

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61207; File No. SR-Phlx-2009-84)

December 18, 2009

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend Rules Relating to Conduct of Business on the Exchange

On October 29, 2009, 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”)¹ and Rule 19b-4 thereunder,² a proposed rule change that would: (i) create an expedited hearing process for members posing an immediate threat to the safety of persons or property, seriously disrupting Exchange operations, or who are in possession of a firearm on the Exchange trading floor; (ii) increase the time period a member may be physically excluded from the trading floor; (iii) increase the maximum amount a member may be fined pursuant to Rule 60; (iv) amend language applicable to contesting citations and create a forum fee of \$100 for contesting citations; (v) add language to explicitly prohibit alcohol and illegal controlled substances on the trading floor; (vi) increase fines for various regulations; (vii) require non-member visitors who are performing contract work at the Exchange on behalf of members to provide a certificate of insurance and add fines for failure to provide proof of insurance; (viii) add a rule to limit exchange liability and require reimbursement of certain expenses; (ix) amend the disciplinary rules to allow Enforcement Staff to request a hearing; and (x) increase the limit on fines from \$5,000 to \$10,000 and add clarifying language to Rule 970.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

On November 6, 2009, Phlx filed Amendment No. 1. The proposed rule change, as amended, was published for comment in the Federal Register on November 17, 2009.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

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.⁴ In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act⁵ 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. The Commission believes the proposed rule change may facilitate prompt, appropriate, and effective discipline for violations of Rule 60 and the regulations thereunder designed to maintain order on the Exchange.

With regard to the proposed rule change's amendments to the Phlx's Minor Rule Plan ("MRP"), the Commission also believes that the proposed rule change is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,⁶ which require that the rules of an exchange enable the exchange to enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Furthermore, the Commission believes

³ Securities Exchange Act Release No. 60961 (November 6, 2009), 74 FR 59279.

⁴ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78f(b)(5) and 78f(b)(6).

that the proposed changes to the MRP should strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation. Therefore, the Commission finds that the proposed rule change amending the MRP is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,⁷ which governs minor rule violation plans.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with Phlx rules and all other rules subject to the imposition of fines under the MRP. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, the MRP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that Phlx will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the MRP or whether a violation requires formal disciplinary action.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act⁸ and

⁷ 17 CFR 240.19d-1(c)(2).

⁸ 15 U.S.C. 78s(b)(2)

Rule 19d-1(c)(2) under the Act,⁹ that the proposed rule change (SR-Phlx-2009-84), as amended, be, and hereby is, approved and the minor rule plan amendment is declared effective.

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

Florence E. Harmon
Deputy Secretary

⁹ 17 CFR 240.19d-1(c)(2).

¹⁰ 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(44).