

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-74292; File No. SR-Phlx-2015-14)

February 18, 2015

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 February 3, 2015, 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 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.

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.

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

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

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

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 certain fees for order execution and routing applicable to the use of the order execution and routing services of the NASDAQ OMX PSX System ("PSX") by member organizations for all securities traded at \$1 or more per share, as well as clarify that consolidated volume does not include the date of the annual reconstitution of the Russell Investments Indexes.

Specifically, the charge to a member organization entering an order that executes in PSX will increase from: (i) \$0.0024 to \$0.0026 per share executed for shares executed in The NASDAQ Stock Market LLC ("Nasdaq")-listed securities; (ii) \$0.0024 to \$0.0025 per share executed for shares executed in New York Stock Exchange ("NYSE")-listed securities; and (iii) \$0.0024 to \$0.0026 per share executed for shares in securities listed on exchanges other than Nasdaq or NYSE. The Exchange believes that these increases better reflect the costs in providing rebates to members.

Additionally, the Exchange proposes to clarify that for purposes of calculating consolidated volume and the extent of a member's trading activity, expressed as a percentage of, or ratio to, consolidated volume, the date of the annual reconstitution of the Russell Investments Indexes ("Russell Reconstitution") will be excluded from both total consolidated volume and the member's trading activity. This change is consistent with the practices of both Nasdaq and the NASDAQ OMX BX, Inc. ("BX") exchanges.

Also, the Exchange proposes to make a few clarifications in the Exchange's Pricing Schedule. Specifically, in section (a)(2) of "Order Execution and Routing in All Securities" under "VIII. NASDAQ OMX PSX FEES", the Exchange proposes to replace the word "None" with "\$0.0000 per share executed at NASDAQ OMX BX". The Exchange believes this proposed change will serve to enhance market participant's understanding that there is no charge for shares executed at BX and reduce any possible confusion in these instances. Additionally, in this same section for both XDRK and XCST orders, the first column will clarify that the amounts in the accompanying column are charges for executions on a venue other than the NASDAQ OMX PSX System, rather than the current practice of simply indicating that they are a "charge or credit" to a member organization entering such orders. Finally, the description of the charge to members entering an XDRK order is changed to "\$0.0007 per share executed"; and the reference to "shares executed at a venue other than NASDAQ OMX BX" is deleted since an XDRK order cannot execute at BX. These clarifications are all intended to reduce confusion and make the fee schedule easier to understand.

## 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 Sections 6(b)(4) and (b)(5) of the Act<sup>4</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities, and it does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange is proposing modest increases to the charges that a member organization entering an order that executes in PSX from: (i) \$0.0024 to \$0.0026 per share executed for

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

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

shares executed in Nasdaq-listed securities; (ii) \$0.0024 to \$0.0025 per share executed for shares executed in NYSE-listed securities; and (iii) \$0.0024 to \$0.0026 per share executed for shares in securities listed on exchanges other than Nasdaq or NYSE. The Exchange believes that these modest increases are reasonable because they reflect the Exchange's need to adjust its credits and fees in response to the costs and benefits provided by the Exchange. Additionally, these modest increases are reasonable since by staggering increases, the Exchange is able to offer reduced rates in some tapes while balancing the need to fund rebates and operational costs.

The Exchange believes that the proposed changes are consistent with an equitable allocation of fees and are not unfairly discriminatory because they apply to all member organizations that enter orders that execute in PSX. The Exchange also believes that they are consistent with equitable allocation of fees and are not unfairly discriminatory because they apply to all member organizations that enter orders that execute in PSX.

The Exchange is also proposing to clarify that for purposes of calculating consolidated volume and the extent of a member's trading activity, expressed as a percentage of, or ratio to, consolidated volume, the date of the Russell Reconstitution will be excluded from both total consolidated volume and the member's trading activity. The Exchange believes that this clarification is reasonable because it is consistent with the practices at both Nasdaq and the BX exchanges and will reduce confusion concerning the Russell Reconstitution.

The Exchange believes that the proposed changes are consistent with an equitable allocation of fees and are not unfairly discriminatory because trading volumes on the date of the Russell Reconstitution are generally far in excess of volumes on other days during the month. As a result, the trading activity of members that are regular daily participants in PSX, expressed as a percentage of consolidated volume, is likely to be lower than their percentage of

consolidated volume on other days during the month. Therefore, including the date of the Russell Reconstitution in calculations of consolidated volume would likely make it more difficult for members to achieve particular volume levels during the month. Accordingly, excluding the date of the Russell Reconstitution from these calculations will diminish the likelihood of a de facto price increase from occurring because a member is not able to reach a volume percentage on that date that it typically reaches on other trading days during the month. Moreover, excluding the date is very unlikely to result in a price increase for any members, since a member that was not, on other days during the month, trading in PSX at volume levels that would allow it to qualify for rebate tiers, would be unlikely to achieve percentage volume levels on the date of the Russell Reconstitution that would increase its overall monthly percentage to the required levels, even if it was very active on that date.

Finally, the Exchange believes that the remaining changes to the Pricing Schedule are reasonable because they are intended to clarify and reduce confusion through the clarification as to what is a charge or credit, the clarification that there is no charge for certain orders executed at BX, as well as to clarify through the removal of unnecessary language that may add confusion to the Pricing Schedule. The Exchange also believes that these changes are consistent with an equitable allocation of fees and are not unfairly discriminatory because they do not impact fees and serve only to clarify and reduce possible confusion.

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

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

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 modest increases to the charges assessed are intended to allow the Exchange to help offset its costs in providing rebates to members. Because there are numerous competitive alternatives to PSX, it is likely the Exchange would lose market share and money as a result of changes if they do not reflect costs.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>6</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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-2015-14 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2015-14. 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-2015-14, 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>

Brent J. Fields  
Secretary

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