

policy with respect to \$1 Index options.⁸

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.⁹ In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁰ which requires, among other things, that the rules of a national securities exchange be 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.

The Exchange stated in its proposal that it has received numerous requests from traders of the \$1 Index options for series listed in \$1 strike price increments. The Exchange believes that allowing the listing of these options at \$1 increments as proposed, particularly given the recent decline in values of the \$1 Indexes, should provide investors with added flexibility in the trading of options and further the public interest by allowing investors to establish positions that are better tailored to meet their investment objectives.

The Commission notes that the Exchange has analyzed its capacity and represented its belief that it and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with listing and trading \$1 strike intervals options series on the \$1 Indexes.

In light of the foregoing, the Commission believes that the proposal strikes a reasonable balance between the Exchange's desire to accommodate market participants by offering a wider array of investment opportunities and the need to avoid unnecessary proliferation of options series and the corresponding increase in quotes. The Commission expects that the Exchange will monitor the trading volume

⁸ For each \$1 Index the Exchange will regularly review series that are outside a range of five (5) strikes above and five (5) strikes below the current value of the \$1 Index and may delist series with no open interest in both the put and the call series having a: (i) Strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month. However, customer requests to add strikes and/or maintain strikes in \$1 Index options in series eligible for delisting may be granted.

⁹ 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).

¹⁰ 15 U.S.C. 78f(b).

associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's and vendors' automated systems.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-Phlx-2009-77) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Elizabeth M. Murphy,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60853; File No. SR-Phlx-2009-89]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Retroactively Waiving the Cancellation Fee

October 21, 2009.

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 October 13, 2009, 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, 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 proposes to retroactively waive the Cancellation Fee for the months of August and September 2009 and issue a rebate to member organizations for Cancellation Fees that were assessed in those months.

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.

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 rebate monies previously assessed for the Cancellation Fee in August and September 2009 to all member organizations. During the months of August and September 2009, member organizations were assessed \$2.10 per order for each cancelled electronically-delivered³ order in excess of the number of orders executed on the Exchange by a member organization in a given month.⁴ The Exchange calculates the Cancellation Fee by aggregating all orders and cancels received by the Exchange and totaling those orders by member organization. The Exchange aggregates and counts as one executed customer⁵ option order all customer orders from the same member organization that are executed in the same series on the same side of the market at the same price within a 300 second period.⁶ The

³ See Exchange Rule 1080.

⁴ See Securities Exchange Act Release No. 60046 (June 4, 2009), 74 FR 28083 (June 12, 2009) (SR-Phlx-2009-44) (assessing \$2.10 per order for each cancelled electronically-delivered order and limit the applicability of the Cancellation Fee to cancelled electronically delivered customer orders.)

⁵ See e.g. Exchange Rule 1080(b)(i)(A) which defines customer order as [sic] " * * * is any order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest."

⁶ See Securities Exchange Act Release No. 60188 (June 29, 2009), 74 FR 32986 (July 9, 2009) (SR-Phlx-2009-48) (aggregating options orders within a specified time period for the purpose of assessing the Cancellation Fee). At least 500 cancellations must be made in a given month by a member organization in order for a member organization to be assessed the Cancellation Fee. The Cancellation Fee is not assessed in a month in which fewer than 500 electronically-delivered orders are cancelled. Simple cancels and cancel-replacement orders are the types of orders that are counted when calculating the number of electronically-delivered

following order activity is exempt from the Cancellation Fee: (i) Pre-market cancellations;⁷ (ii) Complex Orders⁸ that are submitted electronically; (iii) unfilled Immediate-or-Cancel⁹ customer orders; and (iv) cancelled customer orders that improved the Exchange's prevailing bid or offer (PBBO) market at the time the customer orders were received by the Exchange.

The Exchange assessed the applicable Cancellation Fee of \$2.10 per order on member organizations, as specified above, during the months of August and September 2009. Exchange members have experienced various issues related to the Cancellation Fee including staffing issues, delays in implementation of certain Exchange reports which notify members of cancellations, and other communication issues. The Exchange previously waived its Cancellation Fee for July 2009 because it became aware of member confusion with the calculation of the fee.¹⁰ The Exchange explained the Cancellation Fee to member organizations¹¹ at that time and suggested member organizations subscribe to receive the daily cancellation report in order to properly track their cancellation activity for a given month. The Exchange more

orders. (A cancel-replacement order is a contingency order consisting of two or more parts which require the immediate cancellation of a previously received order prior to the replacement of a new order with new terms and conditions. If the previously placed order is already filled partially or in its entirety the replacement order is automatically canceled or reduced by such number.) See Exchange Rule 1066(c)(7). Also, pre-market cancellations are not included in the calculation of the Cancellation Fee as well as Complex Orders that are submitted electronically. See Securities Exchange Act Release Nos. 53226 (February 3, 2006), 71 FR 7602 (February 13, 2006) (SR-Phlx-2005-92); and 53670 (April 18, 2006), 71 FR 21087 (April 24, 2006) (SR-Phlx-2006-21).

⁷ See Securities Exchange Act Release Nos. 53226 (February 3, 2006), 71 FR 7602 (February 13, 2006) (SR-Phlx-2005-92); and 53670 (April 18, 2006), 71 FR 21087 (April 24, 2006) (SR-Phlx-2006-21). See also Securities Exchange Act Release No. 60046 (June 4, 2009), 74 FR 28083 (June 12, 2009) (SR-Phlx-2009-44).

