

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59247; File No. SR-Phlx-2008-87)

January 14, 2009

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Phlx Fee Schedule

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 December 31, 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 been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Summary of Equity Option, and MNX, NDX, RUT and RMN Charges; Summary of Index Option Charges; and Summary of U.S Dollar-Settled Foreign Currency Option Charges fee schedules. Specifically, the Exchange proposes to assess an option transaction charge of \$0.08 per contract side for specialists and Registered Options Traders (“ROT”), including Streaming Quote Traders (“SQTs”)<sup>3</sup> and Remote Streaming Quote

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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> An SQT is an Exchange Registered Options Trader (“ROT”) who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. See Exchange Rule 1014(b)(ii)(A).

Traders (“RSQTs”)<sup>4</sup> on contracts that are executed electronically as part of a Complex Order<sup>5</sup> in equity options on the Exchange’s electronic trading platform for options, Phlx XL.<sup>6</sup> Market participants other than specialists and ROTs would be assessed the applicable current equity options transaction charge.

The Exchange proposes to assess any applicable option transaction charges to participants, including specialists and ROTs, on contracts in Index Options and U.S. Dollar-Settled Foreign Currency Options that are executed electronically as part of a Complex Order.<sup>7</sup>

This proposal is effective upon filing and will be implemented for transactions settling on or after January 2, 2009.

The text of the proposed rule change is available on the Exchange’s Website at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>.

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<sup>4</sup> An RSQT is an ROT and participant in the Exchange’s electronic trading system, “Phlx XL” who has received permission from the Exchange to trade in options for his own account, and to generate and submit option quotations electronically from off the floor of the Exchange through AUTOM in eligible options to which such RSQT has been assigned. See Exchange Rule 1014(b)(ii)(B).

<sup>5</sup> A Complex Order is composed of two or more option components and is priced as a single order (a “Complex Order Strategy”) on a net debit or net credit basis. See Exchange Rule 1080, Commentary .08. For a complete description of the Exchange’s Complex Order System, see Securities Exchange Act Release No. 58361 (August 14, 2008), 73 FR 49529 (August 21, 2008) (SR-Phlx-2008-50).

<sup>6</sup> See Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR-Phlx-2003-59).

<sup>7</sup> This proposal and the Exhibits attached hereto include amendments to the Exchange’s fee schedule that were submitted on December 30, 2008 as part of SR-Phlx-2008-86. Beginning with transactions settling on or after January 2, 2009, the Exchange will assess an option transaction charge of \$0.22 per contract for ROTs, \$0.24 per contract for Firms that submit proprietary orders, and \$0.14 for Firm facilitation orders. The Commission notes that the preceding sentence refers to the “Summary of Equity Option, and MNX, NDX, RUT and RMN Charges” on the fee schedule as amended by File No. Phlx-2008-86.

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 provide an incentive for specialists and ROTs to provide liquidity in Complex Orders sent to the Exchange for execution, and to enhance Exchange revenues, by assessing an equity option transaction charge of \$0.08 per contract side for specialists and ROTs instead of the current applicable charges that apply to simple option transactions in equity options.<sup>8</sup> Respecting Complex Orders in equity options for other market participants, the equity option transaction charges in effect on the Exchange for simple orders would be assessed.

Respecting Complex Orders in index and foreign currency options, the index option and foreign currency option transaction charges in effect on the Exchange for simple orders would be assessed on all participants.

Pursuant to this proposal, the Exchange intends to amend the Exchange's: (i) Summary of Equity Option, and MNX, NDX, RUT and RMN Charges; (ii) Summary of Index Option Charges; and (iii) Summary of U.S Dollar-Settled Foreign Currency Option Charges.

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<sup>8</sup> The Commission notes that prior to this filing, Phlx did not assess transaction charges for Complex Orders.

