

systems and business continuity issues may be someone other than a registered principal.”<sup>18</sup>

In response, FINRA proposes to revise FINRA Rule 4370 to require that only one of a member's two designated emergency contact persons must be a member of senior management and a registered principal of the firm.<sup>19</sup> The proposed rule change, however, would require that someone designated as a second emergency contact person who is not a registered principal must be a member of senior management who has knowledge of the member's business operations.<sup>20</sup> The proposed rule change also would clarify that each emergency contact person must be an associated person of the member.<sup>21</sup> In addition, FINRA proposes to amend FINRA Rule 4370 to codify existing guidance that in the case of a member with only one associated person (e.g., a sole proprietorship without any other associated persons), the second emergency contact person may be an individual, either registered with another firm or nonregistered, who has knowledge of the member's business operations, such as the member's attorney, accountant, or clearing firm contact.<sup>22</sup> The Commission believes that transferring and combining NASD Rules 3510 and 3520 into the Consolidated FINRA Rulebook will help ensure that members are prepared in the event of a significant business disruption.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>23</sup> for approving the proposed rule change, as modified, prior to the thirtieth day after the date of publication of notice in the **Federal Register**. FINRA's proposed changes, with the exception of the proposed revisions contained in Amendment No. 1, were published for comment by the Commission.<sup>24</sup> The Commission believes that Amendment No. 1 provides greater clarity regarding the designation of emergency contact persons and is consistent with a purpose of this rule, which is to provide FINRA with a means to contact a member in the event of a significant business disruption.

Accordingly, the Commission finds that there is good cause, consistent with

Section 15A(b)(6) of the Act,<sup>25</sup> to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, 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-2009-036 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-2009-036. 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 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-2009-036 and should be submitted on or before September 18, 2009.

<sup>25</sup> 15 U.S.C. 78o-3(b)(6).

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>26</sup> that the proposed rule change (SR-FINRA-2009-036), 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>27</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. E9-20704 Filed 8-27-09; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60547; File No. SR-Phlx-2009-70]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate Late Charges and Provide for Suspension or Termination for Failure To Pay Dues, Fees, or Assessments Owed

August 20, 2009.

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 August 12, 2009, NASDAQ OMX PHLX, 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 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

NASDAQ OMX PHLX, Inc., pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>3</sup> and Rule 19b-4 thereunder,<sup>4</sup> proposes to amend Exchange By-Law 14-1 to eliminate the reference to late charges for failure to pay any fees, dues or charges owed to the Exchange. The Exchange also proposes to amend Exchange By-Law 14-5 to dispose of the foreign currency options participation of a member, member organization, participant or participant organization if monies due

<sup>26</sup> 15 U.S.C. 78s(b)(2).

<sup>27</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)(1).

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

<sup>18</sup> *Id.*

<sup>19</sup> See Amendment No. 1, *supra* note 6.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</sup> FINRA noted that it proposes to announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

and owed are not paid within 90 days. Additionally, the Exchange proposes to amend Exchange Rule 50 to eliminate the assessment of late charges for dues, fees and other charges not made to the Exchange as required and provide for suspension or termination of membership of any member or member organization or any person associating with any member that fails to pay, after written notice, any required dues, fees or other charges or fails to submit a required report or information related to the required dues, fees or other charges. The Exchange also proposes to amend Exchange Rule 960.6 to extend the requirement that the respondents may file a written reply to a summary decision within 21 days instead of 15 days.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>.

## 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

Generally the Exchange proposes to amend its rules relating to the failure to pay dues, fees and other charges to harmonize the Exchange rules with Equity Rule 9553 of The NASDAQ Stock Market LLC ("NASDAQ"). To effectuate the proposal, a series of minor amendments are introduced. More specifically, the Exchange proposes to amend Exchange By-Law 14-1 to eliminate the reference to late charges for failure to pay any fees, dues or charges owed to the Exchange. The Exchange is proposing to no longer charge a late charge for the failure to pay any fees, dues or charges owed to the Exchange.

The Exchange also proposes to amend Exchange By-Law 14-5 to change the length of time allowed to dispose the

foreign currency options participation of a member, member organization, participant or participant organization if monies due and owing are not paid. More specifically the proposed amendment will change the termination of a foreign currency options participation of a member, member organization, participant or participant organization if monies due and owing are not paid from within one year to within 90 days to comport with more efficient processing of regular membership or participation.

