

9(a), as described in greater detail in the application.

### Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including, without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

### Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

*It is hereby ordered*, pursuant to section 9(c) of the Act, that GEAM and GEID and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), solely with respect to the Injunction, subject to the condition in the application, from August 11, 2009, until the Commission takes final action on their application for a permanent order.

By the Commission.

**Elizabeth M. Murphy**,  
*Secretary*.

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, August 20, 2009 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii)

and (10), permit consideration of the scheduled matters at the Closed Meeting.

Chairman Schapiro, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, August 20, 2009 will be:

Institution and settlement of injunctive actions;  
Institution and settlement of administrative proceedings; and  
Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551-5400.

Dated: August 13, 2009.

**Elizabeth M. Murphy**,  
*Secretary*.

[FR Doc. E9-19798 Filed 8-13-09; 4:15 pm]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60459; File No. SR-Phlx-2009-54]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Order Approving a Proposed Rule Change To Establish Fees for the Top of Phlx Options Direct Data Feed Product

August 7, 2009.

#### I. Introduction

On June 30, 2009, NASDAQ OMX PHLX, Inc. ("Phlx" 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 amend its fee schedule by establishing subscriber fees for a direct data product related to the trading of standardized options on the Exchange's enhanced electronic trading platform for options, Phlx XL II.<sup>3</sup> Notice of the proposed rule change was published for comment in the **Federal Register** on July 8, 2009.<sup>4</sup> The Commission received no

<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. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32).

<sup>4</sup> See Securities Exchange Act Release No. 60202 (June 30, 2009), 74 FR 32675 ("Notice").

comments on the proposal. This order approves the proposed rule change.

### II. Description of the Proposal

In conjunction with the launch and rollout of its Phlx XL II system, the Exchange is developing Top of Phlx Options ("TOPO"), a direct data feed product that includes the Exchange's best bid and offer price, with aggregate size, based on displayable order and quoting interest on the Phlx XL II system. The data contained in the TOPO data feed is identical to the data sent to the processor for the Options Price Regulatory Authority ("OPRA"), and the TOPO and OPRA data will leave the Phlx XL II System at the same time.

In coordination with the projected completion of the rollout of the Phlx XL II system, the Exchange proposes to charge monthly fees to distributors, beginning August 1, 2009, for use of TOPO.<sup>5</sup> The monthly "Distributor Fee" charged will depend on whether the distributor is an "Internal Distributor" or an "External Distributor."<sup>6</sup> Specifically, the Exchange proposed to charge Internal Distributors a monthly fee of \$2,000 per organization and to charge External Distributors a monthly fee of \$2,500 per organization.

### III. Discussion and Commission Findings

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>7</sup> In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(4) of the Act,<sup>8</sup> which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities, and Section 6(b)(5) of

<sup>5</sup> A "distributor receives a feed or data file of data directly from NASDAQ OMX PHLX or indirectly through another entity and then distributes it either internally or externally. All distributors will be required to execute a NASDAQ OMX PHLX distributor agreement.

<sup>6</sup> An Internal Distributor is an organization that subscribes to the Exchange for the use of TOPO, and is permitted by agreement with the Exchange to provide TOPO data to internal users (*i.e.*, users within their own organization). An External Distributor is an organization that subscribes to the Exchange for the use of TOPO, and is permitted by agreement with the Exchange to provide TOPO data to both internal users and to external users (*i.e.*, users outside of their own organization).

<sup>7</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>8</sup> 15 U.S.C. 78f(b)(4).