SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59705; File No. SR–Phlx–2009–28]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Option Floor Broker Subsidy

April 3, 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 March 26, 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 amend the threshold volume requirements related to the Options Floor Broker Subsidy and amend the Per Contract Average Daily Volume Subsidy Payment from a five tiered structure to a three tiered structure.

While changes to the Exchange's fee schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be effective for trades settling on or after April 1, 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 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 increase the threshold volume requirements related to the Options Floor Broker Subsidy and simplify the current tiered fee structure for the Options Floor Broker Subsidy Per Contract Average Daily Volume Subsidy Payment by reducing the number of tiers. The Exchange believes the proposed tier structure is more aligned with existing average daily volumes and that increasing the threshold volume requirement and compressing the tiers is necessary to continue to attract additional floor brokerage business to the Exchange.

The Exchange currently pays an Options Floor Broker Subsidy to member organizations with Exchange registered floor brokers for eligible contracts that are entered into the Exchange's Floor Broker Management System (''FBMS'').[3] To qualify for the per contract subsidy, a member organization with Exchange registered floor brokers must have: (1) More than an average of 75,000 executed contracts per day in the applicable month; and (2) at least 40,000 executed contracts or more per day for at least eight trading days during that same month.[4] Only the floor broker volume from orders entered into FBMS and subsequently executed on the Exchange would be counted. The 75,000 contract and 40,000 contract thresholds, as described above, would be calculated per member organization floor brokerage unit. In the event that two or more member organizations with Exchange registered floor brokers each entered one side of a transaction into FBMS, then the executed contracts would be divided among each qualifying member organization that participates in that transaction.[5]

The Exchange proposes amending the threshold volume requirements related to the Option Floor Broker Subsidy so that in order to qualify for the per contract subsidy a member organization with Exchange registered floor brokers must have more than an average of 100,000, instead of 75,000, executed contracts per day in the applicable month.[6] The Exchange also proposes amending the current five tiered Per Contract Average Daily Volume Subsidy Payment to a three tiered structure. Currently, in order to be eligible for the Options Floor Broker Subsidy, the member organization must have an average daily volume in a particular calendar month as follows:

PER CONTRACT AVERAGE DAILY VOLUME SUBSIDY PAYMENT

Tier I	Tier II	Tier III	Tier IV	Tier V
75,001 to 100,000	100,001 to 200,000	200,001 to 300,000	300,001 to 400,000	400,001 and greater.
$0.01 per contract	$0.04 per contract	$0.05 per contract	$0.06 per contract	$0.07 per contract.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] FBMS is designed to enable floor brokers and/or their employees to enter, route, and report transactions stemming from options orders received on the Exchange. FBMS also is designed to establish an electronic audit trail for options orders represented and executed by floor brokers on the Exchange. *See* Exchange Rule 1080, commentary .06.

[4] For purposes of calculating the 75,000 and 40,000 thresholds, customer-to-customer transactions, customer-to-non-customer transactions, and non-customer-to-non-customer transactions would be included.

[5] Customer-to-customer transactions would count towards reaching the 75,000 contract and 40,000 contract thresholds, but a per contract subsidy would not be paid on any customer-to-customer transactions. Dividend, merger and short stock interest strategies would be excluded from all threshold volume calculations, and no per contract subsidy would be paid on these transactions. The per contract subsidy would be paid based on the average daily contract volume for that month, which are customer-to-non-customer transactions and are in excess of 75,000 contracts. Payments would be made at the stated rate for each tier for those contracts that fall within that tier. These contracts may include customer-to-customer transactions for the purposes of reaching a tier, but as stated above, a per contract subsidy would not be paid on these executions. When computing the threshold amounts, the Exchange intends to first count all customer-to-customer transactions and then all other customer-to-non-customer transactions. *See also* Securities Exchange Act Release No. 57253 (February 1, 2008), 73 FR 7352 (February 7, 2008) (SR–Phlx–2008–08) (adopting a tiered per contract floor broker options subsidy payable to member organization with Exchange registered floor brokers).

[6] The second of the two threshold volume requirements, ''* * * at least 400,000 [sic] executed contracts or more per day for at least eight trading days during that same month'', would remain the same.

The Exchange proposes a three tiered structure where to be eligible for the Options Floor Broker Subsidy, the member organization must have an average daily volume in a particular calendar month as follows:

PER CONTRACT AVERAGE DAILY VOLUME SUBSIDY PAYMENT

Tier I	Tier III [sic]	Tier IV [sic]
100,001 to 200,000 ..... $0.04 per contract	200,001 to 300,000 ..... $0.05 per contract	300,001 and greater. $0.06 per contract.

In connection with increasing the threshold volume requirements, the Exchange proposes increasing the corresponding eligible contract requirements to reflect the increase from 75,000 to 100,000 for average executed contracts per day in the applicable month as follows:

• Customer-to-customer executions will count towards reaching the 100,000 contract and 40,000 contract thresholds, but a per contract subsidy will not be paid on any customer-to-customer executions.

• Orders entered through FBMS but executed away through Linkage, as well as dividend, merger and short stock interest strategies will not count towards the 100,000 contract or the 40,000 contract thresholds nor will a per contract subsidy be paid on these transactions.

• Only the largest component of a Complex Order (i.e., the component that includes the greatest number of contracts) will count towards the 100,000 contract and the 40,000 contract thresholds. The Options Floor Broker Subsidy does not apply to any contracts that are executed as part of a Complex Order.

Similarly, the Exchange proposes to amend the fee schedule to note that ''[t]he per contract subsidy would be paid based on the average daily contract volume on customer-to-non-customer as well as non-customer-to-non-customer transactions for that month in excess of 100,000 contracts'' instead of 75,000 as currently stated.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(4) of the Act [8] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. Pursuant to this proposal, all member organizations with Exchange registered floor brokers are offered the continued opportunity to receive a subsidy. By allowing for a subsidy, the Exchange believes that floor brokers will be encouraged to send additional orders to the Exchange for execution.

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.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [9] and paragraph (f)(2) of Rule 19b–4 [10] thereunder. 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–2009–28 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–2009–28. 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 available publicly. All submissions should refer to File No. SR–Phlx–2009–28 and should be submitted on or before May 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

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[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).