

or a similar in-person meeting.<sup>28</sup> SIFMA suggested that instead of providing the full ODD, firms should provide information on how to access the ODD.<sup>29</sup> FINRA responded by stating that the requirement to deliver the ODD to prospective customers during a seminar or in-person meeting should be maintained as it also poses virtually no burden and makes the disclosures to a prospective customer as accessible as other forms of options communications.

#### IV. Discussion and Findings

After careful review of the proposed rule change, the comment letter and FINRA's response to the comment letter, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities association.<sup>30</sup> In particular, the Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>31</sup> which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change would provide the investing public with options communications rules that are designed to provide appropriate safeguards and greater clarity by promoting harmonization between FINRA's and other SROs' options communications rules.

The Commission also finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of filing of the amendment in the **Federal Register**. The proposed rule change was published in the **Federal Register** on May 2, 2008.<sup>32</sup> FINRA submitted Amendment No. 1 in response to comments received on the proposed rule change and to reflect recently approved changes to the rule text. Amendment No. 1 does not materially modify the scope of the proposed rule change as published in the **Federal Register**. The Commission believes that approving Amendment No. 1 will simplify firms' compliance, and is consistent with the public interest and the investor protection goals of the

Act. Finally, the Commission finds that it is in the public interest to approve the proposed rule change as soon as possible to expedite its implementation.

Accordingly, the Commission believes good cause exists, consistent with Section 19(b)(2) of the Act<sup>33</sup> to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

#### VI. 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-FINRA-2008-013 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-FINRA-2008-013. 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 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-2008-013 and should be submitted on or before October 31, 2008.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>34</sup> that the proposed rule change (SR-FINRA-2008-013), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>35</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-24121 Filed 10-9-08; 8:45 am]

BILLING CODE 8011-01-P

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58733; File No. SR-Phlx-2008-67]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the NASDAQ OMX PHLX, Inc. Relating to Clarification Regarding Capitalization-Weighting of Indexes

October 3, 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 September 29, 2008, the NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Phlx filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 Exchange, pursuant to Section 19(b)(1) of the Act<sup>5</sup> and Rule 19b-4

<sup>28</sup> See SIFMA letter.

<sup>29</sup> *Id.*

<sup>30</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>31</sup> 15 U.S.C. 78o-3(b)(6).

<sup>32</sup> See *supra* note 3.

<sup>33</sup> 15 U.S.C. 78s(b)(2).

<sup>34</sup> 15 U.S.C. 78s(b)(2).

<sup>35</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> 15 U.S.C. 78s(b)(3)(A).

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

<sup>5</sup> 15 U.S.C. 78s(b)(1).

thereunder,<sup>6</sup> proposes to clarify the methodology used in calculating capitalization-weighted and modified capitalization-weighted indexes underlying options listed pursuant to Exchange Rule 1009A(b).

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), the principal office of the Exchange, and at the Commission's Public Reference Room.

## 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 Exchange 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 Exchange 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 Exchange currently lists a number of narrow-based stock index options pursuant to the listing standards established in section (b) of Phlx Rule 1009A, Designation of the Index (the "Generic Listing Rule"). The Generic Listing Rule includes capitalization-weighting (including modified capitalization-weighting) as a permissible component weighting methodology for indexes underlying options listed pursuant to the Generic Listing Rule. The Exchange would like to clarify that component last sale prices used to calculate index values under capitalization-weighting methodology can be either primary exchange regular-way last sale prices or the regular-way last sale prices reported on the consolidated tape. A primary exchange last sale price is generally the last sale price on a trade executed through the facilities of the exchange where the component maintains its listing. A consolidated tape last sale price is the last sale price reported under the appropriate national market system reporting plan, regardless of where the trade was executed.<sup>7</sup>

#### 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>9</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest by clarifying that investors may have access to options listed pursuant to the Generic Listing Rule that underlie indexes other than those based exclusively on primary exchange last sale prices.

#### 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 solicited nor received.

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup> In addition, Rule 19b-4(f)(6)(iii)<sup>12</sup> requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five-business days prior to the date of filing of the proposed rule change. The

for indexes underlying options listed pursuant to the Generic Listing Rule could be interpreted to permit only primary exchange last sale prices to be used. See Securities Exchange Act Release No. 46211 (July 16, 2002), 67 FR 47874 (July 22, 2002) (SR-Phlx-2002-42). This, of course, is not always the best approach in calculating indexes, since in some cases the consolidated tape may be a better source for current prices.

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

Exchange has satisfied the five-business-day pre-filing requirement.

