



SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-74022; File No. SR-Phlx-2015-04)

January 9, 2015

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Extranet Access Fee

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 January 5, 2015, 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 add new Section XIII (Extranet Access Fee) to the NASDAQ OMX PHLX LLC Pricing Schedule (“Pricing Schedule”), which includes description about the applicability of the Extranet Access Fee. This will conform the Exchange’s Pricing Schedule to that of other markets.

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.

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 proposal is to add new Section XIII (Extranet Access Fee) to the Pricing Schedule, which includes description about the applicability of the Extranet Access Fee. This will conform the Exchange's Pricing Schedule to that of other markets.³

Specifically, the Exchange proposes to establish the Extranet Access Fee in proposed new Section XIII of the Pricing Schedule and indicate that certain non-Exchange Customer Premises Equipment ("CPE") Products shall be assessed a monthly access fee of \$1,000 per CPE.⁴ The Exchange also proposes to conform the Extranet Access Fee to that of another market, specifically NASDAQ Rule 7025, by also indicating that if an extranet provider uses

³ The Exchange, NASDAQ OMX BX, Inc. ("BX"), and The NASDAQ Stock Market ("LLC") are self-regulatory organizations ("SROs") that are wholly owned subsidiaries of The NASDAQ OMX Group, Inc. ("NASDAQ OMX"). The Exchange, NOM (a facility of the Exchange [sic]), BX, BX Options (a facility of BX), and PSX (a facility of Phlx) (together with the Exchange known as the "NASDAQ Markets"), are independently filing proposals to conform their respective Extranet Access Fee rules to NASDAQ Rule 7025.

⁴ Proposed Section XIII is listed in the Table of Contents (Preface).

multiple CPE Configurations⁵ to provide market data feeds to any recipient the monthly fee shall apply to each such CPE Configuration; and that no Extranet Access Fee will be charged for connectivity to market data feeds containing only consolidated data. This proposal establishes the Extranet Access Fee in proposed new Section XIII of the Pricing Schedule that is exactly like the equivalent fee in NASDAQ Rule 7025.

The Extranet Access Fee was introduced a decade ago on NASDAQ Rule 7025 as an equity fee.⁶ The Extranet Access Fee was introduced about a year ago on PSX, a facility of the Exchange, in Section VIII of the Pricing Schedule.⁷ By this proposal, the Exchange not only introduces the Extranet Access Fee on Phlx but also normalizes its cost and structure to that of the equivalent decade-old NASDAQ fee.⁸

Proposed Section XIII of the Pricing Schedule indicates the same fee as NASDAQ Rule 7025, namely \$1,000 per CPE Configuration, and adds verbatim language from NASDAQ Rule

⁵ As defined in proposed Section XIII of the Pricing Schedule, a “Customer Premises Equipment Configuration” means any line, circuit, router package, or other technical configuration used by an extranet provider to provide a direct access connection to Phlx market data feeds to a recipient’s site.

⁶ See Securities Exchange Act Release Nos. 50483 (October 1, 2004), 69 FR 60448 (October 8, 2004) (SR-NASD-2004-118) (establishing the Extranet Access Fee on NASDAQ); and 71199 (December 30, 2013), 79 FR 686 (January 6, 2014) (SR-NASD [sic]-2013-159) (notice of filing and immediate effectiveness increasing the Extranet Access Fee to \$1,000).

⁷ See Securities Exchange Act Release No. 71236 (January 6, 2014), 79 FR 1906 (January 10, 2014) (SR-Phlx-2014-01) (notice of filing and immediate effectiveness establishing the Extranet Access Fee on PSX, and describing that no fee is charged at the time of the filing). The Extranet Access Fee was also established on BX. See Securities Exchange Act Release Nos. 59615 (March 20, 2009), 74 FR 14604 (March 31, 2009) (SR-BX-2009-005) (establishing the Extranet Access Fee on BX); and 71841 (April 1, 2014), 79 FR 19129 (April 7, 2014) (SR-BX-2014-015) (notice of filing and immediate effectiveness and describing that the Extranet Access Fee is \$750).

