

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72572; File No. SR-Phlx-2014-43)

July 9, 2014

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Pricing Schedule under Section VIII with Respect to Execution and Routing of Orders in Securities Priced at \$1 or More Per Share

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 June 27, 2014, 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 and II 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 amend the Exchange's Pricing Schedule under Section VIII, entitled "NASDAQ OMX PSX FEES," with respect to execution and routing of orders in securities priced at \$1 or more per share.

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

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 amend the certain fees and rebates for order execution and routing applicable to the use of the order execution and routing services of the NASDAQ OMX PSX System ("PSX") by member organizations for all securities traded at \$1 or more per share.

The Exchange is proposing to eliminate the distinction in the fees assessed for order execution and routing based on security type. Currently, the Exchange has three separate rule sections³ that provide charges and credits for securities that execute on PSX, which are divided by whether the executed security is listed on The Nasdaq Stock Market ("Nasdaq"), New York Stock Exchange ("NYSE"), or an exchange other than Nasdaq or NYSE (collectively, "Exchange-Listed Securities"). The three sections are largely identical in terms of the categories for which charges are assessed and credits given, with the differences noted in the discussion below. The Exchange is combining all three sections into one section, which will result in a single category of credits provided and charges assessed on executions in quotes/orders on PSX.

Amended Fees for Execution of Quotes/Orders

The Exchange proposes to eliminate the \$0.0030 per share charge currently assessed for orders in Exchange-Listed Securities entered through a PSX market participant identifier ("MPID") through which the member organization provides an average daily volume of 10,000

³ NASDAQ OMX PHLX LLC Pricing Schedule, Section VIII(a)(1)-(3).

or more shares of liquidity during the month. The Exchange is also proposing to reduce the charge assessed for an order that is designated as eligible for routing in Exchange-Listed Securities from \$0.0030 per share to \$0.0026 per share. Similarly, the Exchange is proposing to reduce the charge assessed for all other orders in Exchange-Listed Securities from \$0.0030 per share to \$0.0026 per share.

Amended Credits for Execution of Quotes/Orders: Displayed Orders

The Exchange is proposing to provide a new credit for the execution of displayed quotes and orders in securities listed on Nasdaq, and to reduce the related credits currently provided for execution of displayed quotes and orders in securities listed on NYSE and other exchanges. Currently, for a security listed on NYSE or other exchanges, the Exchange provides a credit of \$0.0030 per share executed for Quotes/Orders entered by a member organization that provides an average daily volume of 6 million or more shares of liquidity during the month; provided that (i) the Quote/Order is entered through a MPID through which the member organization displays, on average over the course of the month, 100 shares or more at the national best bid and/or national best offer at least 25% of the time during regular market hours in the security that is the subject of the Quote/Order, or (ii) the member organization displays, on average over the course of the month, 100 shares or more at the national best bid and/or national best offer at least 25% of the time during regular market hours in 500 or more securities. The Exchange is proposing to reduce this credit to \$0.0025 per share executed. In addition, the Exchange is extending eligibility for this credit to execution of securities listed on Nasdaq. As a consequence, the \$0.0025 per share credit will apply to all Exchange-Listed Securities.

The Exchange is also proposing to reduce the credits provided in Exchange-Listed Securities 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; provided that (i) the Quote/Order is entered through a MPID through which the member organization displays, on average over the course of the month, 100 shares or more at the national best bid and/or national best offer at least 25% of the time during regular market hours in the security that is the subject of the Quote/Order, or (ii) the member organization displays, on average over the course of the month, 100 shares or more at the national best bid and/or national best offer at least 25% of the time during regular market hours in 500 or more securities. Currently, the Exchange provides a credit of \$0.0028 per share executed for Nasdaq-listed securities, and a credit of \$0.0029 per share executed for NYSE listed and securities listed on other exchanges, under the applicable rules. The Exchange is proposing to reduce the credit provided for all Exchange-Listed Securities under the consolidated rule to \$0.0024 per share executed.

The Exchange is also proposing to reduce the credits provided in Exchange-Listed Securities for Quotes/Orders entered through a MPID through which the member organization provides an average daily volume of 100,000 or more shares of liquidity during the month. Currently, the Exchange provides a credit of the \$0.0026 per share executed for Exchange-Listed Securities. The Exchange is proposing to reduce the credit provided for Exchange-Listed Securities under the consolidated rule to \$0.0021 per share executed.

Lastly, the Exchange is proposing to reduce the credit provided for all other displayed Quotes/Orders in Exchange-Listed Securities from \$0.0020 per share executed to \$0.0015 per share executed.

Amended Credits and New Charges for Execution of Quotes/Orders: Non-Displayed Orders

The Exchange is proposing to change the title of the rule section under Section VIII(a) of the Pricing Schedule concerning the credits provided for the execution of non-displayed quotes and orders to reflect that it no longer provides only credits, but also charges.

The Exchange is proposing to eliminate the credit provided to member organizations for the execution of a midpoint pegged order or a midpoint peg post-only order (a “midpoint order”) and instead assess a charge for such an execution. Currently, the Exchange provides a credit of \$0.0010 per share executed in Exchange-Listed Securities. The Exchange is proposing to replace the credit and instead assess a charge of \$0.0003 per share executed.

