

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59891; File No. SR-Phlx-2009-24)

May 8, 2009

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

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>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

---

<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).

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.

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

Florence E. Harmon  
Deputy Secretary

---

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

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