

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81860; File No. SR-Phlx-2017-78)

October 12, 2017

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Decrease the Qualification Criteria of a Credit Tier and Make Related Changes

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 October 2, 2017, NASDAQ 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 decrease the level of Consolidated Volume required to qualify for a \$0.0031 per share executed credit and make related changes.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqphlx.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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's transaction fees at Section VIII (NASDAQ PSX Fees) of the NASDAQ PHLX LLC Pricing Schedule to decrease the level of Consolidated Volume required to qualify for a \$0.0031 per share executed credit and make related changes. Currently, the Exchange provides credits ranging from \$0.0023 to \$0.0031 per share executed to member organizations for displayed quotes and orders that provide liquidity through the PSX System. The top two credit tiers are the following: (1) a credit of \$0.0031 per share executed for Quotes/Orders entered by a member organization that provides and accesses 0.3% or more of Consolidated Volume during the month; and (2) a credit of \$0.0029 per share executed for Quotes/Orders entered by a member organization that provides and accesses 0.25% or more of Consolidated Volume during the month. The Exchange is proposing to decrease the level of monthly Consolidated Volume required of a member organization to qualify for the \$0.0031 per share executed credit from 0.3% to 0.25%, which is the level required to currently qualify for the \$0.0029 per share executed credit tier. As a consequence, the Exchange is also proposing to eliminate the \$0.0029 per share executed credit tier.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the \$0.0031 per share executed credit provided to a member organization for displayed quotes and orders is reasonable because it will remain unchanged, and it is competitive with the fees of other exchanges. For example, The Nasdaq Stock Market provides its members with credits up to \$0.00305 per share executed for displayed quotes and orders.⁵ Elimination of the \$0.0029 per share executed credit provided to a member organization for displayed quotes and orders is reasonable because the criteria currently required to receive the \$0.0029 per share executed credit will be the same as the criteria required to receive the \$0.0031 per share executed credit. Thus, member organizations that currently qualify for \$0.0029 per share executed credit will qualify for the higher credit under the proposed change.

The Exchange believes that decreasing the level of Consolidated Volume during the month required to qualify for the \$0.0031 per share executed credit is an equitable allocation and is not unfairly discriminatory because the Exchange is using the reduced Consolidated Volume requirement to provide incentive to member organizations to participate on the Exchange. The Exchange has observed that the current qualification criteria for the \$0.0031 per share executed credit and the qualification requirement of the \$0.0029 per share executed credit have not

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(4) and (5).

⁵ See Nasdaq Rule 7018(a).

provided adequate incentive. The Exchange believes that creating a single credit tier that combines the higher credit with the lower Consolidated Volume requirement will be more effective at increasing participation on the Exchange. The proposed change will apply to all member organizations, any of which may provide the level of Consolidated Volume required to qualify for the credit.

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. In terms of inter-market competition, 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 proposed changes to the credits available to member organizations for displayed quotes and orders do not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. The Exchange has determined that the two credit tiers have not been as successful at attracting participation on the Exchange. Consequently, the Exchange is decreasing the qualification criteria required to receive the \$0.0031 per share

executed credit to the level of the \$0.0029 per share executed credit. This will effectively increase the credit provided to member organizations that currently qualify for the \$0.0029 per share executed credit, while possibly providing additional incentive to member organizations that do not provide and access 0.25% or more of Consolidated Volume during the month to do so. In sum, the Exchange is making it easier for member organizations to receive a credit in an effort to increase participation on the Exchange. If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. The Exchange notes that competing order execution venues are free to increase their credits, or decrease qualification criteria required to receive credits, in reaction to the proposed changes. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or 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.⁶

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action,

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2017-78 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-Phlx-2017-78. 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-2017-78, 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.⁷

Eduardo A. Aleman
Assistant Secretary

⁷ 17 CFR 200.30-3(a)(12).