

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 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, 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 FINRA. 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-FINRA-2008-055 and should be submitted on or before January 6, 2009.

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

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-29696 Filed 12-15-08; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59076; File No. SR-FINRA-2008-053]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Amend Section 4(c) of Schedule A of the FINRA By-Laws To Increase Certain Qualification Examination Fees

December 10, 2008.

#### I. Introduction

On October 15, 2008, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")), 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 amend Section 4(c) of Schedule A of the FINRA By-Laws ("Schedule A") to increase certain qualification examination fees. The proposed rule change was published for comment in the **Federal Register** on October 29, 2008.<sup>3</sup> The Commission received one comment letter on the proposed rule change.<sup>4</sup> This order approves the proposed rule change.

#### II. Description

Any person associated with a member firm who is engaged in the securities business of the firm must register with FINRA. As part of the registration process, securities professionals must pass a qualification examination to demonstrate competence in each area in which they intend to work. These mandatory qualification examinations cover a broad range of subjects on the markets, products, a person's responsibilities in a given position, securities industry rules and the regulatory structure. The proposed rule change amends Schedule A to increase certain qualification examination fees.<sup>5</sup>

#### III. Comment Letter

The Commission received one comment letter in response to the proposed rule change.<sup>6</sup> People's Securities, Inc. ("People's Securities") submitted a comment letter in opposition to the proposal, arguing that FINRA's decision to increase examination fees comes at a time when many firms are suffering from a reduction in business and have resorted to measures such as reducing the number of new hires and current staff in order to decrease expenditures. People's Securities states that an increase in examination fees would result in a "significant burden" on firms, and for People's Securities in particular, as many of the proposed fee increases are for the examinations that People's Securities uses the most. People's Securities suggests that if FINRA increases these fees, these changes will result in fewer registered representatives

which will detrimentally affect the ability of firms to service the needs of investors.

In its response to the People's Securities Letter,<sup>7</sup> FINRA acknowledged People's Securities' economic arguments but explained that FINRA has experienced a rise in its own costs of developing, administering, and delivering the exams, and consequently had to raise examination fees. In support of its decision, FINRA stated that it had not raised any examination fees since 2006, and that it had conducted a test based on a sample of its regulated firms and concluded that its proposed fee changes would increase a firm's overall examination fees on average by less than 10% each year.

#### IV. Discussion and Commission's Findings

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 association.<sup>8</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(5) of the Act,<sup>9</sup> which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. The filing increases certain qualification examination fees to reflect FINRA's increased costs in developing, administering and delivering qualification examinations. While the Commission recognizes the issues raised by People's Securities, FINRA has represented that an increase in fees is necessary to account for increases in its own costs to manage its qualification examinations, many of which are utilized throughout the securities industry and are used to ensure that registered persons new to the securities industry have the basic knowledge to enable them to do their jobs and comply with industry rules and regulations. The Commission notes FINRA's representation that it will continue to maintain an examination fee structure at a reasonable cost in light of the current economic culture.

<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. 58832 (October 22, 2008); 73 FR 64374 ("Notice").

<sup>4</sup> See Letter to Florence E. Harmon, Acting Secretary, Commission, from Dennis P. Beirne, Vice President and Chief Compliance Officer, People's Securities, Inc., dated November 12, 2008 ("People's Securities Letter").

<sup>5</sup> Schedule A sets forth examination fees for those examinations that are sponsored or co-sponsored by FINRA and/or that may be required by FINRA for its members.

<sup>6</sup> *Supra* note 4.

<sup>7</sup> See Letter to Florence E. Harmon, Acting Secretary, Commission, from Erika L. Lazar, Senior Attorney, FINRA, dated November 26, 2008 ("FINRA Letter").

<sup>8</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>9</sup> 15 U.S.C. 78o-3(b)(5).

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

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-FINRA-2008-053) be, and hereby is, approved.

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

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-29702 Filed 12-15-08; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59081; File No. SR-Phlx-2008-79]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change Relating to Reduction of Option Limit Order Exposure Periods From Three Seconds to One Second

December 11, 2008.

