

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65253; File No. SR-Phlx-2011-121)

September 2, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Clarifying Amendments to Direct Connectivity Services

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 August 31, 2011, NASDAQ OMX PHLX LLC (the “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 clarifying amendments to the Exchange’s Fee Schedule regarding the Exchange’s direct connectivity services. The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqomxphlx.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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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 purpose of this rule filing is to relocate certain text in the Exchange's Fee Schedule for ease of reference and to clarify the Fee Schedule regarding direct connectivity to the Exchange. The direct connectivity fees are currently located in Section VI, entitled "Access Service, Cancellation, Membership, Regulatory and Other Fees." The Exchange proposes to relocate the fees to a new Section XI and title that section "Direct Connectivity to Phlx." The Exchange's proposal is the result of its desire to prominently place language in the Exchange's Fee Schedule to make transparent that the connectivity services are provided by NASDAQ Technology Services, LLC and to group similar fees together. Such changes will assist with easy identification of items not serviced, and billed, by the Exchange.

Currently, the Exchange assesses fees for direct 10Gb circuit connections, and fees for direct circuit connections capable of supporting up to 1Gb, for customers who are not co-located at the Exchange's datacenter.<sup>3</sup> The Exchange noted in SR-Phlx-2010-89 that it makes available to both co-located and non-co-located customers direct connections capable of supporting up to 1Gb, with per connection monthly fees of \$500 for co-located customers and \$1000 for non co-located customers.<sup>4</sup> Monthly fees are higher for non co-located customers because direct connection requires Phlx to provide cabinet space and middleware for those customers' third-

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<sup>3</sup> See Securities Exchange Act Release No. 62639 (August 4, 2010), 75 FR 48391 (August 10, 2010) (SR-Phlx-2010-89).

<sup>4</sup> Id. at page 4 and page 8.

party vendors to connect to the datacenter and, ultimately, to the trading system.<sup>5</sup> The Exchange also assesses an optional installation fee of \$925 if the customer chooses to use an on-site router (collectively “Direct Connectivity Fees”).<sup>6</sup> The Exchange provides direct connectivity services and assesses fees through NASDAQ Technology Services, LLC, as it does with similar co-location services.<sup>7</sup>

Subsequently, the Exchange amended these Direct Connectivity Fees to establish pricing for customers who are not co-located in the Exchange's data center, but require shared cabinet space and power for optional routers, switches, or modems to support their direct circuit connections. The Exchange assesses customers who are not co-located in the Exchange's data center monthly fees for space based on a height unit of approximately two inches high, commonly call a "U" space and a maximum power of 125 Watts per U space.<sup>8</sup>

The Exchange now seeks to relocate the direct connectivity fees, which are provided by NASDAQ Technology Services, LLC, within the Fee Schedule. The Exchange proposes to remove the direct connectivity fees from Section VI of the Exchange’s Fee Schedule and relocate the direct connectivity fees in a new section – Section XI – of the Fee Schedule. This administrative change allows the grouping of all services provided by NASDAQ Technology Services, LLC to be in one location for the convenience to the customers.

The Exchange also proposes to add clarifying text to the new Section XI to state that the direct connectivity services are provided by NASDAQ Technology Services, LLC. This change merely codifies the practice of the Exchange.

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<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> See Exchange Fee Schedule, Section X(b), Connectivity.

<sup>8</sup> See Securities Exchange Act Release No. 64441 (May 9, 2011), 76 FR 28251 (May 16, 2011) (SR-Phlx-2011-60).

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>10</sup> in particular, in that it 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 Exchange believes that amending the Exchange Fee Schedule to relocate the fees for ease of reference within the Fee Schedule as proposed will benefit all market participants by codifying and making transparent the source of the direct connectivity services and grouping the direct connectivity services with similar services on the Exchange's Fee Schedule.

### 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)(i) of the Act.<sup>11</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

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<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(i).

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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2011-121 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-2011-121. 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-2011-121 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>12</sup>

Elizabeth M. Murphy  
Secretary

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