

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90339; File No. SR-Phlx-2020-50)

November 4, 2020

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Transaction Fees at 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 October 26, 2020, 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 transaction fees at Equity 7, Section 3, as discussed below.

The text of the proposed rule change is available on the Exchange's Website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, 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

During the week of October 26-30, 2020, the Exchange will temporarily relocate its place of primary operations from Carteret, New Jersey to Chicago, Illinois. The purpose of this temporary relocation is to demonstrate that the Exchange is capable of and willing to operate outside of the State of New Jersey in the event that the New Jersey State Government enacts pending legislation that would impose a tax on securities transactions processed within the State. If enacted, the tax would be prohibitively expensive and onerous, not only for the Exchange, but also for its member organizations and ultimately for investors, and the Exchange likely would have no option but to relocate permanently outside of New Jersey.

Although the Exchange believes that its member organizations will maintain their ordinary trading activity during the relocation period, the Exchange also recognizes the possibility that some of its member organizations will adjust their trading behavior during this time, and that if they do so, they may fail to qualify for credits or discounted charges that the Exchange would otherwise provide to them if they were to achieve certain threshold levels of total Consolidated Volume³ on the Exchange during the month.

To help minimize any adverse impact of the temporary relocation on member organizations, Exchange proposes to amend its pricing schedule at Equities 7, Section 3 to state

³ As set forth in Equity 7, Section 3(a)(1), the term “Consolidated Volume” means the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot.

that for purposes of determining which of the execution charges and credits listed therein a member organization qualifies for during the month of October 2020, the Exchange will calculate the member organization's total Consolidated Volume on the Exchange for the full month of October as well as for the month of October excluding the week of October 26-30, 2020. Furthermore, the Exchange proposes to state that it will then assess which total Consolidated Volume calculations would qualify the member organization for the most advantageous credits and charges for the month of October and then it will apply those credits and charges to the member organization. Thus, if but for the relocation, a member organization would qualify for a higher credit or a lower fee tier in October, then the Exchange will apply that higher credit or lower fee tier to the member organization's trading activity during the month.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁵ 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 and equitable because in its absence, member organizations may fail to qualify for certain volume-based credits or charges in October should they determine to alter their trading behavior when the Exchange relocates to Chicago during the week of October 26-30, 2020. The Exchange does not wish to penalize these member organizations for altering their trading behavior in response to the Exchange's decision

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4) and (5).

to relocate temporarily. The proposed rule would seek to avoid such a penalty by calculating a member organization's total Consolidated Volume on the Exchange, both for the full month of October and for the month excluding October 26-30 to determine which of those two calculations would result in the member organization qualifying for credits and charges that are most advantageous to it, and then applying those most advantageous credits and charges to the member organization.

The Exchange notes that other exchanges have taken similar steps to avoid penalizing their members for exchange outages that would otherwise cause members to fail to qualify for volume-based tiered pricing.⁶

The Exchange believes that the proposed rule change is an equitable allocation and is not unfairly discriminatory because the Exchange intends for it to ensure that no member organization suffers adverse pricing impacts because of the temporary relocation of the Exchange to Chicago. That is, the Exchange does not intend for the proposal to advantage any particular member organization; rather, it intends for the proposal to avoid disadvantaging any member organization.

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

⁶ See, e.g., Securities Exchange Act Release No. 34-85025 (Jan 1, 2019), 84 FR 2611 (February 7, 2019) (ISE-2018-102).

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 fee change does 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. If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result.

If anything, the Exchange believes that the proposal is pro-competitive in that it will help the Exchange to maintain its competitive standing vis-a-vis other trading venues that are not planning a similar operational move during this month.

Similarly, the Exchange does not believe that the proposal will burden intra-market competition. As noted above, the proposal will simply help to ensure that no participant suffers a pricing disadvantage as a result of the Exchange's decision to operate from Chicago during the last week of October. It is not intended to provide a competitive advantage to any particular member organization.

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-2020-50 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-2020-50. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

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-2020-50 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

J. Matthew DeLesDernier
Assistant Secretary

⁸ 17 CFR 200.30-3(a)(12).