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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the CBOE. 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–CBOE–2009–097 and should be submitted on or before January 26, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–31342 Filed 1–4–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61257; File No. SR–NYSE–2009–116]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change To Increase the Ceiling on Its Equity Ownership Interest in BIDS Holdings L.P. to Less Than 10%

December 30, 2009.

On November 18, 2009, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] proposing to increase the ceiling on the Exchange's equity ownership interest in BIDS Holdings L.P. (''BIDS'') to less than 10% from the current level of less than 9%. The proposed rule change was published for comment in the **Federal Register** on November 27, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

On January 22, 2009, the Commission approved the formation of New York Block Exchange (''NYBX''), an electronic trading facility of the Exchange for NYSE-listed securities, established as a joint venture between the Exchange and BIDS.[4] The governance structure as approved is reflected in the Limited Liability Company Agreement (''LLC Agreement'') of New York Block Exchange LLC (''Company''), the entity that owns and operates NYBX. Pursuant to the LLC Agreement, the Exchange and BIDS each own a 50% economic interest in the Company. In addition, the Exchange, through its wholly-owned subsidiary, NYSE Market, Inc., owns less than 9% of the aggregate limited partnership interest in BIDS. BIDS, through its subsidiary, BIDS Trading, L.P. (''BIDS Trading''), operates BIDS Alternative Trading System (ATS). In connection with the establishment of NYBX, BIDS Trading became a member of the Exchange.

Absent prior Commission approval, the foregoing ownership arrangements would violate NYSE Rule 2B[5] for two reasons. First, the Exchange's indirect ownership interest in BIDS Trading violates the prohibition in Rule 2B against the Exchange maintaining an ownership interest in a member organization. Second, BIDS Trading is an affiliate of an affiliate of the Exchange,[6] which violates the prohibition in Rule 2B against a member of the Exchange having such affiliation.

Consequently, in the Approval Order, the Commission permitted an exception to NYSE Rule 2B, subject to a number of limitations and conditions. One of the conditions for Commission approval of the ownership arrangements was that the proposed exception from NYSE Rule 2B to permit NYSE's indirect interest in BIDS Trading and BIDS Trading's affiliation with the Company would be for a pilot period of 12 months.[7] Another condition for Commission approval was that NYSE, or any of its affiliates, would not directly or indirectly increase its equity interest in BIDS without prior Commission approval.[8]

The Exchange proposes to increase the ceiling of its equity ownership in BIDS from the current limit of less than 9% to less than 10%. BIDS is offering its members the opportunity to invest, on a pro rata basis, in a new class of preferred equity interests, and the Exchange wishes to participate in the new round of capital raising by BIDS without inadvertently exceeding the current limit. The Exchange represents that, based on its expectations, the participation of the Exchange in the capital raising could slightly increase its percentage ownership in BIDS to between 9% and 10%. Other than this increase in the Exchange's equity ownership, all of the other limitations and conditions required by the terms of the Approval Order for the exception to NYSE Rule 2B would continue to apply during the pilot period.[9] Further, the Exchange and its affiliates do not, and would continue not to, have any voting or other control arrangement with any of the other limited partners or general partner of BIDS.[10]

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.[11] In particular, the Commission finds that the proposed rule change furthers the objectives of Section 6(b)(1) of the Act,[12] which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act. The Commission also finds that the proposed rule change is consistent with, and furthers the objectives of Section 6(b)(5) of the Act,[13] in that it 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 facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

[12] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Act Exchange Release No. 61043 (November 20, 2009), 74 FR 62612.

[4] *See* Securities Exchange Act Release No. 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (order approving SR–NYSE–2008–120) (''Approval Order'').

[5] NYSE Rule 2B provides, in relevant part, that: ''[w]ithout prior SEC approval, the Exchange or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in a member organization. In addition, a member organization shall not be or become an affiliate of the Exchange, or an affiliate of any affiliate of the Exchange. * * * The term affiliate shall have the meaning specified in Rule 12b–2 under the Act.''

[6] Specifically, the Company is an affiliate of the Exchange, and BIDS Trading is an affiliate of the Company. The affiliation in each case is the result of the 50% ownership interest in the Company by each of the Exchange and BIDS.

[7] *See* Approval Order, 74 FR at 5018.

[8] *See id.*

[9] *See id.*

[10] *See id.*, n. 69.

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

[12] 15 U.S.C. 78f(b)(1).

[13] 15 U.S.C. 78f(b)(5).

In the Approval Order, the Commission determined that the exception from NYSE Rule 2B to permit NYSE's indirect interest in BIDS Trading and BIDS Trading's affiliation with an affiliate of the Exchange is consistent with the Act, because the limitations and conditions stipulated appear reasonably designed to mitigate concerns about potential conflicts of interest and unfair competitive advantage. Further, the Commission determined that these conditions appear reasonably designed to promote robust and independent regulation of BIDS Trading.

The Commission has consistently expressed concern that an affiliation of an exchange with, or an ownership of, one of its members could raise a potential conflict of interest and impede its self-regulatory responsibilities with respect to such member. Although the Exchange proposes a small increase in the ceiling of its equity ownership of BIDS, the Commission notes that all of the other limitations and conditions would continue to apply, and the exceptions to NYSE Rule 2B would continue to be on a pilot basis. Further, the increase in the Exchange's equity ownership does not appear sufficiently large to raise additional or new concerns. Therefore, the Commission continues to find that the exception from NYSE Rule 2B described above would continue to be consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSE–2009–116) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–31343 Filed 1–4–10; 8:45 am]

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[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61258; File No. SR–Phlx–2009–107]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Technical Change to the Exchange's Complex Order Program

December 30, 2009.

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 December 29, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or the ''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. The Phlx filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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 terminate a feature of its complex order program.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/*, on the Commission's Web site at *http://www.sec.gov*, 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 discontinue a feature of the Exchange's complex orders system, sometimes called ''NBBO protection.'' This feature enables a complex order to be designated as ineligible for execution at a price that is inferior to the NBBO for the individual components of the order. Otherwise, the existing rules permit COLA-eligible orders (defined in the rule) to be executed without consideration of any prices that might be available on other exchanges trading the same options contracts.[5]

This feature is mentioned several times in the rules, referring to various points in the Exchange's complex order processing where an order is executable but for this designation. In the original proposal adopting complex orders, the Exchange stated that the purpose of this provision is to provide a method to protect each component of a Complex Order from trading through the National Best Bid and/or Offer (''NBBO'') in that option series, until such time that the order is placed on the complex order book.[6] The Exchange believes that the feature has never been used. Accordingly, the Exchange believes that the proposal is a simple change to eliminate a feature.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] 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 market system, and, in general to protect investors and the public interest, by removing a feature that the Exchange believes has not been taken advantage of by users.

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 comments were either solicited or received.

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

The proposed rule change is designated by the Exchange as a ''non-controversial'' rule pursuant to Section

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

[2] 17 CFR 240.19b–4.

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

[4] 17 CFR 240.19b–4(f)(6).

[5] *See e.g.,* Rule 1080.08(e)(i)(B).

[6] Securities Exchange Act Release No. 58099 (July 3, 2008), 73 FR 39769 (July 10, 2008) (SR–Phlx–2008–50) (Notice of Filing of Proposed Rule Change Relating to Complex Orders). The description of how this feature operates during the Complex Order Live Auction (''COLA'') appears at 73 FR 39772.

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

[8] 15 U.S.C. 78f(b)(5).