

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59402; File No. SR-Phlx-2009-08)

February 13, 2009

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Reformatting its 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 January 29, 2009, NASDAQ OMX PHLX, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On February 9, 2009, Phlx submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

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

The Exchange proposes to amend its existing NASDAQ OMX PHLX, Inc. Fee Schedule (“fee schedule”) solely to create a more user-friendly fee schedule.

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

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

<sup>2</sup> 17 CFR 240.19b-4.

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 reformat the fee schedule to make it more user-friendly. The newly proposed fee schedule includes the current fees, which remain unchanged. In the process of reformatting the schedule, additional connecting language was added where appropriate to provide clarity to the end-user. The proposal eliminates the current footnotes and reference symbols. The Exchange believes that by placing the language that is currently contained in footnotes and noted by symbols into the text of the fees and endnotes better displays any exceptions or exclusions referenced in those footnotes or symbols by more prominently displaying them in the text.

Additional non-substantive language has been added where appropriate because the Exchange removed the symbol references and footnotes and created sentences from those symbols and footnotes in order to explain the related text that was once referenced by the footnote or symbol. For example, in the Streaming Quote Trading [sic] fees the applicability of the permit credit is spelled out under each specific fee. Previously, these exceptions were referenced in footnotes so the reader had to further search the fee schedule to learn of the applicability of the permit credit.

The proposal makes clarifying changes to the Streaming Quote Trader Fees ("SQT") and the Remote Streaming Quote Trader Fees ("RSQT") in proposed endnotes 35 and 40. In the current fee schedule the footnotes analogous to proposed notes 35 and 40 appear in connection

with categories I and II of the SQT fees and next to category I of the RSQT fees. The Exchange would like to clarify the placement of these footnotes as applicable to all SQT and RSQT fees respectively.<sup>3</sup>

Finally, the proposed fee schedule has added more headers for clarity and to better indicate the categories of fees. This proposed fee schedule makes additional references throughout the fee schedule to current footnote 15, which indicates who qualifies as a broker-dealer. Also, the first page of the proposed fee schedule displays the various categories for quick reference and clarification. These proposed changes, as previously mentioned, are non-substantive amendments and are added for the sole purpose of creating a simplified, easily readable format for displaying the various fees.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>5</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by providing the members with a more user-friendly fee schedule to better display the allocation of fees among Exchange members. The Exchange believes that this proposed format will provide additional transparency of Exchange fees.

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<sup>3</sup> See Securities Exchange Act Release Nos. 51453 (March 30, 2005), 70 FR 17495 (April 6, 2005) (SR-Phlx-2005-16) (adopting fees applicable to Streaming Quote Traders); 51428 (March 24, 2005), 70 FR 16325 (March 30, 2005) (SR-Phlx-2005-12) (adopting fees applicable to Remote Streaming Quote Traders).

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

<sup>5</sup> 15 U.S.C. 78f(b)(5).

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 Exchange 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 with respect to the proposed rule change.

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

The foregoing proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>6</sup> and Rule 19b-4(f)(2) thereunder,<sup>7</sup> because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the Exchange. 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>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</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-2009-08 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-2009-08. 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, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also 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-2009-08 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>8</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).