

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66593; File No. SR-Phlx-2012-30)

March 14, 2012

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Eliminate the 100MB Connectivity Option and 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 March 6, 2012, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 eliminate 100MB connectivity between the Exchange and co-located servers, as well as associated fees, as set forth in the Phlx Fee Schedule, Section X(b). The Exchange will implement the proposed change on April 1, 2012. The text of the proposed rule change is available at <http://nasdaqtrader.com/micro.aspx?id=PHLXRulefilings> at the Exchange’s principal office, 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 proposes to modify the Phlx Fee Schedule, Section X(b) to eliminate 100MB connectivity between the Exchange and co-located servers, as well as associated fees.³ The Exchange currently offers each co-located customer one 100MB connection to the Exchange at no charge; additional connections are available for a \$50 one-time installation fee and a monthly fee of \$100.⁴ Due to the continuous growth of the size of consolidated and proprietary market data feeds, use of 100MB connectivity to the Exchange may result in high data transmission latencies, a loss of data packets, and a reduction in client service satisfaction. As a result, the Exchange proposes to eliminate the 100MB connection option to the Exchange. The proposal to eliminate the 100MB connection option will eliminate potential latencies and loss of data that could occur with lower bandwidths, issues that are potentially damaging to investors.⁵

Currently, there are four co-located customers that utilize 100MB connectivity to the Exchange. All four customers also have larger bandwidth connections to the Exchange. While

³ All co-location services are provided by NASDAQ Technology Services LLC and pursuant to agreements with the owner/operator of its data center.

⁴ See Exchange Fee Schedule, Section X(b), Connectivity to Nasdaq.

⁵ The 100MB option that is being eliminated – which is used to connect co-located servers to the Exchange – should be contrasted with a recently introduced option for customers to establish 100MB connections between their co-located servers and select external locations. These external connections are generally combined with other bandwidth options and are not utilized to transmit the same volume of data as the 100MB connection between co-located services and the Exchange. For this reason, the Exchange believes that the same latency and data loss considerations that are prompting it to eliminate the 100MB connection to the Exchange do not apply to the 100MB connection to external locations.

these customers will need to assess the adequacy of their bandwidth and may need to make adjustments, the Exchange strongly believes that these changes will be beneficial to these customers because they will decrease the risk of latency and data loss. In addition, as the number of customers making use of 100MB connectivity to the Exchange dwindles, maintaining the option would require the Exchange to impose associated fixed costs on a smaller customer base, or upon customers that are not themselves using this legacy connectivity option. The Exchange believes that it is reasonable and equitable to avoid this result by eliminating the option and helping customers migrate to more suitable connections.

To provide all affected customers sufficient time to migrate from their 100MB connections to larger bandwidths, the Exchange has proposed (in a separate filing) to waive installation fees for 10Gb and 40Gb connectivity until May 31, 2012.⁶

The Exchange also proposes to eliminate the word “additional” from the Fee Schedule in several instances to reflect the elimination of the 100MB connection that was previously offered at no charge.

2. Statutory Basis

The Exchange believes the proposal is consistent with the provisions of Section 6 of the Act⁷ in general, and with the objectives of Section 6(b)(5) of the Act⁸ in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a

⁶ See Securities Exchange Act Release No. 66429 (February 21, 2012)(SR-Phlx-2012-20). The Exchange is not proposing to waive fees for migrating to 1GB connectivity, since the Exchange is concerned that this bandwidth level will prove inadequate for most members in the near future. Accordingly, rather than creating a scenario in which customers face repeated concerns about the adequacy of their bandwidth, the Exchange believes that it is reasonable to use the fee waiver to encourage customers to move to connectivity options that are likely to be adequate for a more extended period.

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(5).

national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

Removes Impediments and Perfects Mechanism of a Free and Open Market

The Exchange's proposal is designed to eliminate data transmission latencies and loss of data risks that are associated with 100MB connectivity, and thereby provide a more efficient mechanism for trading. Since the migration to a higher bandwidth option will reduce the potential disruption and consequently provide greater efficiency of trading in the marketplace, the effects of this proposal will remove impediments to and perfect the mechanism of a free and open market and a national market system, which in turn will protect investors and the public interest.

Not Unfairly Discriminatory

The proposal to eliminate the 100MB connectivity [sic] option applies to all Exchange members that have voluntarily elected this service option. Currently, there are four co-located customers that utilize 100MB connectivity to the Exchange. All four clients also have larger bandwidth connections to the Exchange. While these customers will need to assess the adequacy of their bandwidth and may need to make adjustments, the Exchange strongly believes that these changes will be beneficial to these customers because they will decrease the risk of latency and data loss. In addition, as the number of customers making use of 100MB connectivity to the Exchange dwindles, maintaining the option would require the Exchange to impose associated fixed costs on a smaller customer base, or upon customers that are not themselves using this legacy connectivity option.

To assist co-located customers with migration to larger bandwidths, the Exchange has proposed (in a separate filing) to waive installation fees for 10Gb and 40Gb connectivity until

May 31, 2012.⁹ Given the ever-increasing size of market data, the Exchange decided to apply the waiver of installation fees only to the 10Gb and 40Gb connection instead of offering the waiver for the next available bandwidth, the 1Gb connection. This will provide the clients the opportunity to migrate to a bandwidth that will more efficiently sustain the client's business needs over a longer period of time. The four co-located customers that currently have the 100MB connectivity to the Exchange have until March 31, 2012 to migrate from the 100MB connection to a larger bandwidth. Furthermore, eliminating the 100MB connectivity to the Exchange is consistent with the connections offered by other exchanges,¹⁰ and the Exchange does not believe that it would be unfairly discriminatory to eliminate a connectivity option that is not routinely offered by other exchanges.

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. Specifically, the Exchange believes that eliminating the 100MB connectivity service option will not burden competition since the 100MB connectivity option is not routinely offered by other exchanges. In fact, requiring the Exchange to continue to offer this option would unfairly burden competition by requiring it to incur costs that are not typically incurred by any of its competitors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

⁹ See, *supra* note 6.

¹⁰ See http://www.nyse.com/pdfs/NYSEArca_Equities_Fees.pdf, page 13, for NYSE Equities, Inc. Fee Schedule where the bandwidth starts at 1Gb. See also http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee_schedule.pdf, page 9, for the International Securities Exchange Fee Schedule where the bandwidth also starts at 1Gb.

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6)¹² thereunder.

The Exchange has asked that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii).¹³ The Exchange represents that investors and the public interest are best served by waiving the pre-operative delay to minimize potential risks of market disruption associated with the use of lower bandwidth at a time of increasing data traffic. For these reasons, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay, and hereby grants such waiver.¹⁴

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

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-2012-30 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-2012-30. 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-2012-30 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.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).