



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69901; File No. SR-Phlx-2013-70)

July 1, 2013

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Schedule of Fees and Rebates for the Execution of Quotes and Orders on 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 June 25, 2013, 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 changes to its schedule of fees and rebates for execution of quotes and orders on NASDAQ OMX PSX (“PSX”). Phlx proposes to implement the proposed rule change on July 1, 2013. The text of the proposed rule change is available on the Exchange’s website at <http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/phlx>, 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

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

Phlx is proposing two modifications to its schedule of fees and rebates for transactions occurring on PSX.³ First, the Exchange currently charges a fee of \$0.0028 per share executed for orders in securities listed on The NASDAQ Stock Market ("NASDAQ") or the New York Stock Exchange ("NYSE") entered through a PSX market participant identifier ("MPID") through which a member organization provides an average daily volume of 10,000 or more shares of liquidity during the month. The Exchange also charges a fee of \$0.0028 per share executed for orders in securities listed on NASDAQ or NYSE that are designated as eligible for routing, to the extent that such orders execute on PSX rather than routing. Orders that do not qualify for these discounts are charged \$0.0030 per share executed. For orders in securities listed on exchanges other than NASDAQ and NYSE, however, the Exchange currently charges \$0.0025 per share executed if entered through a PSX MPID through which a member organization provides an average daily volume of 10,000 or more shares of liquidity during the month, and also charges \$0.0025 per share executed for orders in securities listed on exchanges other than NASDAQ or NYSE that are designated as eligible for routing. The Exchange is proposing to change both of these fees to \$0.0028 per share executed, so that the fees for accessing liquidity in all securities, regardless of listing venue, will be equivalent.⁴

³ The changes apply to securities priced at \$1 or more per share.

⁴ As is the case with securities listed on NASDAQ or NYSE, the fee for orders in securities listed on other venues that do not qualify for discounts is \$0.0030 per share executed. This fee is not changing.

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁵ in general, and with Sections 6(b)(4) and 6(b)(5) 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 Phlx operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The change with respect to the fee charged for orders in securities listed on venues other than NASDAQ or NYSE that are entered through a PSX MPID through which a member organization provides an average daily volume of 10,000 or more shares of liquidity during the month is reasonable because it will make the applicable fee equivalent to the fee already charged with respect to orders entered by the same member organization with respect to securities listed on NASDAQ or NYSE. Moreover, the fee in question is consistent with the requirements of SEC Rule 610(c) under Regulation NMS.⁷ In adopting that rule, the Commission found that fees not in excess of \$0.0030 per share executed would promote the objective of equal regulation and preventing excessive fees.⁸ The change is consistent with an equitable allocation of fees because the modified fee applicable to the volume tier in question remains lower than the fee charged to member organizations not achieving the tier, and therefore continues to provide a financial incentive for member organizations to achieve higher volume levels at PSX. The change is not unfairly discriminatory because the resulting fee is equivalent to the fee charged with respect to

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(4) and (5).

⁷ 17 CFR 242.610(c).

⁸ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37596 (June 29, 2005).

orders in securities listed on NASDAQ or NYSE. Finally, the fee change does not unduly burden competition because affected member organizations will continue to pay an access fee that is lower than the base rate of \$0.0030 per share executed, and therefore their ability to compete will not be impacted; rather, they will continue to pay a comparatively lower fee that reflects a volume-based discount, conceptually similar to volume-based pricing incentives that are provided by numerous other trading venues.

The change with respect to the fee charged for routable orders in securities listed on venues other than NASDAQ or NYSE is reasonable because it will make the applicable fee equivalent to the fee already charged with respect to routable orders entered with respect to securities listed on NASDAQ or NYSE. Moreover, the fee in question is consistent with the requirements of SEC Rule 610(c) under Regulation NMS.⁹ In adopting that rule, the Commission found that fees not in excess of \$0.0030 per share executed would promote the objective of equal regulation and preventing excessive fees.¹⁰ The change is consistent with an equitable allocation of fees because the modified fee remains lower than the fee charged with respect to non-routable orders not qualifying for a volume discount, and therefore continues to provide a means by which member organizations not qualifying for a volume tier may achieve a rate more favorable than the undiscounted rate. The change is not unfairly discriminatory because the resulting fee is equivalent to the fee charged with respect to orders in securities listed on NASDAQ or NYSE. Finally, the fee change does not unduly burden competition because affected member organizations will continue to pay an access fee that is lower than the base rate of \$0.0030 per share executed, and therefore their ability to compete will not be impacted; rather,

⁹ 17 CFR 242.610(c).

¹⁰ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37596 (June 29, 2005).

they will continue to pay a comparatively lower fee that reflects a discount designed to encourage member organizations to use the routing services of PSX.

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

Phlx 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.¹¹ Phlx 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, or rebate opportunities available at other venues to be more favorable. In such an environment, Phlx must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, Phlx believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, Phlx is instituting a limited fee increase, but one that is designed to make the fee schedule consistent across all securities. If the changes are unattractive to market participants, it is likely that PSX will lose market share as member organizations opt to trade securities at other execution venues. Accordingly, Phlx does not believe that the changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

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.

¹¹ 15 U.S.C. 78f(b)(8).

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) of the Act¹² and paragraph (f) of Rule 19b-4 thereunder.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 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-2013-70 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-2013-70. 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

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f).

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-2013-70 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

Elizabeth M. Murphy
Secretary

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¹⁴ 17 CFR 200.30-3(a)(12).