



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66284; File No. SR-Phlx-2012-04)

February 1, 2012

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Offer a New Product, TradeInfo PHLX, and amend the Fee Schedule to Add a Related Subscription Fee

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 January 26, 2012, NASDAQ OMX PHLX LLC (“Exchange” or “PHLX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II 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 offer a new product, TradeInfo PHLX, to amend the fee schedule to add a related subscription fee.

The text of the proposed rule change is available from the Exchange’s website at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, at the Exchange’s principal office, 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to offer a new product, TradeInfo PHLX, and to amend its fee schedule to assess a fee of \$95 per user, per month for subscription to the new product.³

Through a secure Web connection, TradeInfo PHLX will allow a subscribing member to scan for their orders submitted to PHLX. A subscribing member will be able to scan for all orders in a particular security or all orders of a particular type, regardless of their status (open, canceled, executed, etc.). A subscribing member will also be able to cancel open orders at the order, port or firm mnemonic level. For example, after scanning for open orders, a subscribing member is able to select an open order and cancel the order. TradeInfo PHLX will also allow a subscribing member to scan other order statuses, such as executed, cancelled, broken, rejected and suspended orders. A subscribing member will be able to generate reports of execution, order or cancel information, which can be exported into a spreadsheet for review. TradeInfo PHLX will also permit a subscribing member to manage their order flow and mitigate risk by giving them the ability to view their orders and executions, as well as the ability to perform cancels at the port level. Last, TradeInfo PHLX will allow a subscribing member to download records of their orders and executions for record-keeping purposes. The Exchange currently offers PSX TradeInfo data to subscribing members for a fee of \$95 per user, per month for member's trading

³ The Exchange is creating new Chapter XII "PHLX Trading Application Services" of the NASDAQ OMX PHLX LLC Fee Schedule under which it will place the proposed new fee.

activity on the PSX equities market.⁴ Under the proposed rule change, TradeInfo PHLX will be available to PHLX members participating on the PHLX options market.

TradeInfo PHLX is similar to comparable products offered by the The Nasdaq Stock Market (“Nasdaq”) and NASDAQ OMX BX (“BX”).⁵ PHLX is proposing to offer the same functionality to its options participants in regard to their PHLX trade activity for the same fee assessed for the similar products offered by Nasdaq and BX.⁶

2. Statutory Basis

The Exchange believes that the proposed fee is consistent with the provisions of Section 6 of the Act,⁷ in general, and with Section 6(b)(4) of the Act,⁸ 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. The Exchange believes that the fee is reasonable since the functionally identical product is currently offered for the same subscription fee to PSX participants, as well as Nasdaq and BX members. The Exchange believes that the fee is equitably allocated since subscription to the product is voluntary and the fee is assessed only upon members that elect to subscribe to the product. The

⁴ See NASDAQ OMX PHLX LLC Fee Schedule (January 5, 2012), Chapter VIII NASDAQ OMX PSX FEES, TradeInfo PSX, p. 23.

⁵ Securities Exchange Act Release No. 55135 (January 19, 2007), 72 FR 3893 (January 26, 2007)(SR-NASDAQ-2006-062). See also Securities Exchange Act Release No. 60826 (October 14, 2009), 74 FR 54605 (October 22, 2009)(SR-BX-2009-062).

⁶ NASDAQ Rule 7015(f) and Chapter XV, Section 3(a) of the Nasdaq Options Rules each assess subscribing members a fee of \$95 per user, per month for TradeInfo if the subscribing member does not have a subscription to the Nasdaq Workstation (the Nasdaq Workstation includes access to TradeInfo). BX Rule 7015 assesses subscribing members a fee of \$95 per user, per month for TradeInfo BX.

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

fee is based on the number of subscriptions subscribed, so all similarly-situated member firms would be assessed the same amount.

The Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act,⁹ which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange believes the proposed rule change is consistent with these requirements because the TradeInfo PHLX offers a useful analytical tool with which PHLX members may access information concerning their order and trade activity occurring on PHLX, thus allowing such participants to make informed decisions concerning such activity. The Exchange notes that Nasdaq and BX offer the same type of product to their members. Affording PHLX participants access to the same functionality promotes the goal of perfecting the mechanism of a free and open market by providing a subscriber clearer picture of its market activity and providing it the ability to quickly cancel orders should the participant determine it necessary to do so.

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.

⁹ 15 U.S.C. 78f(b)(5).

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become 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 Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal will provide a tool for Exchange members to assist them in the management of their Exchange orders and is substantially similar to those of other exchanges.¹² Therefore, the Commission designates the proposal operative upon filing.¹³

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

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 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 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 five-day prefiling requirement.

¹² See supra notes 4 and 5.

¹³ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2012-04 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-2012-04. 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 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-2012-04 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.¹⁴

Kevin M. O'Neill
Deputy Secretary

[FR Doc. 2012-2641 Filed 02/06/2012 at 8:45
am; Publication Date: 02/07/2012]

¹⁴ 17 CFR 200.30-3(a)(12).