

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59669; File No. SR-Phlx-2009-24]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, Relating to Increasing Linkage Inbound Principal Orders and Principal Acting as Agent Orders

April 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 24, 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, II, and III below, which Items have been prepared by the Exchange. On March 26, 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 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 Equity Options Fees portion of its fee schedule relating to transaction fees applicable to the execution of Principal Acting as Agent Orders ("P/A Orders")<sup>3</sup> and Principal Orders ("P Orders")<sup>4</sup> sent to the Exchange via the Intermarket Options Linkage ("Linkage") under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the "Plan").<sup>5</sup>

Specifically, the Exchange will increase its transaction fees for P/A Orders from the current \$0.15 per option contract to \$0.30 per option contract, and for P Orders from the current \$0.25 per option contract to \$0.45 per contract.

This proposal is part of an existing pilot program, which is scheduled to expire July 31, 2009.<sup>6</sup>

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 self-regulatory organization 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 those 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 parts 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 raise revenue for the Exchange by increasing the transaction charge for P/A Orders from the current \$0.15 per option contract to \$0.30 per option contract, and by increasing the transaction charge for P Orders from the current \$0.25 per option contract to \$0.45 per option contract.

Consistent with current practice, the Exchange will charge the clearing member organization of the sender of P Orders and P/A Orders. Also, consistent with current practice, the Exchange will not charge for the execution of Satisfaction Orders sent through Linkage.

The Exchange also proposes a technical amendment to the schedule of Equity Option Fees by correcting a typographical error, changing the word "overlying" to read "overlying."

###### 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>7</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>8</sup>

in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and issuers and other persons using its facilities.

##### 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 with respect to the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

#### 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 No. SR-Phlx-2009-24 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2009-24. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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

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

<sup>3</sup> A P/A Order is an order for the principal account of a specialist (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent. See Exchange Rule 1083(k)(i)

<sup>4</sup> A P Order is an order for the principal account of an Eligible Market Maker. See Exchange Rule 1083(k)(ii).

<sup>5</sup> See Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000); (order approving the Plan); and 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (order approving Phlx as a participant in the Plan).

<sup>6</sup> See Securities Exchange Act Release No. 58144 (July 11, 2008), 73 FR 41394 (July 18, 2008) (SR-Phlx-2008-49).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

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 a.m. and 3 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-2009-24 and should be submitted on or before April 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59673; File No. SR-NASDAQ-2009-031]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding a Clerical Change to Nasdaq Rules

April 1, 2009.

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 March 26, 2009, The NASDAQ Stock Market LLC ("Nasdaq"), 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 prepared by Nasdaq. Nasdaq proposes to make a clerical correction to the Nasdaq

rulebook under Rule 19b-4(f)(3) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. 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 the Substance of the Proposed Rule Change

Nasdaq proposes to make clerical corrections to the Nasdaq rulebook. Nasdaq proposes to implement the proposed rule change immediately.

The text of the proposed rule change is available on Nasdaq's Web site <http://nasdaq.cchwallstreet.com>, at Nasdaq's principal office, and at the Commission's Public Reference Room.

Proposed new language is in italics; proposed deletions are in brackets.<sup>4</sup>

\* \* \* \* \*

7048. [7047.] Nasdaq Custom Data Feeds

No Change.

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#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nasdaq proposes to make a clerical correction to the Nasdaq rulebook. Specifically, Nasdaq proposes to renumber Nasdaq Rule 7047 to Nasdaq Rule 7048. Nasdaq is renumbering this rule because Nasdaq has filed another proposed rule change that necessitates a renumbering of the existing Rule 7047. Nasdaq is making no changes to Rule 7047, other than to change the rule number to 7048.

###### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the

provisions of Section 6 of the Act,<sup>5</sup> in general, and with Section 6(b)(5) of the Act,<sup>6</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. The proposed rule change makes a minor clerical change to renumber an existing Nasdaq rule.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

##### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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

Pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(3) thereunder,<sup>8</sup> Nasdaq has designated this proposal as one that is concerned solely with the administration of the self-regulatory organization. Accordingly, Nasdaq believes that its proposal should become immediately effective.

#### 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-NASDAQ-2009-031 on the subject line.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(3).

<sup>3</sup> 17 CFR 240.19b-4(f)(3).

<sup>4</sup> Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaq.cchwallstreet.com/>.

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

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