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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66799; File No. SR-Phlx-2012-38)

April 12, 2012

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to FINRA Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on April 11, 2012, 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 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 amend the Exchange’s Pricing Schedule at Section VII, C to update FINRA fees to mirror the text of The NASDAQ Stock Market LLC (“NASDAQ Stock Market”) and NASDAQ OMX BX, Inc. (“BX”).

The text of the proposed rule change is available on the Exchange’s website at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, 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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 both amend and update the Exchange’s FINRA fees on its Pricing Schedule at Section VII, C entitled “FINRA Fees” to mirror the rules of the NASDAQ Stock Market and BX. Currently, the Exchange displays all the FINRA fees that are billed and collected by FINRA at Section VII, C on behalf of the Exchange. The Exchange is proposing to replace the relevant text in the Pricing Schedule with text similar to that of NASDAQ Stock Market Rule 7003(a)(1) – (5)<sup>3</sup> and BX Rule 7003(a)(1) – (5).<sup>4</sup> This amendment would serve to (1) conform the Exchange’s Pricing Schedule to that of NASDAQ Stock Market and BX rules in order to avoid confusion over similar FINRA fees listed in those rules, however reflected differently on the Phlx Pricing Schedule as compared to the NASDAQ Stock Market and BX Rules with respect to DOJ related costs;<sup>5</sup> and (2) update Phlx’s current

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<sup>3</sup> Rule 7003(a)(6) and (b) are specific to NASDAQ Stock Market and not applicable to Phlx. Also the NASDAQ Stock Market rule has a reference to NASD which is being reflected as FINRA in the Exchange’s proposed rule text similar to the text of BX Rule 7003.

<sup>4</sup> Rule 7003(a)(6) and (b) are specific to BX and not applicable to Phlx.

<sup>5</sup> The Phlx Pricing Schedule calculates the cost of the FINRA fingerprint processing fee (\$13) together with the pass through fee imposed by the United States Department of Justice (“DOJ”) while NASDAQ Stock Market Rule 7003(a)(4) and (5) and BX Rule 7003(a)(4) and (5) only displays the \$13 FINRA fingerprint processing fee and does not

fees so that the fees comport with a recent amendment to the DOJ pass-through fee,<sup>6</sup> which is billed and collected by FINRA.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>8</sup> in particular, 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, by conforming the text of the Exchange's Pricing Schedule regarding certain fees billed and collected by FINRA to that of the NASDAQ Stock Market Rule and BX, to the extent the fees apply to the Exchange, so that there is no confusion as to the amount of fees which are similarly billed and collected by FINRA to members of the various 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 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

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display the pass-through amount to the DOJ but rather notes such a cost is assessed by FINRA.

<sup>6</sup> FINRA notified its members through an Information Notice that there was a reduction to the DOJ pass-through fee from \$17.25 to \$14.50. The amounts currently displayed for fingerprint processing fees on Phlx's Pricing Schedule would therefore need to be amended from \$30.25 to \$27.50 to update the current Pricing Schedule. However, the proposed amendment to the Pricing Schedule would only reference the FINRA fees and would not reference the DOJ pass-through fees therefore obviating the amendment to the proposed text to display the price decrease as the exact DOJ fee would no longer be displayed.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

No written comments were either solicited or received.

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

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) thereunder.<sup>10</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>11</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and, therefore, designates the proposal operative upon filing.<sup>12</sup> The proposed rule change is not controversial as it would conform the text of the Exchange's Pricing Schedule to similar rule text on the NASDAQ Stock Market and BX. In addition, the

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<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) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 this requirement.

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 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).

proposed rule change would update the Exchange's Pricing Schedule to make the amount of the FINRA fingerprinting fees displayed on the Pricing Schedule accurate.

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.

#### 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 Number SR-Phlx-2012-38 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-2012-38. 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-2012-38 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.<sup>13</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).