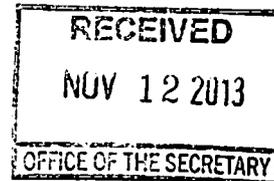




International Securities Exchange



November 11, 2013

Elizabeth Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0609

Re: File No. SR-PHLX-2013-113

Dear Ms. Murphy:

The International Securities Exchange, LLC ("ISE") appreciates the opportunity to comment on the above-referenced fee filing ("Filing") of NASDAQ OMX PHLX LLC ("Phlx"). The Filing increases the rebate Phlx pays for certain customer orders. Phlx filed this rule change on October 31, 2013 as an "effective-on-filing" fee change under Section 19(b)(3)(A) of the Securities Exchange Act of 1934 (the "Act") and the Filing became operative on November 1, 2013.¹

ISE believes that the Filing is not consistent with the requirements of the Act and that ultimately the Commission should disapprove the Filing. We will be submitting a comment letter raising substantive issues with the Filing within the timeframe of the statutory comment period. We submit this preliminary letter solely to urge the Commission to summarily suspend the effectiveness of the Filing pursuant to Section 19(b)(3)(C) of the Act. We believe that the Filing raises issues of such critical importance to the national market system that it is imperative that the fee change not be in effect during the period of public comment and Commission consideration.

The Filing proposes to link the fees for transactions executed on the Phlx to executions on two exchange markets under common ownership with Phlx: NASDAQ Options Market LLC and NASDAQ OMX BX, Inc. This is an unprecedented proposal. Regardless of whether the Commission ultimately determines that such a fee change complies with the requirement of the Act, it raises critical policy issues, including: how, if at all, the Commission can review a proposal for "blended" fees of multiple exchanges

¹ Although Phlx submitted the rule filing on October 31, 2013, Phlx did not post the Filing on its web site until the afternoon of November 6, 2013. Rule 19b-4(l) under the Act requires a self-regulatory organization such as Phlx to post rule filings on its web site within two business days of filing the rule change with the Commission. Thus, Phlx was two days late in complying with this regulatory obligation. This is troubling in any circumstances, but it is inexcusable with respect to a fee that raises significant public policy issues and that took effect three business days prior to the posting of the rule change on the Phlx web site.

for compliance with the requirements of the Act; whether, and if so, under what circumstances, competitive exchanges can cooperate to charge jointly-applicable fees; potential public confusion regarding an exchange's fee schedule that does not even reference the full implications of that exchange's fees; and the implication of such fees on broker-dealers' best execution obligations. Phlx's arguments in the Filing that there are analogies to these types of fees on other exchanges rings hollow since Phlx does not identify any other exchange transaction fee intended to attract order flow to the exchange that is dependent on exchange members transacting business on a competing exchange. Indeed, the fact that Phlx spent 76 pages to justify an "effective on filing" fee change, complete with numerous references to past Commission policies that the Filing contravenes, demonstrates the sensitivity and complexity of this proposal.

We fully recognize that Phlx has the legal right to file any and all of its fee filings to be immediately effective under Section 19(b)(3)(A) of the Act. Indeed, ISE strongly believes that in our highly competitive markets, it is imperative that, as a general matter, exchanges be able to amend their fee schedule on an immediate basis. However, the Act recognizes that it is not appropriate to permit exchanges to exercise this legal right in all circumstances. Specifically, Section 19(b)(3)(C) of the Act provides that "the Commission summarily may temporarily suspend the [immediately-effective 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 of the purposes of [the Act]." It is critical to note that the authority to suspend a rule change does not require the Commission to make even a preliminary decision that the proposal is inconsistent with the requirements of the Act. Rather, all it requires is that the Commission determine that public comment and greater scrutiny is necessary before the rule change can take effect.

For the reasons noted above, we believe that this is exactly the type of fee change that is deserving of public comment and greater scrutiny before taking effect. It is clear that any non-fee filing that raises such fundamental investor protection and market structure issues would be subject to careful review before the Commission would permit such a filing to be operative. The Act provides the Commission with a tool to achieve the same result with a narrow class of fee filings. The Commission should use that tool in this case and should temporarily suspend the effectiveness of the Filing.

If you have any questions on our comments, please do not hesitate to contact us.

Sincerely,



Michael J. Simon
Secretary

cc: John Ramsay, Acting Director, Division of Trading and Markets
James Burns, Deputy Director, Division of Trading and Markets
Heather Seidel, Associate Director, Division of Trading and Markets ✓