

### III. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>202</sup> for approving the proposal, as modified by Amendment Nos. 1 and 2, prior to the thirtieth day after the date of publication of notice of filing of Amendment No. 2 in the **Federal Register**.<sup>203</sup> In Amendment No. 2, Phlx proposed to adopt as rules of the Exchange the Certificate of Incorporation and By-Laws of NASDAQ OMX. The Certificate of Incorporation, as filed by the Exchange, was previously approved by the Commission as rules of Nasdaq.<sup>204</sup> The NASDAQ OMX By-Laws were similarly approved by the Commission.<sup>205</sup> As filed by the Exchange, the NASDAQ OMX By-Laws include certain new terminology to reflect the acquisition of Phlx by NASDAQ OMX. These changes were filed by NASDAQ Exchange as a proposed rule change, and were published for comment.<sup>206</sup> The Commission received no comments on the proposed changes to the NASDAQ OMX By-Laws.

As discussed more fully above and in the NASDAQ Stock Market Proposal, certain provisions of NASDAQ OMX's Certificate and By-Laws are designed to facilitate the ability of NASDAQ OMX's SRO Subsidiaries, including Phlx, to maintain the independence of each of the SRO Subsidiaries' self-regulatory function, enable each SRO Subsidiary to operate in a manner that complies with the federal securities laws, and facilitate the ability of each SRO subsidiary and the Commission to fulfill their regulatory and oversight obligations under the Act.<sup>207</sup> As stated above, the Commission finds that such provisions are consistent with the Act.<sup>208</sup> Notably, the NASDAQ OMX Certificate and By-Laws are rules of NASDAQ Exchange that have been approved previously by the Commission, as noted above, and the changes to the NASDAQ OMX By-Laws were published for notice and comment, as noted above, and the

Commission did not receive any comments thereon. Accordingly, the Commission finds good cause for approving the Phlx's proposal, as modified by Amendment Nos. 1 and 2, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2008-31 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2008-31. This file number should be included on the 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 the Exchange. 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-Phlx-2008-31 and should

be submitted on or before August 13, 2008.

### V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>209</sup> that the proposed rule change (SR-Phlx-2008-31), as modified by Amendment Nos. 1 and 2 thereto, be and hereby is approved on an accelerated basis.

By the Commission.

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58185; File No. SR-Phlx-2008-54]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Participation Guarantees for Crossing and Facilitation Orders

July 17, 2008.

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> notice is hereby given that on July 14, 2008, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Phlx has submitted the proposed rule change as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 Phlx proposes to amend Exchange Rule 1064, "Crossing, Facilitation and Solicited Orders," to

<sup>209</sup> 15 U.S.C. 78s(b)(2).

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

<sup>2</sup> 17 CFR 240.19b-4.

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>202</sup> 15 U.S.C. 78s(b)(2).

<sup>203</sup> Pursuant to Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2), the Commission may not approve any proposed rule change, or amendment thereto, prior to the thirtieth day after the date of publication of the notice thereof, unless the Commission finds good cause for so doing.

<sup>204</sup> See Securities Exchange Act Release No. 51328, *supra* note 101.

<sup>205</sup> See *id.*

<sup>206</sup> See Securities Exchange Act Release No. 57761, *supra* note 4.

<sup>207</sup> See *supra* Section III.C.1 (discussing, for example the duty of the board, officers, employees and agents NASDAQ OMX to give due regard to the preservation of the independence of the Phlx's self-regulatory function).

<sup>208</sup> See *supra* note 56 and accompanying text.

provide that the percentage of the order which a Floor Broker is entitled to cross in equity, index and U.S. dollar-settled foreign currency options, after all public customer orders that were (1) on the limit order book and then (2) represented in the trading crowd at the time the market was established have been satisfied, is 40% of the remaining contracts in the order if the order is traded at or between the best bid or offer given by the crowd in response to the Floor Broker's initial request for a market.

The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and [http://www.phlx.com/regulatory/reg\\_rulefilings.aspx](http://www.phlx.com/regulatory/reg_rulefilings.aspx).

## 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 Phlx 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 these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects 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 enhance the Exchange's ability to compete for order flow in all options traded on the Exchange by establishing uniform participation guarantee rules.

Exchange Rule 1064, Commentary .02 currently guarantees a participation percentage to Floor Brokers representing crossing and facilitation orders in open outcry. The percentage of the order which a Floor Broker is entitled to cross, after all public customer orders that were (1) on the limit order book and then (2) represented in the trading crowd at the time the market was established have been satisfied, is currently 40% of the remaining contracts in the order respecting equity options, and 20% of the remaining contracts in the order respecting index options and U.S. dollar-settled foreign currency options.

Under the proposal, the participation guarantee would be the same for all options traded on the Exchange. Specifically, Rule 1064, Commentary

.02 (iii) would continue to allow a participation guarantee to Floor Brokers of 40% for equity options (including options overlying Exchange Traded Fund shares), and would increase the participation guarantee to Floor Brokers representing crossing and facilitation orders in index options and U.S. dollar-settled foreign currency options from the current 20% to 40%. Thus, the participation guarantee for all options traded on the Exchange would be 40%.

The proposed rule change would have an effect on the Enhanced Specialist Participation<sup>5</sup> respecting index options and U.S. dollar-settled foreign currency options. Rule 1064, Commentary .02(vi)(A) currently states that, respecting orders for index options and U.S. dollar-settled foreign currency options, the Enhanced Specialist Participation may only be 20% of the original order after customer orders have been executed for orders crossed pursuant to paragraph (vi) unless the Floor Broker has chosen to cross less than its 20% entitlement, in which case the Enhanced Specialist Participation will be a percentage that combined with the percentage the firm crossed is no more than 40% of the original order. The proposed rule change would increase the "20% entitlement" specified in the rule to 40%. Thus, the Enhanced Specialist Participation will apply only to the extent that the Floor Broker elects not to cross his or her entire 40% entitlement.

