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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70874; File No. SR-Phlx-2013-111)

November 14, 2013

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Pricing Schedule under Section VIII with Respect to Execution and Routing of Orders in Securities Priced at \$1 or More Per Share

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 31, 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 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 under Section VIII, entitled "NASDAQ OMX PSX FEES," with respect to execution and routing of orders in securities priced at \$1 or more per share.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqomxphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

<sup>2</sup> 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 purpose of the proposed rule change is to amend the certain fees and rebates for order execution and routing applicable to the use of the order execution and routing services of the NASDAQ OMX PSX System by member organizations for all securities traded at \$1 or more per share.

**Amended Fees for Execution of Quotes/Orders in Securities Listed on Nasdaq**

The Exchange is proposing to amend fees assessed for the execution of orders in securities listed on the Nasdaq Stock Market LLC (“Nasdaq”) that execute in NASDAQ OMX PSX (“PSX”). Currently, the Exchange assesses a charge of \$0.0028 per share executed for an order entered through a PSX Market Participant Identifier (“MPID”) through which the member organization provides an average daily volume of 10,000 or more shares of liquidity during the month. The Exchange is proposing to increase the charge assessed for such orders executed at PSX to \$0.0030.

The Exchange is also proposing to increase the charge assessed for an order executed in PSX in Nasdaq securities that is designated as eligible for routing. Currently, the Exchange assesses a charge of \$0.0028 per share executed for an order that is

designated as eligible for routing. The Exchange is proposing to increase the charge assessed for such orders executed at PSX to \$0.0030.

#### **Amended Fees for Execution of Quotes/Orders in Securities Listed on NYSE**

The Exchange is proposing to amend fees assessed and credits provided for the execution of orders in securities listed on the New York Stock Exchange, Inc. (“NYSE”) that execute in PSX. Currently, the Exchange assesses a charge of \$0.0028 per share executed for an order entered through a PSX MPID through which the member organization provides an average daily volume of 10,000 or more shares of liquidity during the month. The Exchange is proposing to increase the charge assessed for such orders executed at PSX to \$0.0030.

The Exchange is also proposing to increase the charge assessed for an order executed in PSX in NYSE-listed securities that is designated as eligible for routing. Currently, the Exchange assesses a charge of \$0.0028 per share executed for an order that is designated as eligible for routing. The Exchange is proposing to increase the charge assessed for such orders executed in PSX to \$0.0030.

The Exchange is proposing to amend the credit provided to a member organization providing displayed liquidity in NYSE-listed securities through the PSX System. Currently, the Exchange provides a credit of \$0.0028 per share executed for a displayed quote/order entered by a member organization that provides an average daily volume of 2 million or more shares of liquidity during the month. To be eligible, either (1) the quote/order is entered through a PSX MPID through which the member organization displays, on average over the course of the month, 100 shares or more at the national best bid and/or national best offer at least 25% of the time during regular market

hours in the security that is the subject of the quote/order, or (2) the member organization displays, on average over the course of the month, 100 shares or more at the national best bid and/or national best offer at least 25% of the time during regular market hours in 500 or more securities. The Exchange is proposing to increase the credit to \$0.0029 per share executed.

The Exchange is also proposing a new credit provided to a member organization providing displayed liquidity in NYSE-listed securities through the PSX System. Specifically, the Exchange is proposing to offer a credit of \$0.0030 per share executed for a displayed quote/order entered by a member organization that provides an average daily volume of 6 million or more shares of liquidity during the month. Like the current credit, in order to be eligible, either (1) the quote/order is entered through a PSX MPID through which the member organization displays, on average over the course of the month, 100 shares or more at the national best bid and/or national best offer at least 25% of the time during regular market hours in the security that is the subject of the quote/order, or (2) the member organization displays, on average over the course of the month, 100 shares or more at the national best bid and/or national best offer at least 25% of the time during regular market hours in 500 or more securities.

#### **Amended Fees for Execution of Quotes/Orders in Securities Listed on Exchanges other than Nasdaq or NYSE**

The Exchange is proposing to amend fees assessed and credits provided for the execution of orders in securities listed on exchanges other than Nasdaq or NYSE that execute at PSX. Currently, the Exchange assesses a charge of \$0.0028 per share executed for an order entered through a PSX MPID through which the member organization provides an average daily volume of 10,000 or more shares of liquidity

during the month. The Exchange is proposing to increase the charge assessed for such orders executed at PSX to \$0.0030.

The Exchange is also proposing to increase the charge assessed for an order executed in PSX in securities listed on exchanges other than Nasdaq or NYSE that is designated as eligible for routing. Currently, the Exchange assesses a charge of \$0.0028 per share executed for an order that is designated as eligible for routing. The Exchange is proposing to increase the charge assessed for such orders executed at PSX to \$0.0030.

The Exchange is proposing to amend the credit provided to a member organization providing displayed liquidity through the PSX System. Currently, the Exchange provides a credit of \$0.0028 per share executed for a displayed quote/order in securities listed on exchanges other than Nasdaq or NYSE entered by a member organization that provides an average daily volume of 2 million or more shares of liquidity during the month. To be eligible, either (1) the quote/order is entered through a PSX MPID through which the member organization displays, on average over the course of the month, 100 shares or more at the national best bid and/or national best offer at least 25% of the time during regular market hours in the security that is the subject of the quote/order, or (2) the member organization displays, on average over the course of the month, 100 shares or more at the national best bid and/or national best offer at least 25% of the time during regular market hours in 500 or more securities. The Exchange is proposing to increase the credit to \$0.0029 per share executed.

