



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68402; File No. SR-Phlx-2012-137)

December 11, 2012

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rebates and Fees for Adding and Removing Liquidity

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4² thereunder, notice is hereby given that, on December 3, 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, 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 file Section I of the Exchange’s Pricing Schedule entitled “Rebates and Fees for Adding and Removing Liquidity in Select Symbols” in order to preserve amendments to the Pricing Schedule that became effective after the suspension of certain fees on April 30, 2012.

The Exchange has designated the proposed amendment to be operative on December 3, 2012.

The text of the proposed rule change is available on the Exchange’s website at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXfilings>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Exchange filed two immediately effective rule changes, SR-Phlx-2012-27 and SR-Phlx-2012-54,³ to amend certain fees and rebates in Section I, which filings were temporarily suspended by the Commission as of April 30, 2012 ("Suspension Order").⁴ In order to continue the effectiveness of certain fees and rebates that were contained in SR-Phlx-2012-27, but not the subject of the Suspension Order, the Exchange filed a rule change on April 30, 2012.⁵ On November 9, 2012, the Commission approved SR-Phlx-2012-27 and SR-Phlx-2012-54, as modified by Amendment No. 1, on a one-year pilot basis, with such fees being operative on December 3, 2012 ("Approval Order").⁶

³ See Securities Exchange Act Release Nos. 66551 (March 9, 2012), 77 FR 15400 (March 15, 2012) (SR-Phlx-2012-27) and 66883 (April 30, 2012), 77 FR 26591 (May 4, 2012) (SR-Phlx-2012-54).

⁴ By order dated April 30, 2012, the Commission suspended SR-Phlx-2012-27 and SR-Phlx-2012-54. See Securities Exchange Release No. 66884 (April 30, 2012), 77 FR 26595 (May 4, 2012) (SR-Phlx-2012-27 and SR-Phlx-2012-54).

⁵ See Securities Exchange Act Release No. 66968 (May 11, 2012), 77 FR 29425 (May 17, 2012) (SR-Phlx-2012-57).

⁶ See Securities Exchange Act Release No. 68202 (November 9, 2012), 77 FR 68856 (November 16, 2012) (SR-Phlx-2012-27 and SR-Phlx-2012-54).

The Approval Order reinstated the fees that were proposed by the Exchange in SR-Phlx-2012-27.⁷ Since the date of the suspension, the Exchange filed multiple amendments to Section I of the Pricing Schedule which became effective after the Suspension Order.⁸ The Exchange proposes to preserve the amendments to Section I of the Pricing Schedule that became effective after the Suspension Order in order to continue the effectiveness of the current fees and rebates which were not the subject of the Approval Order. The fees for executions of Complex Orders by Directed Participants and Market Makers, which were the subject of the Approval Order, will be addressed in a separate filing proposed to be operative on December 3, 2012 and are not included in this filing.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁰ in particular, in that it is concerned solely with the administration of the Exchange. This filing serves to preserve the current pricing that has been filed with the Commission notwithstanding the Approval Order that was issued by the Commission. The Exchange believes this proposal is

⁷ Specifically, SR-Phlx-2012-27 proposed to: (1) increase the Customer Complex Order Rebate for Adding Liquidity from \$0.30 to \$0.32 per contract, (2) create a new Complex Order Rebate for Removing Liquidity and specifically pay a Customer a \$0.06 Complex Order Rebate for Removing Liquidity, and (3) increase the Complex Order Fees for Removing Liquidity for Firms, Broker-Dealers and Professionals from \$0.35 per contract to \$0.38 per contract.

⁸ See Securities Exchange Act Release Nos. 66985 (May 14, 2012), 77 FR 29726 (May 18, 2012) (SR-Phlx-2012-61); 67047 (May 23, 2012), 77 FR 32165 (May 31, 2012) (SR-Phlx-2012-70); 67189 (June 12, 2012), 77 FR 36310 (June 18, 2012) (SR-Phlx-2012-77); 67439 (July 13, 2012), 77 FR 42541 (July 19, 2012) (SR-Phlx-2012-90); 67633 (August 9, 2012), 77 FR 49040 (August 15, 2012) (SR-Phlx-2012-104); 67830 (September 11, 2012), 77 FR 57169 (September 17, 2012) (SR-Phlx-2012-112); and SR-Phlx-2012-125) (not yet published).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

a technical and non-substantive rule change with the sole purpose of preserving the current fees and rebates in Section I. The fees that were the subject of the Approval Order, which related to fees for executions of Complex Orders by Directed Participants and Market Makers, will be addressed in a separate filing. This proposal maintains the status quo, which would be otherwise altered by the Approval Order.

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)(iii) of the Act.¹¹ 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 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:

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

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-2012-137 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-2012-137. 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-2012-137 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.¹²

Kevin M. O'Neill
Deputy Secretary

[FR Doc. 2012-30271 Filed 12/14/2012 at 8:45 am; Publication Date: 12/17/2012]

¹² 17 CFR 200.30-3(a)(12).