For purposes of simplicity, the Exchange proposes to amend Commentary .02(vi)(B) to state that the specialist shall not be entitled to receive the Enhanced Specialist Participation in equity, index and U.S. dollar-settled foreign currency options unless the Floor Broker has chosen to cross less than its 40% entitlement, and to incorporate this text into one single paragraph (A), since it would no longer be necessary to differentiate index options and U.S. dollar-settled foreign currency options from all other options traded on the Exchange for purposes of the crossing and facilitation participation guarantee.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>7</sup>

<sup>5</sup> The "Enhanced Specialist Participation" entitles the specialist to a greater than equal share of the portion of an executed order that is divided among the specialist and any non-customer accounts that were bidding or offering at the same execution price. See Exchange Rule 1014(g).

<sup>6</sup> 15 U.S.C. 78f(b).

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

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 enabling the Exchange to better compete for order flow through an increase to the participation guarantee for crossing and facilitation orders in index options and U.S. dollar-settled foreign currency options.

### 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 written comments were either solicited or received.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>9</sup> Because the Phlx has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) hereunder. As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to filing the proposal with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2008-54 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2008-54. This file number should be included on the 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 the Exchange. 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-Phlx-2008-54 and should be submitted on or before August 13, 2008.

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

**Florence E. Harmon,**

*Acting Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58180; File No. SR-SCCP-2008-01]

#### Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend and Restate Its Articles of Incorporation

July 17, 2008.

##### I. Introduction

On April 24, 2008, Stock Clearing Corporation of Philadelphia ("SCCP") 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").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on May 20, 2008.<sup>2</sup> SCCP filed Amendment No. 1 to the proposed rule change on July 2, 2008.<sup>3</sup> The Commission received no comments on the proposed rule change. This order provides notice of filing of Amendment No. 1 to the proposed rule change, and grants accelerated approval to the proposed rule change, as modified by Amendment No. 1.

##### II. Description

SCCP is amending its current Articles of Incorporation ("Articles") to more clearly state that all of the authorized shares of common stock of SCCP are

issued and outstanding and are held by Phlx. In addition, SCCP is adding language to its Articles relating to transfers and assignments of SCCP shares of stock. SCCP is restating its Articles to consolidate previous amendments and make other technical amendments, which according to SCCP will modernize the existing language in the Articles.<sup>4</sup>

The purpose of the amendment and restatement of the Articles is to ensure that any future change in ownership of SCCP stock, whether transferred or assigned, in whole or in part, would be filed with the Commission under Section 19 of the Act and the rules promulgated thereunder. This language is consistent with language recently approved by the Commission in connection with the amending by Phlx of its Certificate of Incorporation and By-Laws<sup>5</sup> as a result of the proposed acquisition of Phlx by NASDAQ OMX.<sup>6</sup>

##### III. Discussion

The Commission finds that the rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(C) of the Act.<sup>7</sup> The proposed rule change would amend SCCP's Articles to reflect the proposed NASDAQ OMX Merger. The Commission notes that the proposed rule change does not amend SCCP's rules or procedures with respect to the clearance and settlement of securities transactions or the safeguarding of securities and funds which are in SCCP's control or for which it is responsible. Section 17A(b)(3)(C) of the Act requires that a clearing agency's rules assure the fair representation of its shareholders and participants in the selection of its directors and administration of its affairs. SCCP

<sup>4</sup> The specific amendments proposed for SCCP's Articles can be viewed at [http://www.phlx.com/SCCP/sccp\\_rules/SR-SCCP-2008-01.pdf](http://www.phlx.com/SCCP/sccp_rules/SR-SCCP-2008-01.pdf).

<sup>5</sup> Securities Exchange Act Release No. 58179 (July 17, 2008) [File No. SR-Phlx-2008-31] (order approving proposed rule change relating to NASDAQ OMX's acquisition of Phlx).

<sup>6</sup> On November 7, 2007, NASDAQ OMX announced that it had entered into an agreement with Phlx pursuant to which NASDAQ OMX would acquire all of the outstanding capital stock of Phlx. In connection with this acquisition, Pinnacle Merger Corp., a Delaware corporation and wholly owned subsidiary of NASDAQ OMX, would be merged with and into Phlx with Phlx surviving the merger ("NASDAQ OMX Merger"). As a result of the NASDAQ OMX Merger, all of Phlx's common stock would be owned by NASDAQ OMX. Thereafter, NASDAQ OMX would operate Phlx as a wholly-owned subsidiary and SCCP as an indirect wholly-owned subsidiary. Phlx and SCCP would continue to be separate self-regulatory organizations.

<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(C).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 57817 (May 14, 2008), 73 FR 29171.

<sup>3</sup> In Amendment No. 1, SCCP filed the complete Certificate of Incorporation and amended By-Laws of The NASDAQ OMX Group, Inc. ("NASDAQ OMX") in order to propose their adoption as rules of SCCP. The By-Laws contained minor amendments to terminology to apply to SCCP and SCCP's parent corporation, the Philadelphia Stock Exchange, Inc. ("Phlx"), all of the same provisions that are currently specifically applicable to The NASDAQ Stock Market LLC ("NASDAQ"). Such amendments are being made in connection with the NASDAQ OMX Merger, as defined in footnote 6 below. The amended By-Laws were published for comment in a separate filing by NASDAQ. See Securities Exchange Act Release No. 57761 (May 1, 2008), 73 FR 26182 (May 8, 2008) (notice of SR-NASDAQ-2008-035) ("NASDAQ Stock Market Proposal").