The Exchange is also proposing a new credit provided to a member organization providing displayed liquidity through the PSX System in securities listed on exchanges other than Nasdaq or NYSE. Specifically, the Exchange is proposing to offer a credit of

\$0.0030 per share executed for a displayed quote/order entered by a member organization that provides an average daily volume of 6 million or more shares of liquidity during the month. Like the current credit, in order to be eligible, either (1) the quote/order is entered through a PSX MPID through which the member organization displays, on average over the course of the month, 100 shares or more at the national best bid and/or national best offer at least 25% of the time during regular market hours in the security that is the subject of the quote/order, or (2) the member organization displays, on average over the course of the month, 100 shares or more at the national best bid and/or national best offer at least 25% of the time during regular market hours in 500 or more securities.

#### **Amended Fees for Routing of Orders in All Securities**

The Exchange is proposing to amend fees assessed and credits provided for the routing of orders in all securities. Currently, for PSTG or PSCN orders that execute in a venue other than PSX the Exchange assesses a charge of \$0.0025 per share executed at the NYSE, a credit of \$0.0014 per share executed at BX and a charge of \$0.28 [sic] per share executed in other venues. The Exchange proposes to decrease the credit provided for executions at BX to \$0.0011, and to increase the charges for executions elsewhere, including the NYSE, to \$0.0030 per share executed.

The Exchange is also proposing to amend the fees assessed member organizations for entering a PMOP order that executes in a venue other than PSX. Currently, the Exchange assesses a charge of \$0.0027 per share executed at the NYSE and a charge of \$0.0031 per share executed at venues other than the NYSE. The Exchange proposes increasing these fees to \$0.0030 per share executed at the NYSE and \$0.0035 per share executed at venues other than the NYSE.

The Exchange is proposing to amend the fees assessed and credits provided for member organizations entering a PTFY order that executes in a venue other than PSX. Currently, the Exchange assesses a charge of \$0.0024 per share executed at the NYSE, a charge of \$0.0005 per share executed at venues other than the NYSE, Nasdaq or BX, a charge of \$0.0028 per share executed at Nasdaq, and provides a credit of \$0.0014 per share executed at BX. The Exchange is proposing to decrease the credit provided to \$0.0011 per share executed at BX, and increase the charges for shares executed at NYSE and Nasdaq to \$0.0030 per share executed.

The Exchange is proposing to amend the fees assessed and credits provided for member organizations entering a PCRT order that executes in a venue other than PSX. Currently, the Exchange assesses a charge of \$0.0028 per share executed at Nasdaq and provides a credit of \$0.0014 per share executed at BX. The Exchange is proposing to increase the charge assessed for executions on Nasdaq to \$0.0030 per share executed, and to decrease the credit provided for executions on BX to \$0.0011 per share executed.

Last, the Exchange is proposing to amend the credit provided to a member organization for entering an XCST order that executes at BX. Currently, the Exchange provides a credit of \$0.0014 per share executed at BX. The Exchange is proposing to decrease the credit provided to \$0.0011.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>3</sup> in general, and furthers the objectives of Sections

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<sup>3</sup> 15 U.S.C. 78f(b).

6(b)(4) and (b)(5) of the Act<sup>4</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities, and it does not unfairly discriminate between customers, issuers, brokers or dealers. The proposed changes are reasonable because they reflect a modest decrease in the credits provided in the execution of certain orders and a modest increase in the fees assessed for others, which will allow the Exchange to reduce costs and increase revenue.

The change with respect to fees for execution of quotes/orders in securities that execute on PSX is reasonable because it will make the applicable fees for orders that execute in PSX uniform, without regard to the nature of entry, eligibility for routing, or the listing venue of the security. Moreover, the change will result in a modest increase of only \$0.0002 per share executed for PSX MPID-entered orders eligible for the existing tier, and for orders designated as eligible for routing. The change is consistent with an equitable allocation of fees and not unfairly discriminatory because it will eliminate an existing disparity between the fees charged for orders that execute in PSX, thereby making the applicable fees consistent. In addition, the change is equitable and not unfairly discriminatory because it affects all member organizations that execute orders in PSX.

The change with respect to the credits provided for execution of quotes/orders in NYSE-listed securities and securities listed on exchanges other than Nasdaq is reasonable because it further incentivizes member organizations to provide displayed quotes and orders on PSX. Specifically, the change achieves this goal by increasing the credit provided under the current tier, and creating a new tier that provides a larger credit to

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<sup>4</sup> 15 U.S.C. 78f(b)(4) and (5).

member organizations that provide a larger average daily volume of shares of liquidity during the month. The change is consistent with an equitable allocation of fees and not unfairly discriminatory because it applies the same criteria and provides the same rebate to member organizations trading in non-Nasdaq securities that provide displayed liquidity to PSX, under each of the tiers.

The changes with respect to the charges assessed and credits provided for routing of orders in all securities are reasonable because they represent a modest increases in charges assessed a member organization for PSTG, PSCN, PMOP, PTFY and PCRT orders that execute in a venue other than PSX, and a modest decrease in the credits provided to member organizations for PSTG, PSCN, PTFY, PCRT and XCST orders that execute at BX. The Exchange notes that the increase in fees and decrease in credits are designed to incentivize member organizations to provide orders and quotes that execute on PSX. In addition, the change is equitable and not unfairly discriminatory because it affects only those members that opt to use the Exchange's optional routing services.

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, as amended.<sup>5</sup> 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, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have

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

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, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, the decreased credits and increased fees are intended to reduce the Exchange's costs, while still continuing to provide an incentive for members to execute shares on PSX and make use of its optional routing functionality. Because there are numerous competitive alternatives to PSX, it is likely the Exchange will lose market share as a result of the changes if they are unattractive to market participants. Accordingly, the Exchange does not believe the proposed changes will impair the ability of members 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.

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 Act<sup>6</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>7</sup> 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.

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f).

#### 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-2013-111 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-2013-111. 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-2013-111 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>8</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).