⁸ As noted, Phlx and other NASDAQ Markets are independently filing proposals to conform their respective Extranet Access Fee.

7025 that explains the application of the fee.⁹ As proposed, Section XIII of the Pricing Schedule will read as follows: “Extranet providers that establish a connection with Phlx to offer direct access connectivity to market data feeds shall be assessed a monthly access fee of \$1,000 per recipient Customer Premises Equipment (“CPE”) Configuration. If an extranet provider uses multiple CPE Configurations to provide market data feeds to any recipient, the monthly fee shall apply to each such CPE Configuration. For purposes of this Section XIII, the term “Customer Premises Equipment Configuration” shall mean any line, circuit, router package, or other technical configuration used by an extranet provider to provide a direct access connection to Phlx market data feeds to a recipient’s site. No extranet access fee will be charged for connectivity to market data feeds containing only consolidated data. Extranet providers that establish a connection with Phlx pursuant to this Section XIII of the Pricing Schedule as well as a connection with PSX pursuant to Section VIII of the Pricing Schedule shall be assessed a total monthly access fee of \$1,000 per recipient CPE Configuration.” The proposal conforms Section XIII of the Pricing Schedule to NASDAQ Rule 7025, and makes them substantively identical.¹⁰ The proposal also makes it clear that if an extranet provider establishes an Extranet connection on PSX as well as on Phlx, the extranet provider will not need to pay a double \$1,000 monthly access fee per CPE, but rather only one total monthly access fee of \$1,000 per CPE. In addition, as discussed, there is an equity market and an options market under the Phlx SRO license. This proposal currently applies the Extranet Access Fee located in Section VIII of the Pricing

⁹ However, the proposed Section XIII language does not, because it deals with options, indicate that consolidated data includes data disseminated by the UTP SIP (as noted in NASDAQ Rule 7025).

¹⁰ The Exchange notes that while Section XIII of the Pricing Schedule and NASDAQ Rule 7025 each contain some language particular to the relevant exchange, with this proposal the language of the two rules is substantively identical. The Exchange notes that the statement that Extranet providers shall be assessed a total monthly access fee of \$1,000 per recipient CPE Configuration is not in NASDAQ Rule 7025.

Schedule to members transacting an equity business (PSX) and would also apply to members transacting an options business as proposed in Section XIII of the Pricing Schedule, conforming these rules with NASDAQ Rule 7025.¹¹

The proposed Extranet Access Fee will, as on NASDAQ, be used to help recoup the Exchange's costs associated with maintaining multiple extranet connections with multiple providers. These costs include those associated with overhead and technology infrastructure, administrative, maintenance and operational costs. Since the inception of Extranet Access there have been numerous network infrastructure improvements and administrative controls enacted. Additionally, the Exchange has implemented automated retransmission facilities for most of its data clients that benefit extranet clients by reducing operational costs associated with retransmissions. Also, the Exchange is currently undergoing a technology refresh of the its options trading system, which will deploy state-of-the-art hardware and software architecture to achieve a more efficient and more robust infrastructure in support of the growing needs of our customers.

As the number of extranets has increased, the management of the downstream customers has expanded and the Exchange has had to ensure appropriate reporting and review processes, which has resulted in a greater cost burden on the Exchange over time. The proposed fee will also help to ensure that the Exchange is better able to closely review reports and uncover reporting errors via audits thus minimizing reporting issues.¹² The network infrastructure has increased in order to keep pace with the increased number of products, which, in turn, has caused an increased administrative burden and higher operational costs associated with delivery via

¹¹ The Exchange is filing to assess the \$1,000 Extranet Access Fee on PSX, which is currently free.

¹² The Exchange will inform extranet providers of their reporting responsibilities via its public web site. This will include, as an example, reporting CPE usage.

extranets.

