SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69588; File No. SR-Phlx-2013-51)

May 15, 2013

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change to its Schedule of Fees and Rebates for Execution of Quotes and Orders on NASDAQ OMX PSX

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 May 3, 2013, 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 changes to its schedule of fees and rebates for execution of quotes and orders on NASDAQ OMX PSX ("PSX"). Phlx proposes to implement the proposed rule change on May 3, 2013. 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

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

The Commission recently approved modifications to the rules governing the operation of Phlx's PSX trading platform in order to replace its price/size/pro rata allocation model with a price/time model, and to permit member organizations to register as market makers in securities traded on PSX.[3] Phlx is now proposing to modify its schedule of fees and rebates for transactions occurring on PSX.

Currently, the Exchange charges the following fees for execution of orders that access liquidity on PSX: a volume-based discounted fee of $0.0028 per share executed for an order entered through a market participant identifier ("MPID") through which a member organization provides shares of liquidity that represent more than 0.10% of Consolidated Volume[4] during the month; $0.0028 per share executed for an order that is designated as eligible for routing, and $0.0030 per share executed for other orders. The Exchange is proposing to reduce significantly the criterion for the volume-based discounted fee, from 0.10% of Consolidated Volume to an average daily volume of 10,000 or more shares of liquidity provided. Moreover, for securities listed on the NASDAQ Stock Market ("NASDAQ") or the New York Stock Exchange ("NYSE"), Phlx proposes to lower the volume-based discounted fee to $0.00275 per share executed. For securities listed on exchanges other than NASDAQ or NYSE, the Exchange

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[3] Securities Exchange Act Release No. 69452 (April 25, 2013), 78 FR 25512 (May 1, 2013) (SR-Phlx-2013-24).

[4] "Consolidated Volume" is defined as the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities.

proposes to make the discounted fee applicable to routed orders and orders entered through an MPID qualifying for the volume-based discount $0.0025 per share executed rather than $0.0028 per share executed.

With respect to orders that provide liquidity, the Exchange currently provides a rebate of $0.0010 per share executed for non-displayed orders. The Exchange proposes to modify this rebate such that $0.0010 per share executed would be paid with respect to midpoint pegged or midpoint peg post-only orders ("midpoint orders"), while $0.0005 per share executed would be paid with respect to other forms of non-displayed orders. For displayed orders that provide liquidity, the Exchange currently provides a rebate of $0.0028 per share executed for orders entered through an MPID through which a member organization provides shares of liquidity that represent more than 0.10% of Consolidated Volume; $0.0028 per share executed for orders entered through a PSX MPID through which the member organization provides shares of liquidity that represent more than 0.05% of Consolidated Volume, provided that the member organization and any affiliated member organizations also have an average daily volume during the month of 1,000 or more electronically delivered and executed customer contracts that add liquidity on the Exchange's Options Market; and $0.0026 per share executed for other orders.

The Exchange proposes to lower the basic rebate for orders to which no other pricing applies from $0.0026 to $0.0020 per share executed. In addition, the Exchange proposes to reduce the requirement for an enhanced rebate based on volume of liquidity provision from 0.10% of Consolidated Volume to an average daily volume of 100,000 or more shares of liquidity provided, while also reducing the associated rebate from $0.0028 per share executed to $0.0026 per share executed. The Exchange is also proposing to eliminate the rebate tier that requires participation in the Exchange's Options Market. Finally, the Exchange proposes a rebate tier of $0.0028 per share executed for quotes/orders entered by a member organization that provides an average daily volume of 2 million or more shares of liquidity during the month.

In addition to the foregoing changes, Phlx is also replacing the term "order" with the term "quote/order" where appropriate in the PSX fee schedule to reflect the introduction of quoting on PSX. Phlx is also adding new headings to the fee schedule to delineate sections for fees applicable to quotes/orders in securities listed on NASDAQ, NYSE, and other exchanges, respectively, and for fees applicable to routing. Finally, Phlx is deleting a footnote describing conditions under which member organizations may be deemed affiliates, since it relates solely to the pricing tier relating to trading on the Phlx Options Market, which Phlx is eliminating.

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[6] 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 Phlx operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed new rebate tier of $0.0028 per share executed for members that provide an average daily volume of liquidity of 2 million shares or more is reasonable because it will reduce fees for member organizations that make significant contributions to PSX and its market quality by providing high volumes of liquidity. Moreover, the proposed rebate is consistent with an equitable allocation of fees because the rebate is provided to member organizations that benefit the market through high levels of liquidity provision. As such, the proposal is consistent with

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5 15 U.S.C. 78f.

6 15 U.S.C. 78f(b)(4) and (5).

volume-based pricing tiers in effect at many other national securities exchanges. Finally, the proposal is not unreasonably discriminatory because the rebate is consistent with the benefits provided by market participants receiving it, and because the Exchange offers alternative means to receive a rebate that is only slightly lower and that has very modest liquidity requirements associated with it.