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-2008-67 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-2008-67. 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 the 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

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

<sup>7</sup> Language that was included in the "Purpose" section of the filing to add modified capitalization-weighting as a permissible weighting methodology

you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2008-67 and should be submitted on or before October 31, 2008.

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

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-24119 Filed 10-9-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58731; File No. SR-NSX-2008-17]

### Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Exchange Rule 16 and NSX Fee Schedule Concerning Liquidity—Adding Rebates and Market Data Credits for Order Delivery Transactions

October 3, 2008.

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> notice is hereby given that on September 22, 2008, National Stock Exchange, Inc. (“NSX” or the “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 Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

National Stock Exchange, Inc. (“NSX” or “Exchange”) is proposing to amend Exchange Rule 16 and the NSX Fee and Rebate Schedule (the “Fee Schedule”) in order to (i) reduce the rebate for adding liquidity in Order Delivery mode of order interaction for those securities trading at one dollar or more and (ii) eliminate the trade and quote market data revenue credit in Order Delivery mode for all Tape A securities.

The text of the proposed rule change is available on the Exchange’s Web site at <http://www.nsx.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

#### 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 Exchange 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### Purpose

With this rule change, the Exchange is proposing to reduce the liquidity adding rebates and market data revenue credits in Order Delivery mode of order interaction (“Order Delivery Mode”).<sup>3</sup> In particular, this rule change proposes to reduce the rebate for adding liquidity in securities trading at or above one dollar in Order Delivery Mode to a flat rebate of \$0.0023 per share executed for Tape A, and to \$0.0025 per share executed for Tapes B and C. In addition, the Exchange is proposing to eliminate the trade and quote market data revenue credit for all Tape A securities executed in Order Delivery Mode.

###### Reduction of Rebate for Adding Liquidity in Order Delivery Mode

With respect to securities traded at one dollar or more in Order Delivery Mode, the instant filing proposes simplifying the Fee Schedule by reducing the per share executed rebate to a flat rate of \$0.0023 for Tape A securities and to \$0.0025 for Tapes B and C securities. Currently, the per share rebate for adding liquidity across all tapes in Order Delivery Mode for securities executed at one dollar or more is \$0.0027 if “Executed ADV” is equal to or greater than 60 million, and \$0.0026 if “Executed ADV” is less than 60 million. As set forth in explanatory endnote number 6 to the Fee Schedule (which endnote is proposed to be deleted as no longer necessary), “Executed ADV” means, with respect to an ETP Holder, “the number of shares such ETP Holder has executed on average per trading day (excluding partial trading days and securities under

one dollar) across all tapes on NSX for the calendar month in which the executions occurred.” The instant filing proposes to simplify the Fee Schedule by eliminating the tiered rebate structure in Order Delivery Mode based on “Executed ADV” and replacing it with a flat fee based solely on whether the security is Tape A, B or C. The instant filing will affect the calculation of the “Executed ADV” for the month of September, 2008. Accordingly, the “Executed ADV” will be calculated based on the average per trading day (excluding partial trading days and securities under one dollar) across all tapes on NSX for the period beginning September 1, 2008 and ending September 22, 2008, the period when the old Fee Schedule (prior to the instant modification) was in effect. Notice will be provided to ETP Holders respecting the calculation of the Executed ADV.

The instant rule filing proposes no changes to the liquidity adding rebates applicable to securities trading at less than one dollar in Order Delivery Mode.<sup>4</sup>

###### Elimination of Market Data Revenue Credit for Tape A Securities in Order Delivery Mode

With respect to Tape A securities in Order Delivery Mode, the instant filing proposes to eliminate the market data revenue credit in both trades and quotes. Currently in Order Delivery Mode, ETP Holders receive a credit of 50% of both trade and quote market data revenues across all tapes. This credit is proposed to be eliminated for all Tape A securities in Order Delivery Mode, regardless of price.

###### No Changes to Auto Ex

For purposes of clarity, the proposed rule change proposes no modifications to the fees and rebates relating to any trades in Auto Ex.

###### Rationale

The Exchange has determined that these changes are necessary to increase the revenue of the Exchange and to adequately fund its regulatory and general business functions. The proposed modification is reasonable and equitably allocated to those ETP Holders that opt to provide liquidity in Order Delivery Mode, and is not discriminatory because ETP Holders are free to elect whether to send orders in

<sup>4</sup> Securities which trade under one dollar in Order Delivery Mode and which add liquidity currently receive a rebate of 0.10% of the trade value, where “trade value” means a dollar amount equal to the price per share multiplied by the number of shares executed.

<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>3</sup> This rule change proposes no changes to the fees and rebates applicable to securities executed in the Automatic Execution (“Auto Ex”) mode of order interaction under NSX Rule 16.2(b)(1).