efficient cost.

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 Act¹³ and paragraph (f)(2) of Rule 19b-4¹⁴ 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-

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 240.19b-4(f)(2).

18 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-2009-18. 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-2009-18 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.¹⁵

Florence E. Harmon
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).