

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59852; File No. SR-Phlx-2009-39)

April 30, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Trading Post/Booth and Registration Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4 thereunder,² notice is hereby given that on April 24, 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 amend the Exchange's Fee Schedule to: (1) rename the Trading Post/Booth fee and increase the fee from \$250 to \$300 per month; (2) designate certain space on the trading floor as Market Maker Trading Space and assess members a fee of \$300 per month; (3) eliminate the Trading Post with Kiosk fee of \$375 per month and replace it with a Specialist Post fee of \$4,500 per month for a full post and \$1,125 per month for a quarter post, up to a maximum of \$4,500; (4) increase the Floor Facility fee from \$125 to \$200 per month; (5) increase the Trading Floor Personnel Registration fee from \$25 to \$50 per month; and (6) make other minor amendments to the Fee Schedule.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

While changes to the Exchange's fee schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be effective on May 1, 2009.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, 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 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 increase the costs of certain floor-related charges due to a rise in occupancy expenses. The Exchange proposes to adjust its fees related to certain trading floor charges to keep pace with the rising overhead costs associated with maintaining the trading floor. The Exchange has not made any significant changes to these fees in several years.

The Exchange proposes to increase the Trading Post/Booth fee from \$250 to \$300 per month. The Trading Post/Booth space is physical space on the Exchange's trading floor, which space typically is used by floor brokers. The Exchange proposes to increase this fee to cover increasing occupancy costs, such as electricity usage due to the increase of member computers

on the trading floor. Additionally, the Exchange proposes to rename the Trading Post/Booth fee as the “Trading/Administrative Booths and Market Maker Trading Space” fee. The Exchange proposes to designate certain space on the trading floor to be termed as “Market Maker Trading Space” and assess members \$300 per month for that space. The Exchange would clearly define space where Register Options Traders could locate computer and related equipment required to function as a Streaming Quote Trader.³ The Exchange proposes to implement this fee to cover increasing costs associated with the trading floor.

The Exchange proposes to eliminate the Trading Post with Kiosk fee of \$375. The kiosk is an open, flat surface that contains computer terminals and allows specialists to face the trading crowd. The fee is currently imposed on specialists with a trading post with kiosk on the trading floor. Instead, the Exchange proposes to adopt a Specialist Post fee which would vary with the size of the post. Specialists would be assessed a Specialist Post fee of \$1,125 per month for a quarter post and \$4,500 per month for a full post with a maximum fee of \$4,500 per month. Currently the specialists have multiple, contiguous, trading posts with kiosks on the trading floor. This fee should result in no additional increase to the specialists currently on the trading floor as the total amount paid currently for each trading post with kiosk, or \$375, multiplied by the total number of posts utilized is equivalent to the fee range of the proposed charges, \$1,125 for a quarter post and \$4,500 for a full post, per month. Additionally, the Exchange is capping the total amount of fees paid by a specialist for the Specialist Post fee at \$4,500 per month. The posts would continue to facilitate specialist interaction with the trading crowd.

³ A Streaming Quote Trader or 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).

The Exchange proposes to increase the Floor Facility fee from \$125 to \$200 per month. The Floor Facility fee is applicable to floor members and foreign currency options participants that are not currently assessed fees related to the usage of a Trading Post/Booth and would not be assessed a Trading/Administrative Booths and Market Maker Trading Space fee. The Floor Facility fee is intended to fairly allocate costs attendant to providing members and participants with services necessary to the conduct of business on the floor of the Exchange. The Exchange proposes to increase this fee to offset the increased costs of operating a trading floor facility.

The Exchange also proposes increasing the Trading Floor Personnel Registration fee from \$25 to \$50 per month. Pursuant to Exchange Rule 620⁴ all trading floor personnel are required to be registered with the Exchange. This fee is imposed on members and participant organizations for individuals who are employed by such member or participant organizations and who work on the Exchange's trading floor, such as clerks, interns, stock execution clerks and other associated persons, but who are not registered as members or participants. The Exchange proposes to increase this fee to offset the rising occupancy costs associated with operating a trading floor facility.

The Exchange also proposes to make a minor amendment to its Fee Schedule to amend the title of Section II of the Fee Schedule. Currently that section is titled Index Options Fees and the Exchange proposes to amend that section title to "Sector Index Options Fees." This title would be amended in the Table of Contents as well as in Section II of the Fee Schedule. The Exchange believes that the wording "Sector Index Options Fees" is a more appropriate title for these products.

⁴ See Exchange Rule 620(a), titled Trading Floor Personnel Registration, "Each Floor Broker, Specialist and Registered Options Trader on any Exchange trading floor must register as such with the Exchange. . . ."

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act⁶ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the proposed increases in fees to the associated Trading/Administrative Booths and Market Maker Trading Space, Floor Facility and Trading Floor Personnel fees are reasonable and the revenue will assist the Exchange in defraying the occupancy costs of maintaining the floor facility for its members. The Specialist Post fee should not result in a fee increase for specialists. The Exchange believes that because specialists pay significantly more total transaction fees on a monthly basis than similar fees assessed on Register Options Traders and floor brokers, the proposed fees are reasonable. Finally, the Exchange believes that the amendment to the title of Section II is a proper title to identify fees in the Fee Schedule.

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

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁷ and paragraph (f)(2) of Rule 19b-4⁸ 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 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-2009-39 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-2009-39. 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

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ 17 CFR 240.19b-4(f)(2).

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 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-2009-39 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.⁹

Elizabeth M. Murphy
Secretary

⁹ 17 CFR 200.30-3(a)(12).