

proposed rule change (SR-BX-2010-043) be, and hereby is, approved.

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

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. 2010-19649 Filed 8-9-10; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62639; File No. SR-Phlx-2010-89]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Order Approving a Proposed Rule Change Relating to Pricing for Direct Circuit Connections

August 4, 2010.

On June 24, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to establish pricing for 10Gb direct circuit connections and codify pricing for 10Gb direct circuit connections for customers who are not co-located in Phlx's datacenter. The proposed rule change was published for comment in the **Federal Register** on July 2, 2010.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

In its proposal, Phlx proposed to establish fees for direct 10Gb circuit connections, and codify fees for direct circuit connections capable of supporting up to 1Gb, for customers who are not co-located at the Exchange's datacenter. Phlx represented that it already makes available to co-located customers a 10Gb circuit connection and charges for each a \$1,000 initial installation charge as well as an ongoing monthly fee of \$5,000. The Exchange proposed to establish the same fees for non-co-located customers with a 10Gb circuit connection.<sup>4</sup>

Phlx represented that it also already makes available to both co-located and

non-co-located customers direct connections capable of supporting up to 1Gb, with per connection monthly fees of \$500 for co-located customers and \$1000 for non co-located customers. According to the Exchange, monthly fees are higher for non-co-located customers because direct connections require Phlx to provide cabinet space and middleware for those customers' third-party vendors to connect into the datacenter and, ultimately, to the trading system. Finally, the Exchange represented that for non-co-located customers, it charges an optional installation fee of \$925 if the customer chooses to use an on-site router.

After careful review, 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.<sup>5</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>6</sup> which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,<sup>7</sup> which requires, among other things, that the rules of a national securities 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 believes that the proposed fees for 10Gb and 1Gb direct circuit connections are reasonable and equitably allocated insofar as they are applied on the same terms to similarly-situated market participants. In addition, the Commission believes that the connectivity options described in the proposed rule change are not unfairly discriminatory because Phlx makes the 10Gb and 1Gb direct circuit connections uniformly available to all non-co-located customers who voluntarily request them and pay the fees as detailed in the proposal. As represented by Phlx, these fees are uniform for all such customers and are either the same as fees charged to co-located customers, or vary due to

different costs incurred by Phlx associated with providing service to the two different customer types. Finally, the Commission believes that the proposal will further the protection of investors and the public interest because it will provide greater transparency regarding the connectivity options available to market participants.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-Phlx-2010-89) be, and hereby is, approved.

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

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. 2010-19650 Filed 8-9-10; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62631; File No. SR-Phlx-2010-102]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees

August 3, 2010.

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 July 21, 2010, 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 its fees governing pricing for Exchange members using the Phlx XL II system,<sup>3</sup> for routing standardized equity and index option customer and professional orders to away markets for execution.

<sup>1</sup> 15 U.S.C. 78s(b)(2).

<sup>2</sup> 17 CFR 200.30-3(a)(12).

<sup>3</sup> 15 U.S.C. 78s(b)(1).

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

<sup>5</sup> For a complete description of Phlx XL II, see Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32). The instant proposed fees will apply only to option orders entered into, and routed by, the Phlx XL II system.

<sup>6</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<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.

<sup>3</sup> See Securities Exchange Act Release No. 62394 (July 2, 2010), 75 FR 38583 ("Notice").

<sup>4</sup> According to the Exchange, Phlx provides an additional 1Gb copper connection option for co-located customers. Phlx represented that, given the technological constraints of copper connections over longer distances, it does not offer a copper connection option to users outside of its datacenter.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRRulefilings>, at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at <http://www.sec.gov>.

## 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 recoup costs that the Exchange incurs for routing and executing customer and professional orders in equity and index options to away markets.

In May 2009, the Exchange adopted Rule 1080(m)(iii)(A) to establish Nasdaq Options Services LLC ("NOS"), a member of the Exchange, as the Exchange's exclusive order router.<sup>4</sup> NOS is utilized by the Phlx XL II system solely to route orders in options listed and open for trading on the Phlx XL II system to destination markets.

Currently, the Exchange's Fee Schedule includes Routing Fees for both customer and professional orders. The Exchange proposes to assess a Routing Fee of \$.26 per contract in customer option orders that are routed to the International Securities Exchange LLC ("ISE") and subject to the ISE's Rebates and Fees for Adding and Removing Liquidity in Select Symbols to apply only for orders of 100 contracts or more. The Exchange proposes to assess a Routing Fee of \$.31 per contract in professional option orders that are routed to the International Securities Exchange LLC ("ISE") and subject to the ISE's Rebates and Fees for Adding and Removing Liquidity in Select Symbols.

The Exchange would continue to assess \$.06 for all other customer orders routed to ISE and \$.24 per contract for all other professional orders routed to ISE, where those orders are not subject to the ISE's Rebates and Fees for Adding and Removing Liquidity in Select Symbols or the customer orders are for less than 100 contracts. The Exchange is proposing to name these proposed fees "ISE Select Symbols." The Exchange also proposes to add a note to the Fee Schedule to indicate that the fee for customer orders in ISE Select Symbols applies to orders of 100 or more contracts. The Exchange is proposing this amendment in order to recoup clearing and transaction charges incurred by the Exchange when orders are routed to ISE in the ISE Select Symbols, and in the case of customer orders for 100 or more contracts. Each destination market's transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange. The Exchange proposes this fee change to account for an increase in cost for routing to ISE relative to the fees in the ISE Select Symbols.<sup>5</sup>

#### 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>7</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that this fee is reasonable because it seeks to recoup costs that are incurred by the Exchange when routing customer and professional orders to ISE in the select symbols, and for customer orders when the orders are for 100 or more contracts, on behalf of its members. The Exchange also believes that the proposed fee change to both customers and professionals is equitable because it will be uniformly applied to all customers and professionals.

