Office Building, Washington, DC 20503 or send an e-mail to Shagufta Ahmed at *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: May 11, 2009.

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9–11361 Filed 5–14–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59898; File No. SR–NYSE–2009–37]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Implementing a Cap on Vendors' Administrative Charges for NYSE OpenBook

May 11, 2009.

I. Introduction

On March 26, 2009, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to introduce a cap on the monthly charges that broker-dealers and vendors are required to pay for their use of NYSE OpenBook data for the purposes of administering their provision of NYSE OpenBook product offerings. The proposed rule change was published for comment in the **Federal Register** on April 8, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to introduce a cap on the monthly charges that broker-dealers and vendors are required to pay for their use of NYSE OpenBook data for the purposes of administering their provision of NYSE OpenBook product offerings. A one-year pilot program to simplify and modernize market data administration (the "Unit of Count

Filing") was recently approved for its NYSE OpenBook product packages.[4] The Unit of Count Filing redefined some of the basic "units of measure" that vendors are required to report to the Exchange and on which the Exchange bases its fees for its NYSE OpenBook product packages.

Under the proposal, the Exchange proposes to establish a maximum monthly amount of $1500 (the "Monthly Maximum") for entitlements consisting of unique individuals within a vendor's organization to whom the vendor distributes NYSE OpenBook data for the sole purpose of administering the vendor's distribution of NYSE OpenBook services externally to the vendor's customers. The Monthly Maximum of $1500 means that a vendor would have to pay for no more than 25 NYSE OpenBook administrative personnel.

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,[6] which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities and the requirements under Section 6(b)(5)[7] that the rules of an exchange be 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the Act,[8] which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed

rule change is consistent with Rule 603(a) of Regulation NMS,[9] adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.[10]

This proposal would cap the fees for NYSE OpenBook when used by vendors for administrative purposes. The Commission has reviewed the proposal using the approach set forth in the NYSE Arca Order for non-core market data fees.[11] The Commission recently found that NYSE was subject to significant competitive forces in setting fees for its depth-of-book order data in the Unit of Count Filing.[12] There are a variety of alternative sources of information that impose significant competitive pressures on the NYSE in setting the terms for distributing its depth-of-book order data. The Commission believes that the availability of those alternatives, as well as the NYSE's compelling need to attract order flow, imposed significant competitive pressure on the NYSE to act equitably, fairly, and reasonably in setting the terms of its proposal.

Because the NYSE was subject to significant competitive forces in setting the terms of the proposal, the Commission will approve the proposal in the absence of a substantial countervailing basis to find that its terms nevertheless fail to meet an applicable requirement of the Act or the rules thereunder. An analysis of the proposal does not provide such a basis.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NYSE–2009–37) is hereby approved.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59681 (April 1, 2009), 74 FR 16017.

[4] *See* Securities Exchange Act Release No. 59544 (March 9, 2009), 74 FR 11162 (March 16, 2009) (SR–NYSE–2008–131).

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(8).

[9] 17 CFR 242.603(a).

[10] NYSE is an exclusive processor of NYSE depth-of-book data under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes information with respect to quotations or transactions on an exclusive basis on its own behalf.

[11] Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21) ("NYSE Arca Order"). In the NYSE Arca Order, the Commission describes in great detail the competitive factors that apply to non-core market data products. The Commission hereby incorporates by reference the data and analysis from the NYSE Arca Order into this order.

[12] *See* Securities Exchange Act Release No. 59544 (March 9, 2009), 74 FR 11162 (March 16, 2009) (SR–NYSE–2008–131).

[13] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,
Deputy Secretary.
[FR Doc. E9–11356 Filed 5–14–09; 8:45 am]
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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59891; File No. SR–Phlx–2009–24]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Increasing Transaction Fees for Linkage Inbound Principal Orders and Principal Acting as Agent Orders

May 8, 2009.

I. Introduction

On March 24, 2009, the NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change seeking to increase transaction fees applicable to the execution of Principal Acting as Agent Orders (''P/A Orders'')[3] and Principal Orders (''P Orders'')[4] 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'').[5] On March 26, 2009, Phlx submitted Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on April 8, 2009.[6] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 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).

[4] A P Order is an order for the principal account of an Eligible Market Maker. *See* Exchange Rule 1083(k)(ii).

[5] *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).

[6] *See* Securities Exchange Act Release No. 59669 (April 1, 2009), 74 FR 16026.

II. Description of the Proposal

The Exchange proposes to amend the Equity Options Fees portion of its fee schedule relating to transaction fees applicable to the execution of P/A Orders and P Orders sent to the Linkage under the Plan. Specifically, the Exchange proposes to 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.[7]

The Exchange states that the purpose of the proposed rule change is to raise revenue for the Exchange. The Exchange also represents that, consistent with current practice, the Exchange: (i) Will charge the clearing member organization of the sender of P Orders and P/A Orders; and (ii) 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 ''overlaying'' to read ''overlying.''

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,[9] which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Commission notes that the Options Linkage fees are assessed pursuant to a pilot scheduled to end on July 31, 2009 and that the Commission is continuing to evaluate whether such fees are appropriate.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Phlx–2009–24), as amended, is hereby approved.

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[7] *See* Securities Exchange Act Release No. 58144 (July 11, 2008), 73 FR 41394 (July 18, 2008) (SR–Phlx–2008–49).

[8] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,
Deputy Secretary.
[FR Doc. E9–11357 Filed 5–14–09; 8:45 am]
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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59893; File No. SR–NYSEArca–2009–38]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing Fee Change

May 8, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 30, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. NYSE Arca filed the proposal pursuant to Section 19(b)(3)(A)[4] of the Act and Rule 19b–4(f)(2)[5] thereunder. 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 its Schedule of Fees and Charges for Exchange Services (the ''Schedule''). While changes to the Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on May 1, 2009. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office 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

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(2).