

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63838; File No. SR-Phlx-2011-11)

February 3, 2011

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 January 26, 2011, 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 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 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Exchange is proposing to modify order execution fees applicable to use of PSX for trading stocks priced at \$1 or more. Since its launch in October 2010, PSX has employed a promotional, “inverted” pricing structure under which the rebate paid to members that provide liquidity exceeds the fee charged for accessing liquidity. Specifically, PSX currently charges \$0.0013 per share executed for orders that access liquidity, while paying a higher rebate for orders that provide liquidity. Consistent with PSX’s goal of encouraging display of larger order sizes, the Exchange currently offers a rebate of \$0.0024 per share executed for Displayed Orders with an original order size of 2,000 or more shares, but only \$0.0018 per share executed for Non-Displayed Orders or for Displayed Orders with an original order size of less than 2,000.³

³ The higher credit applies to an order as it is decremented by partial executions, but does not apply in circumstances where an order for more than 2,000 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 are deemed to result in new orders. For example, a Pegged Order is 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 higher credit. However, if a PSX Participant entered a 2,400 share order and subsequently modified the order down to 1,500 shares, the lower 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 higher 0.0024 credit but a subsequent execution of the repriced order would receive the lower credit because it would be treated as a new order with a size below 2,000 shares.

Effective February 1, 2011, the fee for accessing liquidity will increase to \$0.0025 per share executed, while the rebate for providing displayed liquidity with an original order size of 2,000 or more shares will remain \$0.0024 per share executed. The rebate for Displayed Orders with an original order size of less than 2,000 will increase to \$0.0022 per share executed. However, consistent with PSX's goal of encouraging greater display of liquidity, the rebate for Non-Displayed Orders that provide liquidity will be decreased to \$0.0010 per share executed.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁴ in general, and with Section 6(b)(4) of the Act,⁵ 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 believes that the proposal reflects an equitable allocation of fees, as all similarly situated member organizations will be subject to the same fee structure, and access to the Exchange's market is offered on fair and non-discriminatory terms.

Although the change will result in an increase of the fee charged to access liquidity on PSX, the fee structure adopted by PSX at its inception, in which liquidity provider rebates paid per share exceeded access fees charged, reflected a promotional pricing structure for a new

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(4).

market entrant under which costs exceed revenues on every share executed. Accordingly, the change is a reflection of PSX's more established status and the desirability of adopting a price model that results in net execution revenues to the Exchange. Similarly, although the proposed decrease in the rebate paid with respect to Non-Displayed Orders effectively constitutes a price increase, the Exchange believes that it may help to advance its market structure goals of encouraging the use of the venue as a means to display liquidity. The Exchange further notes that these price increases will be partially offset by the increase in the rebate paid with respect to orders with a size below 2,000 shares.

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. The Exchange believes that its fees continue to be 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. In particular, the Exchange notes that the proposed fees are consistent with Rule 610(c) under Regulation NMS,⁶ which found that fees not in excess of \$0.0030 per share executed would promote the objective of equal regulation and preventing excessive fees. As the Commission determined in that matter, competition is best able to determine whether a strategy of charging fees set at lower levels, or of charging a higher fee and paying a higher rebate, will be successful.⁷

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

⁶ 17 CFR 242.610(c).

⁷ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37596 (June 29, 2005).

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. Because the market for order execution and routing is extremely competitive, members may readily favor the Exchange's competitors in making order routing decisions to the extent that they deem PSX's fees to be excessive.

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.⁸ 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:

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2011-11 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-2011-11. 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 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-2011-11, 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

Cathy H. Ahn
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).