

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

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

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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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change seeking to increase 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> 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.<sup>6</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

<sup>14</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> 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. 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.<sup>7</sup>

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 "overlying" 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.<sup>8</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,<sup>9</sup> 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,<sup>10</sup> that the proposed rule change (SR-Phlx-2009-24), as amended, is hereby approved.

<sup>7</sup> See Securities Exchange Act Release No. 58144 (July 11, 2008), 73 FR 41394 (July 18, 2008) (SR-Phlx-2008-49).

<sup>8</sup> 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).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

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

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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)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> 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)<sup>4</sup> of the Act and Rule 19b-4(f)(2)<sup>5</sup> 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

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

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

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).