

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59166; File No. SR-Phlx-2008-82)

December 29, 2008

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Rule 1028 (Confirmations)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on December 10, 2008, 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 substantially been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 amend Phlx Rule 1028, Confirmations, to eliminate the requirement that members indicate in written confirmations to options customers the specific exchange on which transactions were done.⁵ The text of the proposed rule change is available at

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The proposed filing is being done pursuant to an industry-wide initiative under the auspices of the Options Self-Regulatory Council (“OSRC”), which is a committee comprised of representatives from each of the options exchanges functioning pursuant to the OSRC Plan (the “Plan”). See Securities Exchange Act Release No. 20158 (Sept. 8, 1983), 48 FR 41256 (Sept. 14, 1983). The Plan is not a National Market System

the Exchange, on the Exchange's Website at, <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, and at the Commission.

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 amend Phlx Rule 1028 to eliminate the requirement that the market on which an options transaction is executed be disclosed on a written confirmation furnished to a customer of a member organization. Pursuant to Phlx Rule 1028, the member organization will continue to be required to furnish a written confirmation that contains a description of each transaction in the option contracts which shall show: the type of option; the underlying security (e.g., stock or Exchange Traded Fund); the expiration month; the exercise price; the number of option contracts; the premium and commissions; the transaction and settlement dates; whether the transaction was a purchase or a sale (writing) transaction; whether the transaction was an opening or a closing transaction; and whether the transaction was effected on a principal or agency basis.

("NMS") plan under Section 11A of the Act, but rather is a plan to allocate regulatory responsibilities under Rule 17d-2 under the Act. 17 CFR 240.17d-2.

The Exchange believes that with the expansion of multi-listing of options and the introduction of new options exchanges, it has become operationally inefficient to require the disclosure of the market center on which an order was executed on the confirmation. As an example, a customer may have a single option order containing numerous option contracts executed on multiple exchanges. As such, it would be inefficient for the member organization to be required to identify the exchange symbol for each contract executed on that customer's order. This proposal will clarify that written confirmations furnished by the member organization(s) to a customer will not need to specify the exchange or exchanges on which such option contracts were executed.

This proposal is similar to rule change proposals that have been filed by the Chicago Board Options Exchange ("CBOE"), the Financial Industry Regulatory Authority, Inc. ("FINRA"), and the American Stock Exchange LLC ("Amex").⁶ The Exchange believes that similar proposals will be filed with the Commission by the New York Stock Exchange ("NYSE") and other exchanges, and if adopted, would continue to provide a uniform approach with respect to confirmations to customers regarding standardized options.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act⁸ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect

⁶ See Securities Exchange Act Release Nos. 58814 (Oct. 20, 2008), 73 FR 63527 (Oct. 24, 2008) (SR-Amex-2008-53); 58932 (Nov. 12, 2008), 73 FR 69696 (Nov. 19, 2008) (SR-FINRA-2008-32); and 58980 (Nov. 19, 2008), 73 FR 72091 (Nov. 26, 2008) (SR-CBOE-2008-61).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest by clarifying the Exchange's options confirmation procedure rules to better reflect the realities of the modern options market.

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 with respect to the proposed rule change.

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

The Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)⁹ of the Act and Rule 19b-4(f)(6)(iii) thereunder¹⁰ because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate.

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹¹ However, Rule 19b-4(f)(6)(iii)¹² permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6)(iii).

¹¹ Id.

¹² Id.

public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The proposed rule change is substantially similar to an Amex rule that provides that written confirmations relating to options transactions are not required to specify the options exchange or exchanges on which such options were executed.¹³ The Exchange believes that this proposed rule change does not raise any new, unique or substantive issues from those raised in the approved Amex filing. The Exchange also believes that acceleration of the operative date is consistent with the protection of investors and the public interest.¹⁴ Lastly, the Exchange provided the Commission with 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 days prior to the date of the filing of the proposed rule change as required by Rule 19b-4(f)(6).

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

¹³ See supra note 6, and related text.

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2008-82 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-2008-82. 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 am and 3:00 pm. 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-2008-82 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
Acting Secretary

¹⁵ 17 CFR 200.30-3(a)(12).