

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59545; File No. SR-Phlx-2009-20)

March 9, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Elimination of Sector Index Options from Monthly Firm Cap

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 February 25, 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 eliminate the sector index options from the Monthly Firm Cap.<sup>3</sup> Additionally, the Exchange proposes minor amendments to its fee schedule to clean-up the formatting of its fee schedule and correct a typographical error.

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.

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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> Firm Proprietary Options Transaction Charges for equity and sector index options, in the aggregate, for one billing month can not exceed \$75,000 per month, per member organization, except for orders of joint back-office participants.

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 no longer include the options transaction charge associated with the sector index options in the \$75,000 Firm-Related Equity Option and Index Option Cap calculation. The Exchange believes that it can continue to attract this business without offering the cap, which should also help to raise revenue. Specifically, "firm-related" charges include equity option firm proprietary transaction charges and index option firm proprietary transaction charges ("Monthly Firm Cap"). Currently, such firm-related charges for equity option and index options, in the aggregate for one billing month, would not exceed \$75,000 per month per member organization. The Monthly Firm Cap excludes orders of joint back-office participants.<sup>4</sup>

Additionally, the Exchange proposes the following clean-up amendments to its Fee Schedule: (1) removal of the date from the first page of the Fee Schedule; (2) removal of page numbers from the Table of Contents to be replaced by section numbers; and (3) removal of

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<sup>4</sup> See Securities Exchange Act Release No. 59393 (February 11, 2009), 74 FR 7721 (February 19, 2009)(SR-Phlx-2009-12)(increasing the Firm-Related Equity Option and Index Option Cap to \$ 75,000 and exclude JBO participants).

underlining from all section headers on each page of the Fee Schedule.<sup>5</sup> The Exchange believes that these amendments will provide for ease of motion in amending the Fee Schedule.

The Exchange also proposes to amend a typographical error related to its Examinations Fee. In filing SR-Phlx-2009-08<sup>6</sup>, the Exchange inadvertently indicated that the Examinations Fee for the number of Off-Floor Traders, in the same Member Organization, that exceeded 200 in number is \$12,000 per month.<sup>7</sup> This fourth tier should have stated that the Examinations Fee for the number of Off-Floor Traders, in the same Member Organization, that exceeded 200 in number is \$12,500 per month. The Exchange purposes to amend this tier of the Examinations Fee to properly reflect the amount previously filed with the Commission.

## 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 the amendment to the Monthly Firm Cap is equitable in that it proposes to eliminate all section index options. Additionally, the proposed amendments to the formatting of the fee schedule will create a more user friendly fee schedule. The proposal to correct the typographical error in the Examination s Fee should eliminate confusion among members as to the amount of the fee.

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<sup>5</sup> See Securities Exchange Act Release No. 59402 (February 13, 2009), 74 FR 8134 (February 23, 2009)(SR-Phlx-2009-08)(a proposal to create a more user-friendly fee schedule).

<sup>6</sup> Id.

<sup>7</sup> See Securities Exchange Act Release No. 54941 (December 14, 2006), 71 FR 77079 (December 22, 2006)(SR-Phlx-2006-70)(adopting a tiered Examinations Fee).

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

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

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 proposal 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](mailto:rule-comments@sec.gov). Please include File No. SR-Phlx-2009-20 on the subject line.

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

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

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 No. SR-Phlx-2009-20. 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 changes 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 such filing also will be available for inspection and copying at the principal office of Phlx. 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 No. SR-Phlx-2009-20 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  
Deputy Secretary

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