

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65689; File No. SR-Phlx-2011-142)

November 4, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify its Co-Location Fee Schedule Regarding Low Latency Network Connections

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 October 31, 2011, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“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 modify the Exchange Fee Schedule, Section X(b) entitled “Co-Location Services” to establish a program for offering low latency network connections and to establish the initial fees for such connections. The Exchange also proposes administrative modifications to the Exchange Fee Schedule, Section X(b).

The text of the proposed rule change is available at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, at the Exchange’s principal office, on the Commission’s website at <http://www.sec.gov>, 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

Low Latency Network Connection Option

The purpose of the proposed rule change is to modify the Exchange Fee Schedule, Section X(b) entitled "Co-Location Services" to offer new options for low latency network telecommunication connections and to establish the initial fees for such connections. As its initial offering, the Exchange proposes to offer point-to-point telecommunication connectivity from the co-location facility to select major financial trading and co-location venues in the New York and New Jersey metropolitan areas, Toronto, and Chicago.

Background

Currently the Exchange provides a cross connect from a client's cabinet to its requested telecommunication carrier's cabinet (known as a "telco cross connect"). Through the enhanced point-to-point connectivity service, clients will now have the option to receive low latency network connectivity from the Exchange's data center to the client's chosen venue(s), in addition to the telco cross connect. These connections can be utilized to send market data to and receive orders from the chosen venues.

The enhanced point-to-point connectivity provides the Exchange's co-location customers the opportunity to obtain low latency network connectivity with greater ease than is currently the case, and at a competitive price. Currently, co-location customers obtain similar services by negotiating fees, obtaining service level agreements, and executing service agreements directly with approved telecommunication carriers. A co-located customer is currently charged a monthly negotiated fee by the telecommunications carrier in addition to a cross connection fee by the Exchange. There are currently 16 approved telecommunication carriers with equipment in the Exchange's data center, with additional carriers added at the request of a client. In order to provide the new connectivity option described in this proposed rule change, the Exchange established a low-latency minimum standard,<sup>3</sup> approached those telecommunications carriers with low latency connections to select major financial trading and co-location venues in the New York and New Jersey metropolitan areas, Toronto, and Chicago that met the low-latency minimum standard,<sup>4</sup> and invited them to agree to discounted rates. In effect, the Exchange is obtaining wholesale rates from the carriers and then charging a markup to compensate it for its efforts to negotiate and establish the arrangement and integrate the connectivity into the Exchange co-location connectivity offering, as well as administrative costs associated with establishing and maintaining each new connection. Of the 16 approved telecommunication carriers with equipment in the Exchange's data center, one carrier has, to date, agreed to offer connections under the program and others are in negotiations with the Exchange; additional carriers are eligible to join the program upon meeting the same terms and conditions.

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<sup>3</sup> The low-latency minimum standard is less than or equal to 0.41 milliseconds for New York/New Jersey routes, less than or equal to 10.1 milliseconds for Toronto routes, and less than or equal to 17 milliseconds for Chicago routes. This standard will change as the technology improves and the latency is further reduced.

<sup>4</sup> The Exchange selected these locations because of the high numbers of member firms and/or liquidity venues located there.

Under the program, co-located customers will have the opportunity to request these new low latency network telecommunication connections through the same process used to request a new co-located cabinet and other co-location services, with no need for direct fee negotiations or new service agreements with telecommunication carriers. The co-located customer will choose the connection destination,<sup>5</sup> but the elimination of direct negotiations and separate service agreements with the telecommunications provider for these services will allow them to obtain a similar service at a competitive price and with greater ease of implementation. In addition, the proposed low latency network connectivity fees include cross connections and eliminate a separate fee for that service.

The Exchange is making the low latency network telecommunication connections available as a convenience to customers and notes that receipt of these connections is completely voluntary. Customers retain the option of contracting directly with telecommunication providers, including either the provider(s) that participate in the program, the current providers in the data center who have not yet agreed to participate, or any new carrier that is approved to install equipment in the Exchange's data center.