⁸ A Complex Order is composed of two or more option components and is priced as a single order (a "Complex Order Strategy") on a net debit or net credit basis.

⁹ An Immediate-or-Cancel (IOC) order is a limit order that is to be executed in whole or in part upon receipt. Any portion not so executed shall be cancelled.

¹⁰ See Securities Exchange Act Release No. 60606 (September 1, 2009), 74 FR 46264 (September 8, 2009) (SR-Phlx-2009-76).

¹¹ NASDAQ OMX PHLX staff contacted all member organizations who were assessed a Cancellation Fee in July 2009 concerning the applicability and calculation of this fee prior to August 1, 2009. Additionally, the Exchange produces a daily cancellation fee reconciliation report as a tool for member organizations to monitor their cancel volume and potential charges.

recently became aware of issues related to the receipt and contents of the daily cancel reports which the Exchange believes may have created confusion among certain member organizations as to the number of cancels that existed in a given month. The Exchange has once again reached out to its members to rectify existing issues with the daily cancel report and to determine if the reports properly reflected the information necessary for the firms to determine the number of cancels in a given month. Additionally, the Exchange will issue an Options Trader Alert to further clarify the tools available to member organizations to notify them of the cancellations and clarify that the Cancellation Fee will be applicable as of October 1, 2009. The Exchange believes that member organizations have been adequately educated as to the Exchange's current Cancellation Fee and its applicability for future assessments.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act¹² in general, and furthers the objectives of Section 6(b)(4) of the Act¹³ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the proposal to retroactively waive the Cancellation Fee for the months of August and September 2009 and issue a rebate to all member organizations for fees previously assessed in August and September 2009 is fair and equitable in that the waiver will apply to all member organizations. The Exchange believes that it has educated its members as to the applicability of the current Cancellation Fee and any implementation issues have been addressed and remedied for future assessment of this fee.

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.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

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

The foregoing proposed rule change establishes or changes a due, fee, or other charge applicable only to a member pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁴ and Rule 19b-4(f)(2)¹⁵ thereunder. Accordingly, the proposal will take effect upon filing with the Commission. 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-Phlx-2009-89 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2009-89. 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

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁵ 17 CFR 240.19b-4(f)(2).

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-Phlx-2009-89 and should be submitted on or before November 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Elizabeth M. Murphy,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60855; File No. SR-NYSEArca-2009-92]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Obligations of Lead Market Makers

October 21, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that, on October 14, 2009, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III, which Items have been prepared by the self-regulatory organization. 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 changes to NYSE Arca Rule 6.82(c)—Obligations of Lead Market Makers. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and www.nyse.com.

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 those 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

1. Purpose

The Exchange proposes to amend NYSE Arca Options Rule 6.82(c)(5) to remove the requirement that an LMM designate a back-up LMM and add a provision obligating an LMM to notify a Trading Official in the event the LMM is not accessible. In addition, the Exchange proposes that if such LMM is not accessible, the Exchange may designate a back-up LMM.

The requirement that each LMM designates a back-up LMM was initially established to help ensure that there would be adequate liquidity in a given issue in the event the appointed LMM was unavailable. At the time, the NYSE Arca options market was strictly floor-based, many Lead Market Makers were individuals, and there may have only been a few Market Makers in any given issue. Therefore, it was necessary to have a designated back-up LMM ready to take over as LMM, should the appointed LMM be unable to fulfill its obligations. In return for fulfilling the obligations of the LMM, the back-up LMM (when acting in that capacity) would also be entitled to all rights afforded to the assigned LMM.

The rationale underlying this rule has since become antiquated because today's electronic-based trading results in fewer absences and there are a sufficient number of Market Maker firms assigned to each issue that are able to provide liquidity in the event of a LMM's temporary absence. Also, since nearly all option issues traded on NYSE Arca are traded on multiple exchanges, the historical risk to be managed by the current rule (namely, the ability of the Exchange to foster the provision of liquidity for investors) is no longer present.

Pursuant to the changes proposed to Rule 6.82(c)(5), an LMM must promptly

notify a Trading Official if it is not accessible during the trading day. In the event an LMM is not accessible, it will not be eligible to receive any of the rights afforded to LMMs as contained in Rule 6.82(d). In those instances, the Exchange may designate an approved LMM³ to act as a back-up LMM. In selecting an approved LMM to act in a back-up capacity, the Exchange will select an LMM that appears best able to perform the functions of the LMM. In designating a back-up LMM, the Exchange will use criteria consistent with LMM allocation procedures contained in Rule 6.82(e). The Exchange believes that this process is more beneficial to all market participants because the Exchange is in the best position to identify an appropriate back-up LMM.

It should be noted that the Exchange intends to designate a back-up LMM only in situations where the incumbent LMM is temporarily not accessible. In the event of a long-term absence, or permanent vacancy, the Exchange may either designate an Interim LMM pursuant to Rule 6.82(b)(4) or reallocate the issue to another LMM pursuant to Rule 6.82(f).

Upon the operative date of this rule change, all previously executed agreements between LMMs and back-up LMMs will be considered null and void. In addition, OTP Holders will no longer be required to designate a back-up LMM when applying to become an LMM. This rule change does not in any way revise or amend any other Exchange rules, including those rules pertaining to qualifications, obligations, and rights of LMMs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)⁴ of the Act, in general, and furthers the objectives of Section 6(b)(5),⁵ in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition, and to protect investors and the public interest.

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.

³ An "approved LMM" is an individual or entity that has been deemed qualified to be an LMM pursuant to Rule 6.82.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.