

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67387; File No. SR-Phlx-2012-87)

July 10, 2012

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Phlx's Fee Schedule Governing Order Execution on its NASDAQ OMX PSX facility

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 June 27, 2012, NASDAQ OMX PHLX LLC ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a 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

Phlx proposes to a modify Phlx's fee schedule governing order execution on its NASDAQ OMX PSX ("PSX") facility. Phlx will implement the proposed change on July 2, 2012. The text of the proposed rule change is available at <http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/phlx/>, at Phlx's principal office, at <http://www.sec.gov>, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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.

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

1. Purpose

Phlx is proposing to modify its fee schedule governing order execution on PSX. Currently, PSX has a fee schedule under which members are charged a relatively high fee of \$0.0027 per share executed to access liquidity and receive a relatively high rebate when providing liquidity, with the level of the rebate varying based on whether the order providing the liquidity is displayed or non-displayed, whether liquidity is provided through a minimum life order, and the original size of the order providing the liquidity. In addition, the current fee schedule has special pricing with regard to securities listed on the New York Stock Exchange ("NYSE").

Phlx is proposing to replace much of the current fee schedule with a new schedule under which market participants providing liquidity will be charged a low fee, and members accessing liquidity will either be charged a low fee or not incur a fee, depending on their volume levels. Phlx believes that the change may encourage greater use of PSX.

For securities priced at \$1 or more per share, an order that accesses liquidity through a market participant identifier ("MPID") through which a market participant provides an average daily volume of 25,000 or more shares of liquidity or accesses an average daily volume of 3.5 million or more shares of liquidity during the month will pay no fee when accessing liquidity. Other orders that access liquidity will pay \$0.0005 per share executed. By contrast, members now pay \$0.0019 per share for accessing liquidity in securities listed on NYSE, and \$0.0027 per

share executed for other securities. For securities priced at less than \$1, Phlx is lowering the fee from 0.20% of the total transaction cost to \$0.10% of the total transaction cost.

For securities priced at \$1 or more per share, Phlx will charge \$0.0002 per share executed for an order that provides liquidity through an MPID through which a market participant provides an average daily volume of 10 million or more shares of liquidity during the month, and will charge \$0.0005 per share executed for other orders that provide liquidity. By contrast, members now receive a rebate ranging from \$0.0005 to \$0.0026 per share executed when providing liquidity. For securities priced below \$1, Phlx will continue neither to charge a fee nor to pay a rebate with respect to orders that provide liquidity.

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,³ in general, and with Sections 6(b)(4) and (5) 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 Phlx operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. All similarly situated members are subject to the same fee structure, and access to Phlx is offered on fair and non-discriminatory terms. Phlx believes that the change to the fees for orders that access liquidity is reasonable, because it will result in a substantial reduction in the cost of accessing liquidity on PSX. Similarly, Phlx believes that although the proposal will replace rebates for providing liquidity on PSX with fees, the change is reasonable because the level of the fees is very low compared with fees charged by other trading venues that charge liquidity providers. For example, NASDAQ OMX BX charges liquidity providers fees that range from \$0.0015 to

³ 15 U.S.C. 78f.

⁴ 15 U.S.C. 78f(b)(4) and (5).

\$0.0018 per share executed, while PSX proposes to charge fees ranging from \$0.0002 to \$0.0005 per share executed. Phlx further believes that the proposed changes are consistent with an equitable allocation of fees. The changes will result in a move away from a maker-taker pricing model, in which one side of a trade pays a fee and the other receives a credit, to a model in which both sides are charged very low rates, or one side is charged a low rate and the other is not charged. While Phlx believes that for many exchanges, the emphasis of the maker-taker pricing model on encouraging deep and liquid markets provides market structure benefits, it also believes that market participants may benefit from an alternative pricing model that offers consistently low cost on all trades. Phlx also believes that the proposal is not unfairly discriminatory, in that the basic rate of \$0.0005 per share executed is the same for both accessing and providing liquidity, while more favorable pricing tiers are offered to market participants that contribute to the success and market quality of PSX through active use of its trading services.

Finally, Phlx 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. In such an environment, Phlx must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Phlx believes that the proposed rule change reflects this competitive environment because it is designed to create pricing incentives for greater use of PSX's trading services.

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

Phlx 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 is extremely competitive, members may

readily opt to disfavor Phlx's execution services if they believe that alternatives offer them better value. The proposed change is designed to enhance competition by using pricing incentives to encourage greater use of PSX's trading services.

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

Written comments were neither solicited nor 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.

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-2012-87 on the subject line.

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2012-87. 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-2012-87 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.⁶

Kevin M. O'Neill
Deputy Secretary

⁶ 17 CFR 200.30-3(a)(12).