

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-64803; File No. SR-Phlx-2011-88)

July 5, 2011

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC to Modify its Fee Schedule Regarding Co-Location Fees to Establish Fees for Access to Market Data Feeds from the Toronto Stock Exchange and the TSX Venture Exchange

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 June 23, 2011, NASDAQ OMX 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 modify its Fee Schedule regarding co-location fees to establish fees for access to market data feeds from the Toronto Stock Exchange ("TSX") and the TSX Venture Exchange ("TSXV").

The Exchange will implement the proposed change on July 1, 2011. The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, at the principal office of the Exchange, 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

The purpose of the proposed rule change is to modify the Exchange's Fee Schedule regarding co-location fees to establish fees for access to market data feeds from TSX and TSXV. The Exchange proposes: 1) a one-time fee of \$1,000 for the installation of telecommunications connectivity for selected TSX and TSXV real-time market data feeds, along with 2) a per-month connectivity fee of \$300 if a client wishes to receive the TSX and TSXV Level 1 Feed; a per-month connectivity fee of \$1,000 if a client wishes to receive the TSX and TSVX Level 2 Feed; a per-month connectivity fee of \$100 if a client wishes to receive the TSX Quantum Level 1 Feed; and a per-month connectivity fee of \$300 if a client wishes to receive the TSX Quantum Level 2 Feed.

The Exchange is making the TSX market data feeds available as a convenience to customers and notes that receipt of these feeds is completely voluntary. The Exchange also notes that such feeds may be freely obtained from other vendors for use by customers in the datacenter. These fees are similar to fees already charged by Phlx for receipt of market data from other

exchanges in the data center. See also the market data connectivity fees for SIAC, the Chicago Mercantile Exchange, and the BATS Exchange on the Exchange's Fee Schedule.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>3</sup> in general, and with Section 6(b)(4) of the Act,<sup>4</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.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading activities of those members who believe that co-location enhances the efficiency of their trading. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of such members. If a particular exchange charges excessive fees for co-location services, affected members will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including co-locating with a different exchange, placing their servers in a physically proximate location outside the exchange's data center, or pursuing trading strategies not dependent upon co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also revenues associated with the execution of orders routed to it by affected members. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for co-location services.

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<sup>3</sup> 15 U.S.C. 78f.

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

It should be noted, however, that the costs associated with operating a co-location facility, like the costs of operating the electronic trading facility with which the co-location facility is associated, are primarily fixed costs, and in the case of co-location are primarily the costs of renting or owning data center space and retaining a staff of technical personnel. Accordingly, the Exchange establishes a range of co-location fees with the goal of covering these fixed costs, covering less significant marginal costs, such as the cost of electricity, and to the extent the costs are covered, earns [sic] a profit. Because fixed costs must be allocated among all customers, the Exchange's fee schedule reflects an effort to assess a range of relatively low fees for specific aspects of co-location services, which, in the aggregate, will allow the Exchange to cover its costs and earn a profit; [sic] to the extent the costs are covered.

In the case the proposed fees for installation and connectivity to select TSX and TSXV real-time market data feeds, the proposed fees cover the costs charged by Nasdaq Technology Services for establishing and maintaining the telecommunication networks to obtain and republish these market data feeds. The fees are based on anticipated bandwidth needed to accommodate a particular feed. The proposed fees also allow the Exchange earn [sic] a profit; [sic] to the extent the costs are covered. The Exchange notes that it is not the exclusive method to obtain market data connectivity. The Exchange believes that it is reasonable to use fees assessed on this basis as a means to recoup Phlx's share of the costs associated with the proposed market data feeds, provide a convenience for the customers, and to the extent the costs are covered, provide the Exchange a profit.

The Exchange notes that its installation and monthly connectivity rates proposed for TSX and TSXV market data feeds are similar to connectivity fees imposed by other vendors. The Exchange also notes that the fees charged by the Exchange are generally lower or comparable to

prices charged by other exchanges or unregulated vendors for similar services. For instance, NYSE is charging charges fees of \$500 to \$5,750 for selected CME market data feeds and charges a \$950 installation fee.<sup>5</sup>

Furthermore, because the proposed co-location services are entirely voluntary and available to all members, the Exchange's fees for proposed co-location services are equitably allocated and non-discriminatory. In addition, the market data feeds may be obtained from other sources.

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

Written comments were neither solicited nor 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.<sup>6</sup> 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 necessary or appropriate in the public interest, for the protection of investors, or 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.

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<sup>5</sup> See <http://www.nyxdata.com/doc/50210>.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

#### 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-2011-88 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-2011-88. 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-2011-88 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>7</sup>

Cathy H. Ahn  
Deputy Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).