



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66037; File No. SR-Phlx-2011-177)

December 22, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Fees Applicable to the Trading of NMS Stocks Through NASDAQ OMX PSX

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 December 16, 2011, NASDAQ OMX PHLX LLC ("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 modify the fees applicable to trading of NMS stocks through NASDAQ OMX PSX ("PSX"). The text of the proposed rule change is available on the Exchange's website at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, at the principal office of the Exchange, on the Commission's website at <http://www.sec.gov/>, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to modify order execution fees applicable to use of PSX. The Commission recently approved PSX's new Minimum Life Order type,³ and this filing is designed to establish rebates applicable to its use. A Minimum Life Order is a Displayed Order that may not be cancelled for a period of 100 milliseconds following its entry. Because a party entering a Minimum Life Order incurs a degree of risk due to its inability to cancel the order for a period of time, the Exchange believes that it is appropriate to encourage use of the order through an enhanced liquidity provider rebate for such orders when they provide liquidity. The Exchange believes that it is appropriate to encourage use of the order type because it is intended to promote greater stability in the quotes available at PSX, thereby encouraging more market participants to direct orders to PSX in an effort to interact with its quotes. The Exchange thereby seeks to increase both its market share and its market quality.

Currently, the Exchange offers a rebate of \$0.0026 per share executed for Displayed Orders with an original order size of 2,000 or more shares, but only \$0.0024 for Displayed Orders with an original order size of less than 2,000. The rebate for Non-Displayed Orders is \$0.0010 per share executed. PSX proposes also to offer the higher rebate of \$0.0026 per share executed to Minimum Life Orders that provide liquidity.⁴ PSX believes that the Minimum Life

³ See Securities Exchange Act Release No. 65926 (December 9, 2011), 76 FR 78057 (December 15, 2011) (SR-Phlx-2011-141).

⁴ As is the case with other liquidity-providing orders, no rebate is paid with respect to securities priced at less than \$1 per share.

Order, with its goal of promoting more stable quotes, is complementary to PSX's goal of encouraging quotes with greater displayed size.

When a Minimum Life Order executes against an existing quote, rather than posting and providing liquidity, the market participant will pay the same fee (\$0.0027 per share executed, or 0.20% of the total transaction cost for securities priced at less than \$1 per share) that applies to all other liquidity-accessing orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁵ in general, and with Section 6(b)(4) of the Act,⁶ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. Specifically, the Exchange believes that the proposed rebate for Minimum Life Orders is reasonable because it is set at a level comparable to the existing rebate for orders with an original displayed size of 2,000 or more shares. The Exchange further believes that the proposal reflects an equitable allocation of fees, as all similarly situated member organizations will be subject to the same fee structure, and access to the Exchange's market is offered on fair and non-discriminatory terms. The Exchange further believes that it is equitable to pay a high rebate with respect to Minimum Life Orders, because (i) a market participant incurs a risk when it enters the order, which may not be cancelled for a period of time, and (ii) the Exchange expects that the higher rebate will promote its goal of encouraging display of more stable quotes that attract more order flow to the Exchange.

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(4).

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that its fees continue to be reasonable and equitably allocated to members on the basis of whether they opt to direct orders to the Exchange and thereby make use of its order execution services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution and routing is extremely competitive, members may readily favor the Exchange's competitors in making order routing decisions to the extent that they deem PSX's fees to be excessive. Moreover, the Exchange believes that the proposal will enhance competition through its use of pricing incentives to draw greater order flow to PSX.

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.⁷ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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 No. SR-Phlx-2011-177 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-Phlx-2011-177. 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m.

and 3:00 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-2011-177 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Kevin M. O'Neill
Deputy Secretary

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⁸ 17 CFR 200.30-3(a)(12).