### 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.

<sup>5</sup> ISE assesses a taker fee of \$.20 for priority customer orders of 100 or more contracts and taker fee of \$.25 for Customer (Professional) orders in its rebates and fees for adding and removing liquidity in select symbols. See Securities Exchange Act Release No. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010) (SR-ISE-2010-25).

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

### 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)(ii) of the Act<sup>8</sup> and paragraph (f)(2) of Rule 19b-4<sup>9</sup> thereunder. At any time within 60 days of the filing of such 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2010-102 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-2010-102. 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

<sup>4</sup> See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, 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 No. SR-Phlx-2010-102 and should be submitted on or before August 31, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62651; File No. SR-NFA-2010-03]

### Self-Regulatory Organizations; National Futures Association; Notice of Filing and Immediate Effectiveness of Proposed Change to Compliance Rule 2-30 and the Related Interpretive Notice Regarding Customer Information and Risk Disclosure

August 4, 2010.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-7 under the Act,<sup>2</sup> notice is hereby given that on July 13, 2010, National Futures Association ("NFA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in Items I, II, and III below, which Items have been substantially prepared by the NFA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. On March 8, 2010, NFA also filed this proposed rule change with the Commodity Futures Trading Commission ("CFTC") requesting that it review and approve the proposed rule change. On June 28, 2010, the CFTC

notified the NFA that the CFTC had approved the rule change.<sup>3</sup>

#### I. Self-Regulatory Organization's Description and Text of the Proposed Rule Change

The amendments to NFA Compliance Rule 2-30 and the Related Interpretive Notice expand the customers covered by the rule to reach not just individuals, but all non-Eligible Contract Participants ("ECPs"); require futures commission merchants ("FCMs") Members to request at least annually that active customers update information obtained from the customer pursuant to NFA Compliance Rule 2-30(c), if there are any material changes to the information, and require the FCM, introducing broker ("IB"), or commodity trading advisor ("CTA") Member, or one of their Associates, that currently solicits and communicates with the customer to determine if additional risk disclosure is required to be provided based on any changed information; and prohibit Members and Associates from making individualized recommendations to those customers whom the Member or Associate has or should have advised that futures trading is too risky for them.

The text of the proposed rule change is available on NFA's Web site at <http://www.nfa.futures.org>, at the principal office of NFA 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, NFA 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. NFA 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

Section 15A(k) of the Act<sup>4</sup> makes NFA a national securities association for the limited purpose of regulating the activities of NFA Members ("Members")

who are registered as brokers or dealers under Section 15(b)(11) of the Act.<sup>5</sup> NFA Compliance Rule 2-30(c) and the related Interpretive Notice apply to all Members, including those who are registered as security futures brokers or dealers under Section 15(b)(11).

In early September 2009, the CFTC and SEC held joint public meetings to discuss regulatory harmonization. At these meetings, one of the many issues discussed related to the similarities and differences between the futures industry's know-your-customer requirements and the securities industry's suitability requirements.

Due, in part, to these harmonization discussions and in light of changes in the futures industry, NFA's Executive Committee asked NFA's Member Advisory Committees to consider whether NFA Compliance Rule 2-30 could be amended to further enhance customer protection. In their review, the Executive and Advisory Committees noted that the futures industry differs from the securities industry in several crucial ways. Most importantly, futures contracts in general are recognized as highly volatile instruments. It therefore makes little sense to presume that a certain futures trade may be appropriate for a customer while others are not. An appreciation of the risks of futures trading and its appropriateness for a particular customer must be made at the time the customer makes a decision to trade futures in the first place. Therefore, the Committees fully supported maintaining the essential character of NFA Compliance Rule 2-30's know-your-customer requirement as a customer-by-customer determination.

The Committees also generally agreed that NFA Compliance Rule 2-30 currently works well and provides strong customer protection. Further, they believed that NFA's know-your-customer requirements and FINRA's suitability rules address the same concerns and achieve substantially the same results and any differences between them are largely semantic. The Committees noted, however, that certain modifications would provide increased customer protection and, therefore, they supported the following changes.

The amendments to NFA Compliance Rule 2-30 and its related Interpretive Notice will: (1) Expand the customers covered by the rule to reach not just individuals but all non-ECPs; (2) require FCM Members to request at least annually that active customers update information obtained from the customer pursuant to NFA Compliance

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 15 U.S.C. 78s(b)(7).

<sup>2</sup> 17 CFR 240.19b-7.

<sup>3</sup> See letter from David A. Stawick, Secretary, U.S. Commodity Futures Trading Commission to Thomas W. Sexton, III, General Counsel, National Futures Association dated June 28, 2010.

<sup>4</sup> 15 U.S.C. 78o-3(k).

<sup>5</sup> 15 U.S.C. 78o(b)(11).