Thus, subsequent to the proposal extranet providers that establish a connection with the Exchange to offer direct access connectivity to market data feeds shall be assessed a monthly access fee of \$1,000 per CPE Configuration. If, as discussed below, an extranet provider uses multiple CPE Configurations to provide market data feeds to any recipient, the monthly fee shall apply to each such CPE Configuration.

The Exchange proposes two new descriptions to conform the language of Section XIII of the Pricing Schedule to that of NASDAQ Rule 7025. Specifically, the Exchange proposes to indicate that if an extranet provider uses multiple CPE Configurations to provide market data feeds to any recipient, the monthly fee shall apply to each such CPE Configuration; and that no extranet access fee will be charged for connectivity to market data feeds containing only consolidated data. These proposed descriptions should serve to reduce any confusion as to the applicability of the Extranet Access Fee. Moreover, the descriptions would make the Exchange's Extranet Access Fee in Section XIII work the same as the equivalent fee in NASDAQ Rule 7025, and complete the effort to conform the two rules.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and with Section 6(b)(4) of the Act,¹⁴ 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 the Exchange operates or controls.

The Exchange believes that its proposal to add the Extranet Access Fee in Section XIII of the Pricing Schedule, and to describe the applicability of the Extranet Access Fee and thereby

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(4).

conform the fee with the equivalent fee on NASDAQ, is consistent with the Act.

All similarly situated extranet providers, including the Exchange operating its own extranet, that establish an extranet connection with the Exchange to access market data feeds from the Exchange are subject to the same fee structure.¹⁵ The fee will help the Exchange to offset some of the rising overhead and technology infrastructure, administrative, maintenance and operational costs it incurs in support of the service.

If such costs are covered, the service may provide the Exchange with a profit. As such, the Exchange believes that the proposed fee is reasonable and notes that this proposal conforms similarly-situated Extranet Access Fee rules on Phlx options, PSX equities, and NASDAQ. The extranet costs are separate and different from the colocation facility that is able to recoup these fees by charging for servers within the associated data centers. Additionally, the Exchange believes that the proposed change is equitable and not unreasonably discriminatory. The monthly fee is assessed uniformly to all extranet providers that establish a connection with the Exchange to offer direct access connectivity to market data feeds, and is the same for all at \$1,000 per recipient CPE Configuration. Thus, any burden arising from the fees is necessary in the interest of promoting the equitable allocation of a reasonable fee. Moreover, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with the Exchange or other markets and, of course, the Extranet Access Fee is but one factor in a total platform analysis.

Additionally, proposed Section XIII of the Pricing Schedule contains description stating that if an extranet provider uses multiple CPE Configurations to provide market data feeds to any recipient, the monthly fee shall apply to each such CPE Configuration; and that no Extranet

¹⁵ For example, NASDAQ Technology Services, a subsidiary of the NASDAQ, pays the applicable fee(s) to the Exchange for services covered under the Extranet Access Fee.

Access Fee will be charged for connectivity to market data feeds containing only consolidated data. This description should serve to reduce any confusion as to the applicability of this fee.

The proposal 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 the Exchange operates or controls, and is consistent with the Act.

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

The Exchange 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.

The proposed fees are applied uniformly among extranet providers, which are not compelled to establish a connection with the Exchange to offer access connectivity to market data feeds. For these reasons, any burden arising from the fees is necessary in the interest of promoting the equitable allocation of a reasonable fee. Additionally, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with the Exchange or other exchanges and, of course, the Extranet Access Fee is but one factor in a total platform analysis.

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,¹⁶ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

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.

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-2015-04 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-2015-04. 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 such filing also will be available for inspection and copying at the principal offices 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-2015-04, and should be submitted on or before [INSERT DATE 21 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Brent J. Fields,
Secretary.

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¹⁷ 17 CFR 200.30-3(a)(12).