

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59611; File No. SR-Phlx-2009-22)

March 20, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a
Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Administration of
Certain Rules In Respect Of Index Data Dissemination

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4² thereunder, notice is hereby given that on March 16, 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 reflect in the administration of its rules the expected discontinuation by the NASDAQ OMX Futures Exchange, Inc. ("NFX") of index value distribution over NFX's Market Data Distribution Network ("MDDN"). Index values will continue to be distributed via another NASDAQ OMX data dissemination service, and the discontinuation of MDDN index value dissemination will not have any impact on the listing or trading of any instruments on the Exchange, or on any facility of a national securities exchange within the meaning of the Act. The Exchange is not proposing to amend the text of any rules, but simply to change the administration of certain rules, as described below.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

Currently, the values of the Exchange's various proprietary indexes are disseminated in parallel over two separate data services operated by The NASDAQ OMX Group, Inc. ("NASDAQ OMX").³ These values are included both in NFX's MDDN⁴ and NASDAQ OMX's data dissemination service. The purpose of this filing is to reflect the pending discontinuation by NFX of its index data dissemination service over MDDN as redundant and unnecessary.⁵

³ NASDAQ OMX acquired the Exchange on July 24, 2008. NFX, which was previously known as the Philadelphia Board of Trade and became a subsidiary of NASDAQ OMX on the same date, is a Designated Contract Market within the meaning of the Commodities Exchange Act.

⁴ MDDN is an Internet protocol multicast network, which was developed by NFX for the purpose of, among other things, transmitting current and closing index values.

⁵ The Exchange's rule book and fee schedule do not reference MDDN. As explained herein, MDDN is not a service being provided by the Exchange (rather, it is a service of NFX, a designated contract market under the Commodities Exchange Act), and even if MDDN were an Exchange-supplied service, it would

Exchange rules condition the listing and trading of index options on, among other things, the dissemination of underlying index values periodically during the trading day and closing index values after the close of the trading day. Rule 1009A(b)(10) provides that the current underlying index value for narrow-based indexes will be reported at least once every fifteen seconds during the time the index options are traded on the Exchange.⁶ Additionally, Rule 1100A(a) provides that the Exchange shall disseminate or shall assure that the closing index value is disseminated after the close of business and the current index value is disseminated from time-to-time on days on which transactions in index options are made on the Exchange.⁷

not constitute a facility of a national securities exchange, making its inclusion in the Exchange's rule book unnecessary. See, e.g., Securities Exchange Act Release No. 34-58897 (November 3, 2008), 73 FR 66952 (November 12, 2008) (SR-NASDAQ-2008-018) (NASDAQ's index dissemination service is not a facility of a national securities exchange, and its terms are not rules that must be filed with the Commission).

⁶ See also Rule 1009A(c)(1)(regarding reporting requirements for continued listing of narrow-based indexes underlying options); and Rules 1009A(d)(11) and 1109A(e)(1)(regarding reporting requirements for initial and continued listing of broad-based indexes underlying options).

⁷ See also Securities Exchange Act Release No. 53790 (May 11, 2006), 71 FR 28737 (May 17, 2006) (SR-Phlx-2006-04) (regarding, among other things, transmission over MDDN of current and closing index values underlying four index options that were approved by Commission order: XAU, OSX, SOX, and UTY).

The Exchange lists options on several proprietary indexes.⁸ Under this proposed rule change, discontinuation of the MDDN index value dissemination service will not affect the eligibility of such options to be listed and traded because dissemination of the underlying index data will not stop and will not be interrupted. All index values included in MDDN are currently also being disseminated over another NASDAQ OMX index dissemination service, making the MDDN index dissemination duplicative and no longer necessary.⁹ In the future, the Exchange will continue dissemination of its index data either through NASDAQ OMX's index dissemination service or through one or more other (NASDAQ OMX-owned or unrelated) major market data vendors.¹⁰

⁸ The proprietary indexes listed on the Exchange include: PHLX Chemicals Index (XCM); PHLX Defense Sector (DFX); PHLX Drug Sector (RXS); PHLX Europe Sector (XEX); PHLX Gold/Silver Sector (XAU); PHLX Housing Sector (HGX); PHLX Marine Shipping Index (SHX); PHLX Medical Device Index (MXZ); PHLX Oil Service Sector (OSX); PHLX Semiconductor Sector (SOX); PHLX Sports Index (SXP); and PHLX Utility Sector (UTY). DFX, RXS, HGX, OSX, and SOX are listed and options are traded pursuant to Rule 1009(A), which provides for trading of options on indexes pursuant to Rule 19b-4(e) of the Act. XAU and UTY, being two of the oldest indexes that pre-date Rule 19b-4(e), are listed and options are traded pursuant to Commission orders. See Securities Exchange Act Release Nos. 20437 (December 2, 1983), 48 FR 55229 (December 9, 1983) (XAU); and 24889 (September 9, 1987), 52 FR 35021 (September 16, 1987) (UTY). XCM, XEX, SHX, MXZ, and SXP are no longer listed or traded and have no open options interest.

⁹ It is expected that other MDDN data streams will continue to operate as a service of NFX to distribute NFX trading data.