#### Low Latency Pricing Structure

The Exchange proposes: (1) a one-time fee of \$1,165 for the installation of 100 MB of telecommunication connectivity to select New York and New Jersey metropolitan area financial trading and co-location venues, which includes fiber telecommunication cross connects within the NASDAQ OMX data center, along with a per-month connectivity fee of \$1,650; (2) a one-time fee of \$2,150 for the installation of 1G of telecommunication connectivity to select New York and New Jersey metropolitan area financial trading and co-location venues, which includes

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<sup>5</sup> As additional providers join the program, customers will also have the opportunity to choose from among these providers.

fiber telecommunication cross connects within the NASDAQ OMX data center, along with a per-month connectivity fee of \$2,150; (3) a one-time fee of \$5,000 for the installation of 10G of telecommunication connectivity to select New York and New Jersey metropolitan area financial trading and co-location venues, which includes fiber telecommunication cross connects within the NASDAQ OMX data center, along with a per-month connectivity fee of \$5,000; (4) a one-time fee of \$5,150 for the installation of 100 MB of telecommunication connectivity to select Toronto area financial trading and co-location venues, which includes fiber telecommunication cross connects within the NASDAQ OMX data center, along with a per-month connectivity fee of \$4,350; (5) a one-time fee of \$8,200 for the installation of 1G of telecommunication connectivity to select Toronto area financial trading and co-location venues, which includes fiber telecommunication cross connects within the NASDAQ OMX data center, along with a per-month connectivity fee of \$10,450; (6) a one-time fee of \$15,150 for the installation of 10G of telecommunication connectivity to select Toronto area financial trading and co-location venues, which includes fiber telecommunication cross connects within the NASDAQ OMX data center, along with a per-month connectivity fee of \$32,400; (7) a one-time fee of \$4,850 for the installation of 100 MB of telecommunication connectivity to select Chicago area financial trading and co-location venues, which includes fiber telecommunication cross connects within the NASDAQ OMX data center, along with a per-month connectivity fee of \$8,350; (8) a one-time fee of \$5,900 for the installation of 1G of telecommunication connectivity to select Chicago area financial trading and co-location venues, which includes fiber telecommunication cross connects within the NASDAQ OMX data center, along with a per-month connectivity fee of \$16,400; and (9) a one-time fee of \$12,050 for the installation of 10G of telecommunication connectivity to select Chicago area financial trading and co-location venues, which includes fiber

telecommunication cross connects within the NASDAQ OMX data center, along with a per-month connectivity fee of \$39,750.

The fees are based on anticipated bandwidth necessary for the connections and distances to these select venues. Furthermore, the Exchange believes the fees are reasonable as they are similar and competitive with fees charged for similar services by other entities.<sup>6</sup>

#### Elimination of Obsolete Rule Language Concerning Waiver of Fees

The Exchange also proposes to eliminate references to certain fee waivers that expired July 31, 2011.<sup>7</sup> Since the fee waivers expired, such language is no longer necessary.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>8</sup> in general, and Sections 6(b)(4) and (b)(5) of the Act<sup>9</sup> 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 or system which the Exchange operates or controls, and is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposal is designed to provide a method of connectivity between the Exchange's co-location facility and various remote locations. Currently, market participants obtain such connections by negotiating directly with telecommunication providers.

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<sup>6</sup> See <http://www.cmegroup.com/globex/files/CMEGlobexConnectionAgrmt.pdf>; <http://nysetechnologies.nyx.com/global-connectivity/sfti-americas/sfti-ip-americas>; [http://nysetechnologies.nyx.com/sites/technologies.nyx.com/files/SFTI\\_Americas\\_Market\\_Connectivity.pdf](http://nysetechnologies.nyx.com/sites/technologies.nyx.com/files/SFTI_Americas_Market_Connectivity.pdf); <http://nysetechnologies.nyx.com/global-connectivity/sfti-americas>.

