

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

1. Purpose

The purpose of this proposed rule change is to amend the ISE's cancellation fee. The Exchange currently has a cancellation fee of \$2.00 that applies to Electronic Access Members ("EAMs") that cancelled at least 500 orders in a month, for each order cancellation in excess of the total number of orders such member executed that month. Further, all orders from the same clearing EAM executed in the same series on the same side of the market at the same price within a 30 second period are aggregated and counted as one executed order for purposes of this fee. This fee is currently charged only to customer orders; broker-dealer orders, including non-member market maker (FARMM) orders, are excluded from this fee.

Recognizing that order cancellations often happen in large numbers, the purpose of this fee is to ease system congestion and to fairly allocate costs among members according to system use. Some members recently have sought to circumvent the fee by breaking up their orders into a range of deep out of the money options series in the same underlying name that trade at the same premium; in another [sic] words, executing multiple orders within 30 seconds, but in related—not the same—series of options. As noted above, ISE currently aggregates executions only in the same series, not related series. In order to prevent market participants from circumventing this fee, ISE proposes to amend the current execution-offset provision of the cancellation fee. Specifically, in calculating this fee, the Exchange will aggregate together and count as one cancelled order orders that are entered and traded within 30 seconds, at the same price, in the same underlying symbol. The Exchange believes this proposed fee change is justified to counter the level of cancellation activity and its effect on congestion.

This proposed fee change will be operative on November 3, 2008.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the Exchange believes amending the manner by which its cancellation fees

are calculated is necessary to allow the Exchange to target cancellations that do not have a valid justification.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Act⁵ and Rule 19b-4(f)(2)⁶ thereunder. 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. Please include File Number SR-ISE-2008-81 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-ISE-2008-81. 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 you wish to make available publicly. All submissions should refer to File Number SR-ISE-2008-81 and should be submitted on or before December 4, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Florence E. Harmon,
Acting Secretary.

[FR Doc. E8-26884 Filed 11-12-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58906; File No. SR-PHLX-2008-76]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the NASDAQ OMX PHLX, Inc. Relating to an Increase in the Maximum Number of Quoters Permitted in an Option

November 6, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 4, 2008, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II,

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 19b-4(f)(2) [sic].

and III, below, which Items have been prepared by the Exchange. 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 Act³ and Rule 19b-4 thereunder,⁴ proposes to amend Exchange Rule 507, Application for Approval as an SQT or RSQT and Assignment in Options, which governs the assignment of options to Streaming Quote Traders ("SQTs")⁵ and Remote Streaming Quote Traders ("RSQTs"),⁶ by establishing a higher maximum number of quoting participants ("Maximum Number of Quoters" or "MNQ") in equity options that are not in the top 15% most actively traded based upon monthly national volume.

The Exchange further proposes to amend Commentary .05 to Rule 507 to reflect the current practice of announcing changes to the MNQ on its web site.

The text of the proposed rule change is available on the Exchange's Web site at 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 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 purpose of the proposed rule change is to provide additional liquidity in equity options on the Exchange by increasing the MNQ in certain options.

Currently, the Exchange limits the number of participants that may be assigned to a particular equity option at any one time based upon each option's monthly national volume. Commentary .02 to Rule 507 sets forth tiered MNQ levels permitting 22 market participants for the top 5% most actively traded options; 17 market participants for next 10% most actively traded options, and 12 market participants for all other options.⁷ The ranking is based upon the preceding month's national volumes. The Exchange proposes to increase the MNQ level for equity options that are not in the top 15% most actively traded from 12 market participants to 15.⁸

Finally, Commentary .05 to Rule 507 states that the Exchange will inform market participants of changes to the MNQ via Exchange circular. The Exchange proposes to amend Commentary .05 to Rule 507 to reflect its current practice of announcing changes to the MNQ on its Web site.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁰ 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

⁷ When initially adopted, Commentary .01 (a)-(c) established MNQ levels of 20 market participants for the top 5% most actively traded options; 15 market participants for next 10% most actively traded options; and 10 market participants for all other options. See Securities Exchange Act Release No. 55114 (January 17, 2007), 72 FR 3185 (January 24, 2007) (SR-Phlx-2006-81). These MNQ levels were subsequently increased to the current levels of 22, 17, and 12, respectively. See Securities Exchange Act Release No. 56261 (August 17, 2007), 72 FR 47112 (August 22, 2007) (SR-Phlx-2007-51).

