

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61711; File No. SR-Phlx-2010-37)

March 15, 2010

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Controller Space Fee

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 February 26, 2010, NASDAQ OMX PHLX, Inc. ("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 offer the Controller Space storage service at no charge. While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on March 1, 2010.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, on the Commission's Website at <http://www.sec.gov>, 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

¹ 15 U.S.C. 78s(b)(1).

² 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 offer the Controller Space service at no charge. Currently, the Exchange assesses a Controller Space storage fee of \$250.00 per month on Members, Member Organizations, participants and participant organizations on the options and foreign currency trading floors. The Controller Space storage refers to space near the Exchange's trading floor that stores Member equipment that is used by Members, Member Organizations, participants and participant organizations to support their floor operations.

Previously, NASDAQ OMX PHLX's match infrastructure was located at 1900 Market Street in Philadelphia, PA, the location of the NASDAQ OMX PHLX trading floor. The NASDAQ OMX PHLX match infrastructure was relocated to the New York City area. As a result of this relocation, NASDAQ OMX PHLX now only offers a storage facility at the 1900 Market Street location for member equipment. The Controller Space storage services being offered to Members by NASDAQ OMX PHLX have been subsumed by co-location services which are currently being offered by NASDAQ Technology Services LLC ("NTS") pursuant to agreements with the owner/operator of its data center where both the Exchange's quoting and

trading facilities and co-located customer equipment are housed.³ A recent proposed rule change proposes to codify fees for these existing co-location services in a single uniform fee schedule.⁴

Exchange members may subscribe to co-location services provided by NTS. These co-location services are generally available to all qualified market participants who desire them. The Exchange will continue to offer the storage service to its Members at no charge. If the Exchange determines at a later date to charge a fee for this service, it will file a proposed rule change with the Commission.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions settling on or after March 1, 2010.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act⁶ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that Members benefit in that the Exchange will continue to offer all Members the ability to store equipment at the Exchange's facility at no charge.

³ Currently, the Exchange provides its current co-location services through data centers located in the New York City and Mid-Atlantic areas.

⁴ See Securities Exchange Act Release No. 61486 (February 3, 2010), 75 FR 6426 (February 9, 2010) (SR-Phlx-2010-18).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

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.

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 Act⁷ and paragraph (f)(2) of Rule 19b-4⁸ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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.

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-2010-37 on the subject line.

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ 17 CFR 240.19b-4(f)(2).

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-2010-37. 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 Web site (<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 Web site 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-2010-37 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.⁹

Florence E. Harmon
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).