The proposed changes with respect to the existing volume-based tiers for accessing and providing liquidity are reasonable because the reduction in the liquidity-provision criterion for achieving the tier – from 0.10% of Consolidated Volume to an average daily volume of 10,000 or more shares for the take fee discount, or 100,000 or more shares for the higher rebate[7] – will make it easier for a broader range of market participants to achieve the tier, thereby resulting in price reductions for PSX participants who may not qualify for the tier at present. In addition, the applicable fee for accessing liquidity in securities listed on NASDAQ or NYSE will be reduced from $0.0028 to $0.00275 per share executed, and to $0.0025 per share executed for other securities.[8] The cost of enhancing the tiers in this manner will be offset by reducing the rebate for liquidity provision from $0.0028 to $0.0026 per share executed, but the Exchange believes that this change is reasonable in light of the significant broadening of the tiers. The Exchange

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7 By contrast, on a trading day with a Consolidated Volume of 6 billion shares, the current tier would require a member to provide 6 million shares of liquidity.

8 The rate reductions, as well as the rate reduction for routable orders in securities listed on exchanges other than NASDAQ and NYSE, are reasonable because they will reduce costs to market participants. The changes are consistent with an equitable allocation of fees and not unfairly discriminatory because they are assessed against members that either achieve specified volume tiers or that assist the development of PSX's routing services by making use of its router. To the extent that fees differ depending on the listing venue of the security, the change is not unfairly discriminatory because it is consistent with established practices on other national securities exchanges of using security-specific discounts as a means to promote the exchange as a venue for trading certain types of securities. See e.g., http://usequities.nyx.com/markets/nyse-arca-equities/trading-fees.

further believes that these changes reflect an equitable allocation of fees and are not unreasonably discriminatory, because they are consistent with pricing at many other national securities exchanges under which discounts are provided to members that achieve specified volumes of liquidity provision. In addition, the changes should make the applicable fees and rebates available to a wider range of market participants, and the Exchange offers other means by which a member organization may achieve comparable or better rates.

The proposed change with respect to the basic rebate to which no other pricing applies from $0.0026 to $0.0020 per share executed is reasonable because the rate is comparable to the base rebate payable on several other national securities exchanges, including NASDAQ ($0.0020), NYSEArca ($0.0021), and the EDGX Exchange ($0.0021). The change is consistent with an equitable allocation of fees and not unreasonably discriminatory because it is consistent with providing a rebate to all liquidity providers, regardless of volume or other factors, while paying higher rebates to member organizations that do more to support the Exchange through higher volumes and/or contributions to market quality.

The elimination of the rebate tier that requires participation in both PSX and the Exchange's Options Market is reasonable, consistent with an equitable allocation of fees, and not unreasonably discriminatory because any PSX Participant that qualifies for the tier at present would be required to have a volume of liquidity provision of at least 0.05% of Consolidated Volume. Following the implementation of the proposed change, any such market participant would also likely qualify for the proposed new rebate tier requiring an average daily volume of liquidity provision of at least 2 million shares, and receive the same rebate of $0.0028 per share executed. Accordingly, the change will not alter the rebate for which such participants qualify.

The changes with respect to rebates payable for non-displayed orders is reasonable because the rebate will remain unchanged for midpoint orders that provide liquidity, and therefore will be reduced only for other forms of non-displayed orders, which are expected to constitute only a small percentage of liquidity-providing orders. The fees reflect an equitable allocation of fees and are not unreasonably discriminatory because they reflect the Exchange's belief that all market participants benefit from pricing that encourages the use of displayed orders, which promote active price discovery. Accordingly, as is the case with other national securities exchanges, such as NASDAQ, the Exchange pays a lower rebate with respect to non-displayed orders than displayed orders. However, the change adopts a distinction between midpoint orders, which provide price improvement by executing at the midpoint between the national best bid and national best offer, and other forms of non-displayed orders, which do not provide such a benefit.

B. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

Phlx does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.[9] Phlx 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 favorable. In such an environment, Phlx 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, Phlx

[9] 15 U.S.C. 78f(b)(8).

believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, Phlx is introducing new pricing to accompany changes to PSX's market structure. These changes were necessitated by the failure of PSX's former price/size execution algorithm to garner significant market share, and therefore reflect an effort to increase PSX's competitiveness. If the changes are unattractive to market participants, it is likely that PSX will fail to increase its share of executions. Conversely, to the extent that the proposed changes broaden the availability of favorable pricing, if they are successful in attracting additional order flow, they will reduce costs to market participants and possibly encouraging [sic] competitive responses from other trading venues. Accordingly, Phlx believes that the proposed changes will promote greater competition, but will not impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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) of the Act[10] and paragraph (f) of Rule 19b-4 thereunder.[11] 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.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b-4(f).

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-2013-51 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-2013-51. 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-2013-51 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.[12]

Kevin M. O'Neill
Deputy Secretary

[12] 17 CFR 200.30-3(a)(12).