⁸ Commentary .05 to Rule 507 states that the Exchange may increase the MNQ levels established in this Commentary (meaning the 22, 17, and 12 numbers established in Commentary .01(a)-(c)) by submitting to the SEC a rule filing pursuant to Section 19(b)(3)(A) of the Exchange Act. The Exchange may decrease the MNQ levels established in this Commentary upon SEC approval of a rule filing submitted pursuant to Section 19(b)(2) of the Exchange Act.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

adding depth and liquidity to the Exchange's markets in certain equity options.

The Exchange further believes that increasing the MNQ in certain equity options is pro-competitive, because it adds depth and liquidity to the Exchange's markets by permitting additional participants to compete on the Exchange.

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

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) 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, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² At any time within 60 days of the filing of such 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.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) 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, or such shorter time as designated by the Commission. The Exchange fulfilled this requirement.

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. Please include File Number SR-Phlx-2008-76 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-2008-76. 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 will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-2008-76 and should be submitted on or before December 4, 2008.

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

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-26957 Filed 11-12-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58900; File No. SR-NYSE-2008-105]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC To Shorten the Time Period for Listed Companies To Issue a Press Release After Receipt of Notification That the Company Is Noncompliant With the Exchange's Price Test

November 5, 2008.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act"),² and Rule 19b-4 thereunder,³ notice is hereby given that on October 28, 2008, New York Stock Exchange, LLC (the "NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. 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 proposes to amend Section 802.01C of the Exchange's Listed Company Manual (the "Manual") to provide that the Exchange will require a U.S. company, upon receiving written notification that it has fallen below the Exchange's \$1.00 stock price requirement over a 30 trading-day average, to issue a press release within the same amount of time as allotted by the SEC for the company to disclose such an occurrence, but in any event no later than four business days after receipt of notification from the Exchange, and will require a non-U.S. company to issue a press release within 30 days of receiving written notification from the Exchange that it has fallen below the Exchange's \$1.00 stock price requirement. The text of the proposed

rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the Exchange's Office of the Secretary, 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 self-regulatory organization 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 NYSE 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 proposes to amend Section 802.01C of the Manual to provide that the Exchange will require a U.S. company, upon receiving written notification that it has fallen below the Exchange's \$1.00 stock price requirement over a 30 trading-day average, to issue a press release within the same amount of time as allotted by the SEC for the company to disclose such an occurrence, but in any event no later than four business days after receipt of notice from the company. The Exchange will require a non-U.S. company to issue a press release within 30 days of receiving written notification from the Exchange that it has fallen below the Exchange's \$1.00 stock price requirement. By doing so, the Exchange is conforming its requirements under Section 802.01C to the press release requirements in relation to other notifications of events of noncompliance as set forth in Section 802.02 (for domestic companies) and Section 802.03 (for foreign private issuers).⁴

⁴ See Exchange Act Release No. 58487 (September 8, 2008), 73 FR 53303 (September 15, 2008) (SR-NYSE-2008-59). Nothing in this proposal affects a company's obligations to disclose material news in a timely fashion. See Section 202.05 of the Manual. There are currently no companies that have received notifications from the Exchange regarding non-compliance with the Exchange's stock price continued listing requirements and that have not already issued the required press release. As such, the revised time periods this filing establishes for companies that are non-compliant under Sections 802.01C (including foreign companies) will apply only to those companies that receive a notice of

¹³ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.