<sup>7</sup> See Securities Exchange Act Release No. 64629 (June 8, 2011), 76 FR 34798 (June 14, 2011)(SR-Phlx-2011-77); and Securities Exchange Act Release No. 64842 (July 8, 2011), 76 FR 41536 (July 14, 2011)(SR-Phlx-2011-97).

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

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

Through its efforts to negotiate standard wholesale rates with providers, the Exchange seeks to offer market participants an opportunity to obtain the same connectivity service at a potentially lower cost and with greater ease of implementation. The Exchange believes that this change will be unambiguously beneficial to market participants, who will retain all current options for obtaining connectivity through direct negotiations with telecommunications providers, while also receiving a new option for obtaining the service through the Exchange's program.

The proposed fees for the service cover the costs charged to the Exchange by telecommunication provider(s). The fees charged to the Exchange are based on anticipated bandwidth necessary for the connections and distances to the available locations covered by the service (New York/New Jersey, Chicago, and Toronto). The proposed fees also include a markup to allow the Exchange to cover its administrative costs and to earn a profit on its provision of the service. The Exchange believes that it is reasonable to use fees assessed on this basis as a means to recoup the Exchange's share of the costs associated with the proposed low latency network telecommunication connections, provide a convenience for the customers, and to the extent the costs are covered, provide the Exchange a profit. The Exchange further believes that the proposed fees are reasonable in light of the costs associated with the service and the fees charged by other trading venues for comparable services.<sup>10</sup>

The proposed co-location services are entirely voluntary and available to all members, with uniform fees charged to all market participants that opt to obtain connectivity through the Exchange. Moreover, market participants may choose to obtain services through the Exchange, or may choose to negotiate their own connectivity with 16 different providers. Accordingly, the Exchange's proposed fees are non-discriminatory, and equitably allocated to market participants

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<sup>10</sup> See supra n. 6.

that choose to avail themselves of the Exchange's services, rather than obtaining comparable services directly.

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. First, competition between the Exchange and competing trading venues will be enhanced by allowing the Exchange to offer its market participants connectivity to its data center at a potentially lower price, and with greater ease. As noted above, NYSE already offers comparable services, at comparable fees, to its market participants. Accordingly, the proposal will allow the Exchange to enhance its competitive standing vis-à-vis other trading venues. Conversely, any delay in the effectiveness of the proposed rule change would burden competition by preventing the Exchange from mounting a response to a primary competitor. Second, competition among market participants will be supported by allowing small and large participants to pay a lower price for data center connectivity.

The Exchange believes that the proposed rule change will likewise enhance competition among telecommunications providers that seek to offer connections between market participants and the Exchange's data center. As discussed above, the Exchange does not discriminate among telecommunication providers, but rather allows providers to access the data center upon request of a market participant. As a result, 16 providers are currently connected. Likewise, the Exchange does not discriminate among providers with respect to eligibility to offer connectivity through the Exchange under the service proposed in this filing, provided the latency, destinations, and fees offered by the provider are consistent with the minimum standards established by the Exchange. Thus, telecommunications providers can choose to participate in

the program, or can choose to service market participants exclusively through direct negotiations with customers. The Exchange's approach is consistent with its own economic incentives to facilitate as many market participants as possible in connecting to its market. Burdening competition among telecommunications providers would be antithetical to the Exchange's own competitive interests, since impaired competition would make it more expensive and more difficult for market participants to send order flow to the Exchange.

The Exchange expects that the result of the proposal will be a reduction in fees charged to market participants, the very essence of competition. To the extent that fees under the program are less expensive than the rates currently paid by many market participants, the welfare of these market participants will increase, and other telecommunications providers will be incentivized to lower their own rates. This will, in turn, facilitate the introduction of greater volumes of order flow to the Exchange.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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-2011-142 on the subject line.

##### 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-2011-142. 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 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-2011-142 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>11</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).