Currently, the Exchange does not assess transaction charges for Complex Orders. The Exchange believes that the \$0.08 transaction charge for Complex Orders in equity options (as opposed to the transaction charges for simple orders) should provide incentives for specialists and ROTs to provide liquidity in the Exchange's markets for Complex Orders in equity options.

#### Summary of Equity Option, and MNX, NDX, RUT and RMN Charges

Currently, the Exchange assesses various option transaction charges for equity options, depending on such factors as the category of person(s) submitting orders for execution (e.g., customers, specialists, broker-dealers, ROTs and Firms are all charged differently, on a per contract basis, ranging from \$0.00 per contract to \$0.45 per contract) and the manner in which the order is delivered to the Exchange. For example, broker-dealer orders submitted electronically to the Exchange's systems are charged \$0.45 per contract, whereas broker-dealer orders submitted through means other than the Exchange's electronic system are charged \$0.25 per contract. Customers submitting orders in equity options are generally not charged transaction fees<sup>9</sup> whereas ROTs and Firms are charged.

The Exchange proposes to amend the fee schedule to assess specialists and ROTs an option transaction charge of \$0.08 per contract side on contracts in equity and MNX, NDX, RUT and RMN options that are executed electronically as part of a Complex Order. Participants other than specialists and ROTs would be assessed the regular equity option transaction charge applicable to simple equity option orders.

#### Summary of Index Option Charges

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<sup>9</sup> Customers are charged \$0.12 per contract for executions in MNX and NDX options. The Commission notes that the Phlx fee schedule also provides for a \$0.12 per contract charge for customer executions in RUT and RMN. See Securities Exchange Act Release No. 59243 (January 13, 2009) (File No. Phlx-2008-86) (adding those charges to the fee schedule).

The Exchange assesses an option transaction charge for index option transactions other than transactions involving Complex Orders, as described in the Exchange's Summary of Index Option Charges. The Exchange proposes to amend its Summary of Index Option Charges to assess any applicable option transaction charges to participants, including specialists and ROTs, on contracts in index options that are executed electronically as part of a Complex Order. For clarity, the Exchange proposes to amend its Summary of Index Option Charges to state specifically that Registered Option Traders (on-floor) and specialists will be assessed \$0.24 per contract side on contracts that are executed electronically as part of a Complex Order.

#### Summary of U.S Dollar-Settled Foreign Currency Option Charges

The Exchange currently assesses an option transaction charge for transactions in options overlying U.S. dollar-settled foreign currencies, as described in the Exchange's Summary of U.S Dollar-Settled Foreign Currency Option Charges. The Exchange proposes to amend its Summary of U.S Dollar-Settled Foreign Currency Option Charges schedule to assess any option transaction charges on contracts in U.S dollar-settled foreign currency options that are executed electronically as part of a Complex Order. For clarity, the Exchange proposes to amend its Summary of U.S Dollar-Settled Foreign Currency Option Charges schedule to state specifically that Registered Option Traders (on-floor) and specialists will be assessed \$0.24 per contract side on contracts that are executed electronically as part of a Complex Order.

The Exchange currently provides a discount for ROTs (on-floor) and specialists that exceed 4.5 million contracts in a given month (the "Volume Threshold") by assessing \$0.01 per contract on contract volume above the Volume Threshold instead of the applicable options

transaction charge described in the Summary of Equity Option, and MNX, NDX, RUT and RMN Charges. Complex Order volume is not used in calculating the Volume Threshold.<sup>10</sup>

## 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>11</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>12</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. Specifically, the Exchange believes that this proposal is equitable because it would apply evenly to specialists and ROTs transacting with Complex Orders sent to the Exchange for execution.

### 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 that is 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 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>13</sup> and paragraph (f)(2) of Rule 19b-4<sup>14</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

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<sup>10</sup> See Securities Exchange Act Release No. 58420 (August 25, 2008), 73 FR 51035 (August 29, 2008) (SR-Phlx-2008-62).

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2008-87 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-2008-87. 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 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 No. SR-Phlx-2008-87 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).