

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-71520; File No. SR-Phlx-2014-09)

February 11, 2014

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Pricing Schedule under Section VIII with Respect to Execution and Routing of Orders in Securities Priced at \$1 or More Per Share

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 31, 2014, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule under Section VIII, entitled "NASDAQ OMX PSX FEES," with respect to execution and routing of orders in securities priced at \$1 or more per share.

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on February 3, 2014.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqomxphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 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 purpose of the proposed rule change is to amend the [sic] certain fees and credits for order execution and routing applicable to the use of the order execution and routing services of the NASDAQ OMX PSX System by member organizations for all securities traded at \$1 or more per share. Specifically, the Exchange is proposing to amend fees and credits provided for the routing of orders in all securities.

Currently, for PSTG, PSCN, PTFY, PCRT or XCST orders that execute at NASDAQ OMX BX ("BX") the Exchange provides a credit of \$0.0011 per share to the member organization. The Exchange proposes to no longer offer this credit.

Additionally, the Exchange currently charges a member organization entering a PMOP order that executes at the New York Stock Exchange ("NYSE") \$0.0030 per share. The Exchange is proposing to increase the charge assessed for such orders executed at NYSE to \$0.0035 per share.

The Exchange also currently charges a member organization \$0.0005 per share for entering a PTFY order that executes in a venue other than the NASDAQ OMX PSX (“PSX”), NYSE, The Nasdaq Stock Market LLC (“Nasdaq”) or BX. The Exchange is proposing to increase the charge assessed for such orders to \$0.0007 per share.

Finally, the Exchange will institute a \$0.0007 per share charge for XCST and XDRK orders for shares executed at a venue other than BX. Currently, there is no charge for either XCST or XDRK.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>3</sup> in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act<sup>4</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using its facilities, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed changes are reasonable because they reflect a modest decrease in the credits provided in the execution of certain orders and a modest increase in the fees assessed for others, which will allow the Exchange to reduce costs and increase revenue.

The Exchange is proposing modest increase of only \$0.0002 per share, from \$0.000t [sic] to \$0.0007 per share, for a member organization entering a PTFY order that executes in a venue other than the PSX, NYSE, NASDAQ or BX. The Exchange proposes the same \$0.0007 per share charge for a member organization entering a XCST or XDRK order that executes in a venue other than the PSX, NYSE, NASDAQ or BX. Currently, there is no charge for such

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<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(4), (5).

XCST and XDRK orders. These changes are consistent with an equitable allocation of fees and not unfairly discriminatory because it [sic] will eliminate an existing disparity between the fees charged for a PTFY, XCST and XDRK orders that execute in a venue other than the PSX, NYSE, NASDAQ or BX, thereby making the applicable fees consistent. In addition, the change is equitable and not unfairly discriminatory because it affects these similarly situated member organizations in the same way.

The Exchange is proposing a similarly modest increase of only \$0.0005 per share, from \$0.0030 to \$0.0035 per share, for a member organization entering a PMOP order that executes in [sic] the NYSE. This change is consistent with an equitable allocation of fees and not unfairly discriminatory because it will eliminate an existing disparity between the fees charged for a PTFY order executed at NYSE with PMOP orders executed at venues other than NYSE, thereby making the applicable fees consistent. In addition, the change is equitable and not unfairly discriminatory because it affects all similarly situated member organizations in the same way.

The Exchange is also proposing to no longer provide a credit of \$0.0011 per share executed at BX to a member organization entering PSTG, PSCN, PTFY, PCRT or XCST orders that execute at BX. These changes are reasonable because the Exchange believes it is no longer necessary to further incentivizes [sic] member organizations to provide displayed quotes and orders on PSX. Additionally, the changes are equitable and not unfairly discriminatory because they affect all similarly situated member organizations in the same way.

The changes with respect to the charges assessed and credits provided for routing of orders in all securities are reasonable because they represent a modest increases [sic] in charges assessed a member organization for PTFY, XCST and XDRK orders that execute at a venue other than BX and for PMOP orders that execute at NYSE, and a modest decreases [sic] in the

credits provided to member organizations for PSTG, PSCN, PTFY, PCRT and XCST orders that execute at BX. The Exchange notes that the increase in fees and decrease in credits are designed to incentivize member organizations to provide orders and quotes that execute on PSX. In addition, the change is equitable and not unfairly discriminatory because it affects only those members that opt to use the Exchange's optional routing 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 not necessary or appropriate in furtherance of the purposes of the Act, as amended.<sup>5</sup> 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, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange 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. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, the decreased credits and increased fees are intended to reduce the Exchange's costs, while still continuing to provide an incentive for members to execute shares on PSX and make use of its optional routing functionality. Because there are numerous competitive alternatives to PSX, it is likely the Exchange will lose market share as a result of the changes if they are unattractive to market participants. Accordingly, the Exchange does not believe the proposed changes will impair the ability of members or

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<sup>5</sup> 15 U.S.C. 78f(b)(8).

competing order execution venues to maintain their competitive standing in the financial markets.

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.<sup>6</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2014-09 on the subject line.

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<sup>6</sup> 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-2014-09. 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 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-2014-09, 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.<sup>7</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).