¹⁰ As is the case with the values of proprietary indexes, current and closing index values of certain non-proprietary indexes underlying options listed on the Exchange (Hapoalim American Israeli Index, SIG Coal Producers Index, SIG Energy MLP Index, and SIG Oil Production & Exploration Index) and data regarding foreign currencies underlying options listed on the Exchange (Australian dollars, British pounds, Canadian dollars, Euros, Japanese Yen and Swiss Francs) will likewise continue to be distributed over the NASDAQ OMX index dissemination service or one or more other (NASDAQ OMX-owned or unrelated) major market data vendors.

The Exchange believes that, just like NASDAQ's index dissemination service,¹¹ NFX's MDDN index dissemination service is not a facility of any national securities exchange within the meaning of the Act and that the Exchange is not required under Section 19(b)(1) of the Act¹² and Rule 19b-4 thereunder¹³ to file rule changes regarding administration of such service. If, at a later date, the Exchange proposed to modify the manner in which it disseminates index values, causing the relevant index dissemination service to fit within the definition of a facility of an exchange, or the Exchange proposed to tie the fees for receiving data from the index dissemination service to fees for usage of exchange services (to include, for example, listing and trading), the Exchange would file a proposed rule change with the Commission.¹⁴

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁶ 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

¹¹ See Securities Exchange Act Release No. 34-58897 (November 3, 2008), 73 FR 66952 (November 12, 2008) (SR-NASDAQ-2008-018) (NASDAQ's index dissemination service is not a facility of a national securities exchange, and its terms are not rules that must be filed with the Commission).

¹² 15 U.S.C. 78s(b)(1).

¹³ 17 CFR 240.19b-4.

¹⁴ See Securities Exchange Act Release No. 58897 (November 3, 2008), 73 FR 66952 (November 12, 2008) (SR-NASDAQ-2008-018).

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

market system, and, in general to protect investors and the public interest by clarifying how underlying index data is to be disseminated.

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) of the Act and paragraph (f)(1) of Rule 19b-4 thereunder. Pursuant to the Act, the proposed rule change has been designated by the Exchange as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. Specifically, as described above, the Exchange has stated how it will administer the enumerated portions of Phlx Rules 1009A and 1100A in light of the discontinuation of index data dissemination over NFX's MDDN. 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.

As discussed above, the Exchange believes that the MDDN index dissemination service is not a "facility of a national securities exchange," and the terms and conditions

of this service are therefore not included in the text of the Exchange's rules. Because of this, no changes are being made to the Exchange rule book or fee schedule, and this filing should be viewed as a statement of how the Exchange will administer its existing rules in light of the impending discontinuation of a non-exchange service (MDDN index dissemination) by a sister company (NFX).

It must be noted in this regard that rule changes to discontinue important exchange services (as opposed to non-exchange services, as is the case here) have in the past been accepted by the Commission on immediately effective basis under paragraph (f)(1) of Rule 19-b(4).¹⁷ It stands to reason that discontinuation of a non-exchange service should receive the same treatment under paragraph (f)(1).

In its recent interpretive guidance regarding the self-regulatory organizations' rule filing process, the Commission stated that certain SRO proposals "may be filed as an immediately effective rule so long as it is based on and similar to another SRO's rule" and raises no new policy issues.¹⁸ Filings in this category are eligible to be submitted under paragraph (f)(6) of Rule 19b-4.¹⁹ As explained below, paragraph (f)(6) could serve as a separate basis for this filing's designation under Rule 19(b)(3), but the Exchange believes that designation under paragraph (f)(1) is more appropriate in this case.

¹⁷ See, e.g., Securities Exchange Act Release No. 58613 (Sept. 22, 2008), 73 FR 57181 (Oct. 1, 2008) (SR-PHLX-2008-065) (immediately effective filing to change the administration of Exchange rules as a result of the shutdown of the entire XLE equity trading).

¹⁸ Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144 (July 11, 2008).

¹⁹ 17 CFR 240.19b-4(f)(6).

The Commission recently approved removal of index dissemination from the rule book of another exchange, NASDAQ,²⁰ and in its impact, the present filing is similar to the NASDAQ filing. With the shut-down of MDDN index dissemination, both the PHLX and NASDAQ index values will continue to be distributed by the same index dissemination service, and since that service is not a facility of any national securities exchange (either NASDAQ or PHLX), its terms are not rules of an exchange within the meaning of the Act. This similarity to another SRO's rule makes the present filing eligible for immediate effectiveness under paragraph (f)(6) of Rule 19(b)(4).

However, unlike the NASDAQ proposal, the present filing does not require any modifications to codified rule text and relates to a service that is being proposed for discontinuation. As explained above, even when the service to be discontinued is an important facility of a national securities exchange, its discontinuation has in the past been accepted as immediately effective under paragraph (f)(1) of Rule 19b-4. Based on prior Commission practice, while paragraph (f)(6) of Rule 19b-4 would certainly apply to this filing, paragraph (f)(1) of this Rule is the appropriate basis for its immediate effectiveness.

Based on the foregoing, the Exchange designates this filing as immediately effective under paragraph (f)(1) of Rule 19b-4. It is expected that notice of the impending discontinuation of MDDN index dissemination will be given as soon as practicable and the actual discontinuation will occur shortly thereafter, on a timetable that would minimize any possible inconvenience to its users.

²⁰ Securities Exchange Act Release No. 58897 (November 3, 2008), 73 FR 66952 (November 12, 2008) (SR-NASDAQ-2008-018) (NASDAQ's index dissemination service is not a facility of a national securities exchange, and its terms are not rules that must be filed with the Commission).

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-2009-22 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-2009-22. 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 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-2009-22 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.²¹

Florence E. Harmon
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).