



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73126; File No. SR-Phlx-2014-60)

September 17, 2014

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"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 5, 2014, 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 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 Exchange implemented the fees on September 2, 2014.³

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The proposed rule change was originally filed on August 28, 2014 (Phlx-2014-58). This filing makes a technical correction to the original filing, which was withdrawn concurrently with the submission of this filing.

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 certain fees for order execution on the NASDAQ OMX PSX System ("PSX") by member organizations for securities traded at \$1 or more per share. Chapter VIII(a)(1) of the PSX pricing schedule concerns fees assessed for execution of quotes/orders on PSX in securities listed on the Nasdaq Stock Market ("Nasdaq"), securities listed on the New York Stock Exchange ("NYSE") and securities listed on exchanges other than Nasdaq and NYSE. Under the rule, the Exchange assesses two separate fees of \$0.0026 per share executed for execution of securities that are eligible for routing, and for execution of securities that are not eligible for routing. The Exchange is proposing to eliminate the current distinction made between orders designated as eligible for routing and those that are not, and rather distinguish the charges assessed based on the venue on which the security is listed. Specifically, the Exchange is proposing to assess a charge of \$0.0024 per share executed in securities listed on NYSE, \$0.0024 per share executed in securities listed on an exchange other than Nasdaq or NYSE, and \$0.0026 per share executed in securities listed on Nasdaq.

The Exchange notes that it historically distinguished the fees it assessed under Chapter

VIII(a) by the listing venue of the security executed; however, in an effort to simplify the fee schedule, the Exchange recently consolidated three sections of the rule concerning each of the three types of securities into a single section under Chapter VIII(a)(1) that applies to all three types of securities.⁴ A consequence of the proposed rule change will be that charges assessed for executions in securities listed on NYSE and securities listed on an exchange other than Nasdaq or NYSE will decrease, without regard to their ability to be routed, and charges assessed for executions in securities listed on Nasdaq will remain unchanged, also without regard to their ability to be routed.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act⁵ in general, and furthers the objectives of Sections 6(b)(4) and (b)(5) of the Act⁶ 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 charges assessed for execution of securities in NYSE-listed and securities listed on an exchange other than Nasdaq or NYSE, and no change in the charge assessed for the execution of orders in securities designated as not eligible for routing in Nasdaq-listed securities. The proposed changes are consistent with an

⁴ The Exchange noted at the time that the three sections were largely identical in terms of the categories for which charges are assessed and credits given. Notwithstanding, the Exchange must, from time to time, make distinctions in the fees assessed and credits provided based on type of security traded and the market-improving behavior sought to incentivize. See Securities Exchange Act Release No. 72572 (July 9, 2014), 79 FR 41327 (July 15, 2014)(SR-Phlx-2014-43).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

equitable allocation of fees and are not unfairly discriminatory because they provide incentive to market participants to improve the market in the applicable securities by offering a reduced rate than is currently offered for the execution of securities on PSX. The Exchange makes distinctions in fees and charges based on desire to provide certain incentives to market participants to further provide liquidity to the market weighed against the costs the Exchange incurs in providing such incentives. In the present case, the Exchange is providing incentive to market participants to improve the market in NYSE-listed and securities listed on an exchange other than Nasdaq or NYSE, which is not as robust as the liquidity currently available in Nasdaq-listed securities. Because the market in Nasdaq-listed securities is robust on PSX, the Exchange is maintaining the current charge assessed for executions in Nasdaq-listed securities. Moreover, under the proposed change a member that receives an execution on PSX in a security listed on a venue noted in the amended rule will be assessed the same charge that all other members are assessed for the execution of a security listed on the same venue. For these reasons, the Exchange believes that the proposal is an equitable allocation of fees and is not unfairly discriminatory.

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.⁷ 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

⁷ 15 U.S.C. 78f(b)(8).

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, 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 reduced charges are intended to provide incentive to market participants to add liquidity to the Exchange in securities listed on NYSE or exchanges other than Nasdaq or NYSE, while maintaining the current charge applied to Nasdaq-listed securities, which is reflective of the robust liquidity in Nasdaq-listed securities currently on the market. Because there are numerous competitive alternatives to PSX, it is possible that the changes will not have the desired effect and, although the Exchange believes unlikely in the current proposal, the Exchange could lose market share as a result of the changes to the extent that 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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,⁸ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

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:

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-2014-60 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2014-60. 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-2014-60 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.⁹

Kevin M. O'Neill,
Deputy Secretary.

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⁹ 17 CFR 200.30-3(a)(12).