## I. Introduction

On November 10, 2008, 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 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to reduce certain order exposure periods from three seconds to one second. The proposed rule change was published for comment in the **Federal Register** on November 25, 2008.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change on an accelerated basis.

## II. Description of the Proposal

The purpose of the proposed rule change is to reduce the exposure time during which Order Entry Firms<sup>4</sup> may not execute as principal against orders they represent as agent from three seconds to one second. Specifically, the Exchange proposes to amend Exchange Rule 1080(c)(1), which currently provides that Order Entry Firms may not execute as principal against orders on the limit order book they represent

as agent unless such agency orders are first exposed on the limit order book for at least three seconds, the Order Entry Firm has been bidding or offering on the Exchange for at least three seconds prior to receiving an agency order that is executable against such order, or the Order Entry Firm proceeds in accordance with the crossing rules contained in Exchange Rule 1064.<sup>5</sup> In addition, the Exchange proposes to amend Exchange Rule 1080(c)(2), which provides that Order Entry Firms must expose orders they represent as agent for at least three seconds before such orders may be automatically executed, in whole or in part, against orders solicited from members and non-member broker-dealers to transact with such orders. Under the proposal, these three-second exposure periods would be reduced to one second.

## III. Discussion and Commission Findings

After carefully reviewing the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>7</sup> which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating 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 Commission also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,<sup>8</sup> which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that, given the electronic environment of Phlx XL, reducing each of these exposure periods from three seconds to one second could facilitate the prompt execution of orders, while continuing to provide

market participants with an opportunity to compete for exposed bids and offers. To substantiate that Phlx members could receive, process, and communicate a response back to the Exchange within one second, the Exchange stated that it distributed a survey to its members that regularly participate in orders executed on Phlx XL that would be affected by the proposal. Phlx stated that the survey results indicated that it typically takes not more than 250 milliseconds for members to receive, process, and respond to orders exposed on the limit order book. According to Phlx, members who responded to the survey also indicated that reducing the exposure period to one second would not impair their ability to participate in orders affected by the proposal.<sup>9</sup> Based on Phlx's statements regarding the survey results, the Commission believes that market participants should continue to have opportunities to compete for exposed bids and offers within a one second exposure period. Accordingly, the Commission believes that it is consistent with the Act for Phlx to reduce the order handling and exposure times discussed herein from three seconds to one second.

The Commission finds good cause to approve the proposed rule change prior to the thirtieth day after publication for comment in the **Federal Register**. The Commission notes that the proposed rule change was noticed for a fifteen-day comment period, and no comments were received. The Commission believes that the Exchange has provided reasonable support for its belief that the Exchange's market participants would continue to have an opportunity to compete for exposed bids and offers if the exposure periods were reduced to one second as proposed. Finally, the Commission also notes that the proposed rule change is similar to recently approved proposals submitted by the Chicago Board Options Exchange, Incorporated and the International Securities Exchange, LLC.<sup>10</sup> Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>11</sup> to approve the proposed rule change on an accelerated basis.

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

<sup>11</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. 58949 (November 14, 2008), 73 FR 71709 ("Notice").

<sup>4</sup> The term "Order Entry Firm" means a member organization of the Exchange that is able to route orders to the Exchange's AUTOM system. See Exchange Rule 1080(c)(iii)(A)(1).

<sup>5</sup> Exchange Rule 1064 sets forth the procedures that must be followed before an Options Floor Broker who holds orders to buy and sell the same option series may cross such orders.

<sup>6</sup> 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).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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

<sup>9</sup> The Phlx stated that all of the eight members that responded to the timing questions indicated that reducing the crossing exposure timer to one second would not impair their ability to participate in orders affected by this proposal. See Notice.

<sup>10</sup> See Securities Exchange Act Release Nos. 58088 (July 2, 2008), 73 FR 39747 (July 10, 2008) (SR-CBOE-2008-16) and 58224 (July 25, 2008), 73 FR 44303 (July 30, 2008) (SR-ISE-2007-94).

<sup>11</sup> 15 U.S.C. 78s(b)(2).