Additionally, the Exchange proposes to amend Exchange Rule 50 to eliminate the assessment of late charges for dues, fees and other charges not made to the Exchange as required. Instead, the proposal provides for suspension of membership of any member or member organization or suspension of any person associating with any member or member organization that fails to pay, within 21 days of service of written notice of suspension, any required dues, fees or other charges. The proposal also provides for termination of membership of any member or member organization or termination of any person associating with any member or member organization that fails to pay, within 21 days of service of written notice of termination, any required dues, fees or other charges. Certain Exchange dues, fees or other charges are based upon self-reported information.<sup>5</sup> For this reason, the proposal also provides suspension of membership of any member or member organization or suspension of any person associating with any member or member organization that fails to submit the required report or information related to the dues, fees or other charges within 21 days of service of written notice of suspension. Similarly, the proposal also provides for termination of membership of any member or member organization or termination of any person associating with any member or member organization that fails to submit any report or information related to the dues, fees or other charges within 21 days of service of written notice of termination. The proposed changes will result in a more efficient systematic process of the collection of fees, dues and other charges owed the Exchange and comports with NASDAQ Equity Rule 9553. The proposed changes also provide guidance regarding service of notice of suspension or termination;

<sup>5</sup> For a list of fees, see the NASDAQ OMX PHLX Fee Schedule at <http://www.nasdaqtrader.com/Micro.aspx?id=phlx>, Equity Options Customer Fees, NASDAQ OMX PHLX Fee Schedule. Also see NASDAQ OMX PHLX Rules 703(e), *Due Dates, Fees for Late Filing, and 712, Independent Audit*.

contents of the notice; effective date of suspension or termination; request for hearing; the failure to request a hearing; and a request for termination of the suspension.

The Exchange also proposes to amend Exchange Rule 960.6 to change the requirement that the respondents may file a written reply to a summary decision within 21 days of service of written notice instead of 15. This proposal is similar to the requirements of the NASDAQ Equity Rule 9553(f).

#### 2. Statutory Basis

The Exchange believes that its proposal to amend By-Laws 14-1 and 14-5 and to eliminate Rule 50 and amend Rule 960.6 is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(7) of the Act<sup>7</sup> in particular in that the proposed amendments provide a fair procedure for the disciplining of members and persons associated with members and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange of a member, member organization, participant or participant organization thereof. The Exchange believes that the proposal is consistent with these obligations in that the amendments provide that members, member organizations, participants, participant organizations or persons associated with such may be suspended or terminated, after written notice, for the failure to pay dues, fees and other charges owed to the Exchange. The Exchange believes that eliminating references to charges for the failure to pay fees, dues and other charges owed the Exchange and to provide for a systematic process to suspend or terminate members or persons associated with members provides for a fair and efficient process for handling the collection of dues, fees and other charges owed to the Exchange. The Exchange's proposal is similar to that of the NASDAQ Stock Market LLC.

### 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.

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

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

*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 proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) becomes operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

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-2009-70 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-Phlx-2009-70. 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 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 publicly available. All submissions should refer to File Number SR-Phlx-2009-70 and should be submitted on or before September 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-60560; File No. SR-FINRA-2009-045]**

**Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to Transaction-Related Charges for Trade Reporting to the OTC Reporting Facility**

August 21, 2009.

On July 1, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") 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 Rule 7710, OTC Reporting Facility. The proposed rule change clarifies the application of transaction-related charges for trade reporting to the OTC Reporting Facility ("ORF") by deleting the reference to "OTC Equity Security" in Rule 7710 to

clarify that, from March 5, 2007, until June 17, 2009,<sup>3</sup> the trade reporting charges imposed by the rule applied to trade reports in any security sent to the ORF that were not subject to comparison through the ORF. This change to the rule is necessary to correct an inadvertent mistake made in SR-NASD-2007-018.<sup>4</sup> In SR-NASD-2007-018, FINRA deleted a catch-all phrase from Rule 7010(g) which had the effect of excluding from the rule securities such as PORTAL equity securities, which are specifically excluded from the definition of OTC Equity Security. On June 17, 2009, FINRA filed SR-FINRA-2009-043<sup>5</sup> to correct this mistake prospectively. The change made in the instant rule filing corrects the mistake for the period from March 5, 2007 until June 17, 2009, the date of effectiveness of SR-FINRA-2009-043.

The proposed rule change was published for comment in the **Federal Register** on July 13, 2009.<sup>6</sup> The Commission received no comments on the proposal.

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 association.<sup>7</sup> In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>8</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 does not raise any novel issues; it is merely designed to accurately reflect FINRA's intent when it filed SR-NASD-2007-018,<sup>9</sup> as well as its members' understanding of the coverage of the rule. The proposal clarifies that the charges that FINRA assessed with respect to transactions that were reported to the ORF from March 5, 2007, until June 17, 2009 are consistent with

<sup>3</sup> March 5, 2007, is the effective date for SR-NASD-2007-018 *intra* and June 17, 2009 is the effective date for SR-FINRA-2009-043.

<sup>4</sup> See Securities Exchange Act Release No. 55538 (March 27, 2007), 72 FR 15924 (April 3, 2007).

<sup>5</sup> See Securities Exchange Act Release No. 60168 (June 24, 2009), 74 FR 31471 (July 1, 2009).

<sup>6</sup> See Securities Exchange Act Release No. 60239 (July 2, 2009), 74 FR 33492.

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

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

<sup>9</sup> See footnote 4, *supra*.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</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.