

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63411; File No. SR-Phlx-2010-169)

December 2, 2010

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC to Modify Fees for 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 November 23, 2010, NASDAQ OMX PHLX LLC (“Phlx” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 modify the fees applicable to trading on the NASDAQ OMX PSX system (“PSX”). The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, 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 self-regulatory organization 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 those 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 parts of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to modify order execution fees applicable to use of PSX. Specifically, the Exchange is modifying the credit provided to PSX Participants that provide liquidity to support executions on the platform. In keeping with the goal of PSX to provide an electronic exchange environment that encourages display of larger order sizes through its unique price-size order execution algorithm, the Exchange proposes to offer a larger liquidity provider credit to Participants when Displayed Orders with an original order size of 2,000 or more shares are executed. Specifically, the credit will be \$0.0024 per share executed for Displayed Orders with an original order size of 2,000 or more shares, but will only be \$0.0018 per share executed for Non-Displayed Orders or for Displayed Orders with an original order size of less than 2,000. Through the change, the Exchange hopes to further promote PSX as a venue that enhances price discovery and efficiency by encouraging transparent trading of larger orders.

The higher credit would apply to an order as it is decremented by partial executions, but would not apply in circumstances where an order for 2,000 or more shares is entered and then reduced in size by the entering Participant, such that the order is subsequently in the System for less than 2,000 shares. Moreover, changes to orders that result from system operations other than execution and decrementation will also be deemed to result in new orders. For example, a Pegged Order will be considered a new order each time its price changes.

Thus, if a Participant entered a 2,400 share order that posted to the PSX book, the order was executed for 1,000 shares, and the remainder of the order was then executed for 1,400, both of the executions would receive the \$0.0024 credit. However, if a PSX Participant entered a 2,400 share order and subsequently modified the order down to 1,500 shares, the \$0.0018 credit

would apply. Finally, if a Participant entered a 2,400 share buy order pegged to the national best bid, the order executed for 1,000 shares, and the order then repriced due to a change in the national best bid, the 1,000 share execution would receive the \$0.0024 credit but a subsequent execution of the repriced order would receive the \$0.0018 credit because it would be treated as a new order with a size below 2,000 shares.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,³ in general, and with Section 6(b)(4) of the Act,⁴ 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 impact of the price changes upon the net fees paid by a particular market participant will depend upon a number of variables, including the prices of the market participant's quotes and orders relative to the national best bid and offer (i.e., its propensity to add or remove liquidity), its usage of Non-Displayed orders, and the size of the orders that it enters.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The change will result in a fee reduction to PSX Participants that provide liquidity through PSX using relatively large orders, and a fee increase to Participants using small orders or Non-Displayed Orders. If particular market participants object to the proposed fee changes because they prefer the use of smaller or Non-Displayed Orders, they may readily direct order flow to other venues. The Exchange believes that its fees continue to be

³ 15 U.S.C. 78f.

⁴ 15 U.S.C. 78f(b)(4).

reasonable and equitably allocated to members on the basis of whether they opt to direct orders to the Exchange and thereby make use of its order execution 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 that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution and routing is extremely competitive, members may readily direct orders to the Exchange's competitors. Indeed, as a relatively new market entrant, the Exchange believes that its pricing will promote further competition by enhancing the ability of PSX to compete with alternative trading systems that seek to attract larger order sizes through pricing or by operating as "dark pools."

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)(ii) of the Act.⁵ 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.

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2010-169 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-2010-169. 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,⁶ 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

⁶ The text of the proposed rule change is available on the Commission's website at <http://www.sec.gov/rules/sro.shtml>.

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-2010-169 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.⁷

Florence E. Harmon
Deputy Secretary

⁷ 17 CFR 200.30–3(a)(12).