

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-NYSEArca-2008-70) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58379; File No. SR-NYSEArca-2008-47]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change To Waive Retroactively as of June 24, 2008, Initial Listing Fees for Companies Who Apply To List Securities Currently Listed on Another National Securities Exchange

August 18, 2008.

#### I. Introduction

On June 24, 2008, NYSE Arca, Inc. ("NYSE Arca" 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 waive retroactively as of June 24, 2008, initial listing fees for companies who apply to list securities currently listed on another national securities exchange. The proposed rule change was published in the **Federal Register** on July 14, 2008.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange proposes to waive initial listing fees for companies who apply to list securities currently listed on another national securities exchange. The waiver would apply to all classes of securities. The proposed fee waiver would be applied retroactively to any companies that apply to list after June 24, 2008. The Exchange had previously waived initial listing fees for all companies that transferred from the New York Stock Exchange ("NYSE") at any time or from Nasdaq Stock Market

("Nasdaq") or the American Stock Exchange prior to December 31, 2007, or had applied to list prior to that date.<sup>4</sup>

#### III. Discussion

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 and, in particular, the requirements of Section 6(b) of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Sections 6(b)(4)<sup>5</sup> and 6(b)(5) of the Act,<sup>6</sup> which require 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, and are designed, among other things, 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, to protect investors and the public interest, and to not permit unfair discrimination between customers, issuers, brokers, or dealers.<sup>7</sup>

The Commission notes that an issuer seeking to transfer to the Exchange has already paid initial listing fees to another national securities exchange when it became a publicly traded company. In addition, the Commission notes that the Exchange does not expect the loss of initial listing fees to be material and has stated that the fee waiver will not affect the Exchange's commitment of resources to its regulatory oversight of the listing process or its regulatory program. The Exchange would continue to assess annual fees and listing of additional shares fees from these issuers. Further, the Exchange believes that there will be lower burdens associated with its eligibility review of issuers transferring from another national securities exchange. However, the Commission expects, and the Exchange has represented, that a full and independent review of compliance with the listing standards will be conducted for any company seeking to take advantage of the fee waiver, just as for any company that applies for listing on the Exchange. Finally, the Commission also notes that

The Nasdaq Stock Market and the New York Stock Exchange have similar provisions.<sup>8</sup> The Commission believes that the proposed waiver could enhance competition among the markets, as the Exchange seeks to become a more attractive listing venue and a viable alternative to listing on other national securities exchanges.

Based on the above, the Commission believes the proposed fee waiver, which is retroactively effective to June 24, 2008, the date of the filing of the proposed rule change,<sup>9</sup> does not constitute an inequitable allocation of reasonable dues, fees, and other charges under Section 6(b)(4) of the Act,<sup>10</sup> does not permit unfair discrimination between issuers under Section 6(b)(5) of the Act,<sup>11</sup> and is otherwise consistent with the requirements of the Act.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-NYSEArca-2008-47) is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58380; File No. SR-Phlx-2008-61]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Changing Its Name

August 18, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on August 15, 2008, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. The

<sup>4</sup> See Securities Exchange Act Release No. 54007 (June 16, 2006), 71 FR 36155 (June 23, 2006) (SR-PCX-2006-16).

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> See Nasdaq Rule IM-4500-4 and NYSE Listed Company Manual Section 902.02.

<sup>9</sup> See *supra* note 3.

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</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>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</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. 58109 (July 7, 2008), 73 FR 40415.

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 its Certificate of Incorporation, By-Laws and Rules to rename itself NASDAQ OMX PHLX, Inc.

The text of the proposed rule change is available on the Exchange's Web site at [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 rename the Exchange to reflect its new placement within The NASDAQ OMX Group, Inc. corporate structure, following its acquisition by The NASDAQ OMX Group, Inc. on July 24, 2008.<sup>3</sup>

Specifically, all references to the Exchange shall be amended to state "NASDAQ OMX PHLX, Inc." or "Exchange," as appropriate. The Certificate of Incorporation shall be amended to remove all reference to "Philadelphia Stock Exchange, Inc." and replace with "NASDAQ OMX PHLX, Inc." By-Law Article I, Section 1-1(h) shall specifically define the "Exchange" as NASDAQ OMX PHLX, Inc. Similarly, a new Rule 1(rr) to be added to the Rules of the Board of Governors shall define the term "Exchange" as NASDAQ OMX PHLX, Inc. Further, a new Rule 1(ss) to be added to the Rules of the Board of Governors shall define the terms "Philadelphia Stock Exchange, Inc."

and "Phlx" as NASDAQ OMX PHLX, Inc.

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>5</sup> 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 renaming the Exchange to reflect its current ownership.

#### 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 that is 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 foregoing proposed rule change is concerned solely with the administration of the Exchange pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>6</sup> and Rule 19b-4(f)(3)<sup>7</sup> thereunder. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such 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.

### 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-2008-61 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-2008-61. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. 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-2008-61 and should be submitted on or before September 12, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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<sup>3</sup> See Securities Exchange Act Release Nos. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR-Phlx-2008-31); and 58183 (July 17, 2008), 73 FR 42850 (July 23, 2008) (SR-NASDAQ-2008-035).

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

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>7</sup> 17 CFR 240.19b-4(f)(3).

<sup>8</sup> 17 CFR 200.30-3(a)(12).