

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59844; File No. SR-NYSE-2009-31]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Regarding Initial and Annual Listing Fees for Securities Listed and Traded on the NYSE Bonds System

April 29, 2009.

#### I. Introduction

On March 16, 2009, the New York Stock Exchange LLC (“NYSE” 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 regarding initial and annual listing fees for securities listed pursuant to Section 102.03 of the NYSE Listed Company Manual (“Manual”) and traded on the NYSE Bonds system. The proposal was published in the **Federal Register** on March 26, 2009.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Background

Currently, Rule 902.08 of the Manual imposes a one-time listing fee of \$15,000 for bonds and other fixed income debt securities that list on the Exchange pursuant to Section 102.03. The Exchange has proposed to amend Rule 902.08 to eliminate the one-time listing fee and replace it with an initial listing fee of \$5,000 and an annual listing fee of \$5,000. The proposal also would clarify that *non-listed* debt of NYSE equity issuers and affiliated companies<sup>4</sup> would continue to be eligible to trade on NYSE Bonds without a fee. However, new language to Rule 902.08 clarifies that NYSE equity issuers and affiliated companies that determine to list debt securities on the Exchange would be subject to the \$5,000 initial and annual listing fees. The proposal further clarifies that only *domestic* debt of issuers exempt from registration

under the Act is not subject to a listing fee.

#### III. Discussion

After careful review, 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.<sup>5</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,<sup>6</sup> which requires 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. The Commission notes that the Exchange’s proposed fee of \$5,000 for both initial and annual listing is consistent with a similar fee for Equity-Linked Debt Securities traded on NYSE Bonds, which the Commission previously approved,<sup>7</sup> and that no commenters objected to the proposal. The Commission also believes that the proposed clarifications to Rule 902.08 of the Manual are reasonable and consistent with the Act.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-NYSE-2009-31) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Elizabeth M. Murphy**,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59841; File No. SR-Phlx-2009-38]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Payment for Order Flow

April 29, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>5</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> See Securities Exchange Act Release No. 59559 (March 11, 2009), 74 FR 11391 (March 17, 2009) (SR-NYSE-2009-03).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

(“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 23, 2009, NASDAQ OMX PHLX, Inc. (“Phlx” or the “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 Exchange. Phlx filed the proposal pursuant to Section 19(b)(3)(A)<sup>3</sup> of the Act and Rule 19b-4(f)(2)<sup>4</sup> thereunder. 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 make permanent its payment for order flow pilot program (“Pilot”), which is currently in effect until May 27, 2009.

The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, 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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of making permanent the Exchange’s payment for order flow program (“Pilot”) is to remain competitive with other options exchanges that administer payment for order flow programs.<sup>5</sup> The Pilot is

<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)(2).

<sup>5</sup> See e.g., Securities Exchange Act Release Nos. 57094 (January 3, 2008), 73 FR 1653 (January 9, 2008) (SR-CBOE-2007-154); 55895 (June 11, 2007), 72 FR 33549 (June 18, 2007) (SR-ISE-2007-38);

<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. 59608 (March 19, 2009), 74 FR 13278 (March 26, 2009) (“Notice”).

<sup>4</sup> See NYSE Rules 1400 and 1401. See also Securities Exchange Act Release No. 54767 (November 16, 2006), 71 FR 67680 (November 22, 2006) (SR-NYSE-2004-69) (permitting Exchange trading of debt securities that are not registered under the Act, but are issued by NYSE-listed companies or their wholly-owned subsidiaries and that meet other conditions).