

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84967; File No. SR-Phlx-2018-83)

December 26, 2018

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Equity 7, Section 3

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 December 20, 2018, 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 amend the Exchange’s port fee schedule at Equity 7, Section 3, as described further below.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule, at Equity 7, Section 3, to clarify its existing practice for assessing port fees.

Presently, the Exchange assigns ports to customers that request them using the customers’ Market Participant Identifiers or “MPIDs.” The Exchange assesses ports fees in two ways.

First, for certain port types – i.e., Multicast TotalView-ITCH, TCP ITCH data feed, DROP, and their corresponding disaster recovery ports– the Exchange assigns a port only to the MPID of the customer that requested it. Even if, as a practical matter, others also utilize the port, the Exchange will only bill the MPID of the customer that requested the port. The requesting customer may then, at its discretion, subsequently bill any other users for their shared usage of the port.

Second, for other port types – i.e., OUCH, FIX Trading Ports (FIX and FIX Lite), RASH, and their corresponding disaster recovery ports – the Exchange assigns the port to the MPID of the customer that requested it as well as to any other MPIDs that the requester had specified. In these instances, the Exchange does not only bill the port-requesting MPID. Instead, the Exchange assesses a separate monthly fee to each of the MPIDs it assigned to the port.

The existing port fee schedule, at Section 3, does not explain these nuances of Exchange’s port billing practices. Instead, Section 3 states simply, for all port types, that the Exchange will assess fees of certain stated amounts on a per port, per month basis. Although this

existing language is accurate, the Exchange believes that it should be more descriptive so as to avoid confusion as to the circumstances in which a customer will incur port fees. The Exchange now proposes to amend Section 3 to provide a more fulsome explanation of its billing practices.

To accomplish this, the Exchange proposes to reorganize its chart of ports and associated fees in the second paragraph of Section 3. Specifically, the Exchange proposes to split this chart into two parts.

The first part of the proposed amended chart will comprise port types for which the Exchange will charge a separate monthly fee to each MPID that it has assigned to a port, i.e., OUCH, FIX Trading Port (FIX and FIX Lite (FLITE)), RASH, and disaster recovery ports for OUCH, FIX Trading Port, and RASH. The first part of the chart will include the following preface to explain the Exchange's pertinent billing practice:

For the port types listed immediately below, where a customer has requested that the Exchange assign more than one MPID to a particular port, then the Exchange will assess a separate monthly fee to each MPID assigned to the port.

The Exchange also proposes to revise its description of the price formula for each port type therein from "\$X/port/month" to "\$X/each MPID assigned to port/month."

The second part of the proposed amended chart will comprise port types for which the Exchange will charge a monthly fee only to the MPID that requested the port, i.e., Multicast TotalView-ITCH (software based), TCP ITCH data feed, DROP, Trading Ports used in Test Mode, and the disaster recover port for DROP.³ This part will include the following preface describing the applicable billing practice:

³ It also includes ports for which the exchange charges no fee – Data Retransmission Ports and other disaster recover ports. The Exchange proposes to add a parenthetical with the word "Glimpse" next to Data Retransmission Ports to clarify that that such Ports include

For the port types listed immediately below, the Exchange will assess the monthly fee to the single MPID that requested that particular port.

For the ports in this part, the Exchange will maintain its existing price formula: “\$X/port/month.”

The Exchange emphasizes that the foregoing proposal does not make any change to the Exchange’s existing port fees other than to clarify its existing practices for assessing them.⁴

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁶ 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 proposal is reasonable because it clarifies the Exchange’s port fee schedule, at Section 3. Although existing Section 3 is an accurate description of the fees that the Exchange charges for ports, it does not describe the nuances of the Exchange’s existing practices for assessing port fees in different situations. The proposal will convey these nuances in order to avoid potential confusion among customers as to the circumstances in which they will incur port fees. In particular, the proposal will amend Section 3 to state that, for certain enumerated port types, the Exchange will assess a monthly fee only on the MPID that requested

access to the “Glimpse” product, which allows a subscriber to replay market data from the current trading day.

⁴ In addition to the above, the Exchange proposes to delete the following paragraph from the Rule insofar as it will become obsolete and will no longer apply after December 31, 2018: “New PSX Participants will not be assessed the above listed Port Fees through December 31, 2018. A New PSX Participant will be defined as a PSX Participant that was not a PSX Participant before September 1, 2017.”

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

the port, whereas in other enumerated port types, the Exchange will assess a separate fee to the requesting MPID as well as to each additional MPID that the requester asked the Exchange to assign to the same port.

The Exchange believes that this proposal is also equitable in that a more fulsome description of the Exchange's port fee practices will help to avoid any potential confusion as to when and under what circumstances the Exchange will assess a monthly port fee to a customer. The Exchange notes that the proposal merely codifies the existing practices of the Exchange with respect to port fees and will not involve any substantive changes to the fees that the Exchange's customers are paying now.

The Exchange believes that its proposal is not unfairly discriminatory because, again, the proposal will merely make non-substantive clarifications to Section 3 that will codify the Exchange's existing practices for assessing port fees in different situations. The proposal will not make any changes to the fees that port users pay presently.

Finally, the Exchange believes that it is consistent with the Act to delete a paragraph from the Rules that refers to a port fee waiver that has expired, as of January 1, 2019. It is in the interest of the public and investors for the Exchange to maintain a rulebook that is current and accurate.

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. Insofar as the proposal merely codifies existing practice and makes no changes to the fees that the Exchange charges presently, the Exchange does not expect that the proposal will have any impact on competition whatsoever.

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.⁷

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, 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-2018-83 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.

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-Phlx-2018-83. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-Phlx-2018-83, 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.⁸

Eduardo A. Aleman
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).