

opportunity for potential relief to a party affected by an obvious error. The Exchange believes that for these reasons the proposed rule change is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>6</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposed rule change will incorporate a uniform approach in determining obvious errors that is consistent with other national options exchanges.

#### *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.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup> Because the 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) become operative prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>10</sup>

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change,

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 No. SR-NYSEArca-2010-03 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 No. SR-NYSEArca-2010-03. 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,<sup>11</sup> 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

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 has satisfied the pre-filing requirement.

<sup>11</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov>.

the principal office of NYSE Arca. 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 No. SR-NYSEArca-2010-03 and should be submitted on or before February 19, 2010.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-61405; File No. SR-Phlx-2009-101]**

### **Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Order Approving a Proposed Rule Change Relating to Collection of Exchange Fees**

January 21, 2010.

#### **I. Introduction**

On December 8, 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 Exchange Rule 909, Security for Exchange Fees and Other Claims, to require member organizations to provide a clearing account number at the National Securities Clearing Corporation ("NSCC") for purposes of permitting the Exchange to debit any undisputed or final fees, fines, charges and/or other monetary sanctions or monies owed to the Exchange.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on December 17, 2009.<sup>4</sup> The Commission

<sup>12</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> This includes, among other things, fines which result from: Violation of Rule 60, Order and Decorum; violations of the Minor Rule Plan pursuant to Rule 970; monetary sanctions imposed by the Business Conduct Committee relating to a Letter of Caution; and monetary sanctions imposed by a Hearing Panel in connection with Disciplinary Violations. See also Notice, *infra* note 4, for further information regarding disciplinary and non-disciplinary sanctions.

<sup>4</sup> See Securities Exchange Act Release No. 61141 (December 10, 2009), 74 FR 67003 (December 17, 2009) ("Notice").

received no comments on the proposal. This order approves the proposed rule change.

## II. Description of the Proposal

Currently, Phlx Rule 909 requires member organizations and applicants for registration to provide and maintain a security deposit, unless the member organization maintains excess net capital of at least the amount established by the Exchange. The Exchange proposes to eliminate the requirement to provide and maintain a security deposit and would instead require member organizations and applicants to provide a clearing account number for an account at NSCC in order to permit the Exchange to debit undisputed or final fees, fines, charges and/or other monetary sanctions or monies owed to the Exchange or other charges related to Rule 924.<sup>5</sup> Additionally, the Exchange proposes to amend the title of Rule 909 from "Security for Exchange Fees and Other Claims" to "Collection of Exchange Fees and Other Claims" in order to more accurately describe the proposed rule.

Under the proposal, the Exchange would send a monthly invoice to each member organization on approximately the fourth through sixth business day of the month following the month in which the charges were incurred.<sup>6</sup> In addition, the Exchange would send a file to the member's clearing firm which will indicate the amounts to be debited from each member. If a member is self-clearing, no such file would be sent, since the member would receive the invoice indicating the amount to be debited. If a member disputes an invoice in writing to the Exchange's designated staff by the fifteenth of the month, and the amount in dispute is at least \$10,000 or greater, the Exchange would not include the disputed amount in the debit.<sup>7</sup>

The Exchange then would send a file to NSCC on approximately the twenty-third of the month following the month in which the charges were incurred to initiate the debit of the appropriate amount. Once NSCC receives the file from the Exchange, NSCC would debit

the amount indicated from the clearing members' account.<sup>8</sup>

The Exchange would provide members with a thirty-day period, upon Commission approval of this proposal, to provide an NSCC number to the Phlx Membership Department if the member has not already provided one in the past.<sup>9</sup>

## III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>10</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>11</sup> 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.

The Commission notes that Phlx would only initiate a debit for an *undisputed* or *final* fee, fine, charge, or other monetary sanction or money owed to the Exchange. In addition, because members would receive invoices approximately two weeks before any funds are debited, members would have a means to monitor the accuracy of their invoices and, if necessary, would have time to contact the Exchange staff prior to amounts being debited.

Further, the Exchange has informed the Commission that the vast majority of the Exchange's members already voluntarily participate in the automatic-debit program, which the proposed rule would make mandatory. Those members that do not currently participate will have thirty days from approval of this proposal to provide the NSCC number to the Exchange. Finally, the Commission notes that no comments were received regarding the proposal.

<sup>8</sup> If the member clears through an Exchange clearing member, the estimated transactions fees owed to the Exchange are typically debited by the clearing member on a daily basis using daily transaction detail reports provided by the Exchange to the clearing member in order to ensure adequate funds have been escrowed.

<sup>9</sup> The Exchange noted that many of its members have already provided voluntarily the Exchange with an NSCC clearing account number, and those members' accounts are currently being debited on a monthly basis. See Notice, *supra* note 4, at note 10.

<sup>10</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>11</sup> 15 U.S.C. 78f(b)(5).

## IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change, (SR-Phlx-2009-101), be, and hereby is, approved.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61409; File No. SR-NYSE-2010-04]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend for 12 Months the Pilot Program Permitting the Exchange's Ownership Interest in BIDS Holdings L.P. (BIDS) and the Affiliation of BIDS With the New York Block Exchange LLC

January 22, 2010.

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 January 11, 2010, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed this proposal pursuant to Rule 19b-4(f)(6) under the Act<sup>3</sup> and requested that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii).<sup>4</sup> 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 extend for an additional 12 months the January 22, 2010 expiration date of the pilot program that provides an exception to NYSE Rule 2B by permitting the Exchange's equity ownership interest in BIDS Holdings L.P. ("BIDS"), which is the parent company of a member of the Exchange, and BIDS's affiliation with

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</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> 17 CFR 240.19b-4(f)(6).

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

<sup>5</sup> Phlx Rule 924 (Obligations of Members and Member Organizations to the Exchange) states, among other things, that members and member organizations shall be liable for such fees, fines, dues, penalties and other amounts imposed by the Exchange.

<sup>6</sup> For example, invoices for the month of October might be sent on November 5.

<sup>7</sup> If the fifteenth day is not a business day, then the member would have until the following business day.