In light of the amended title of the rule, the Exchange is also proposing to add clarifying rule text concerning the \$0.0005 per share executed credit provided for other non-displayed orders in Exchange-Listed Securities. Specifically, the Exchange is adding the word “credit” to the rule. The Exchange is also adding language that makes it clear that the credit is intended for non-displayed orders that provide liquidity.

Lastly, the Exchange is proposing to add a new charge of \$0.0003 per share executed for orders that execute against resting midpoint order liquidity in Exchange-Listed Securities.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act⁴ in general, and furthers the objectives of Sections 6(b)(4) and (b)(5) of the Act⁵ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities, and it does not unfairly

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4) and (5).

discriminate between customers, issuers, brokers or dealers. The proposed changes are reasonable because they reflect a modest decrease in the credits provided in the execution of certain orders and a modest increase in the fees assessed for others, which will allow the Exchange to reduce costs and increase revenue.

The proposed change with respect to consolidating the three fee schedules under Section VIII(a) is reasonable because it will simplify the presentation of the fees, which are similar in many respects currently and will be identical under the proposed changes. The change is consistent with an equitable allocation of fees and not unfairly discriminatory because it presents the harmonized charges and credits in a single schedule of charges and credits.

The proposed change with respect to the elimination of the \$0.0030 per share charge assessed for quotes and orders entered through a MPID through which the member organization provides an average daily volume of 10,000 or more shares of liquidity during the month is reasonable because it eliminates a fee assessed on providers of liquidity in order to encourage further participation on PSX by these market participants. The Exchange believes that the proposed change is consistent with an equitable allocation of fees and is not unfairly discriminatory because it applies to all market participants who formally met the requirements of the fee who will now be assessed the same fee assessed other market participants that enters orders that execute orders on PSX. The Exchange notes that the current rule assesses a fee that is identical to the other rates that are assessed for entering orders that execute in PSX.

The proposed change with respect to the reduction of fees assessed for execution of an order that is designated as eligible for routing and for other orders executed on PSX are reasonable because they create a single, lower charge assessed for orders that execute on PSX designed to further attract liquidity to the market. The Exchange believes that the proposed

changes are consistent with an equitable allocation of fees and is not unfairly discriminatory because they will result in the same fee assessed on all member organizations that enter orders that execute on PSX.

The proposed change with respect to the new credit for Quotes/Orders entered by a member organization that provides an average daily volume of 6 million or more shares of liquidity during the month; provided that (i) the Quote/Order is entered through a MPID through which the member organization displays, on average over the course of the month, 100 shares or more at the national best bid and/or national best offer at least 25% of the time during regular market hours in the security that is the subject of the Quote/Order, or (ii) the member organization displays, on average over the course of the month, 100 shares or more at the national best bid and/or national best offer at least 25% of the time during regular market hours in 500 or more securities is reasonable because it provides a new credit designed to incentivize member organizations to provide displayed liquidity in Nasdaq-listed securities. The Exchange notes that it currently provides identical categories of incentive for liquidity provided in NYSE-listed securities and securities listed on other exchanges. The Exchange believes that the proposed changes are consistent with an equitable allocation of fees and are not unfairly discriminatory because they extend the credits currently provided to member organizations for the same liquidity in NYSE-listed securities and securities listed on other exchanges. Accordingly, all member organizations will receive the same credit for providing liquidity that meets the requirements of the rules.

The Exchange notes that it is reducing all of the credits under the rule for providing liquidity in displayed quotes and orders, regardless of the listing venue of the security. The Exchange believes that the proposed reduction in these credits is reasonable because it reflects a

modest reduction in the credits provided. Phlx notes that the credits provided by the rule are given in lieu of assessing normal fees, and accordingly provide incentive to market participants to enter such orders. The proposed change balances the Exchange's desire to provide certain incentives to market participants with the costs the Exchange incurs in providing such incentives, which ultimately affect the ability to sustain them. The Exchange believes that the proposed changes are consistent with an equitable allocation of fees and is not unfairly discriminatory because they will provide the same credits to member organizations for the same levels of liquidity provided, regardless of the listing venue of the security.

The Exchange believes that the proposed changes to the credits concerning non-displayed orders are also consistent with the Act. Specifically, the believes that the proposed change from a credit provided for non-displayed midpoint orders to a charge is reasonable because it reflects the Exchange's need to adjust its credits and fees in response to the costs and benefits provided. As discussed above, credits provided by the Exchange are given in lieu of assessing normal fees, and accordingly provide incentive to market participants to enter such orders. The proposed change balances the Exchange's desire to provide certain incentives to market participants with the costs the Exchange incurs in providing such incentives, which, in the case of the proposed change, have outweighed the Exchange's desire to incentivize member organizations to provide such liquidity. The Exchange believes that the proposed changes are consistent with an equitable allocation of fees and is not unfairly discriminatory because they result in a uniform charge to member organizations that provide such non-displayed liquidity.

The change with respect to the new charge assessed for orders that remove liquidity in resting midpoint orders is reasonable because it imposes a modest charge for removing midpoint liquidity from PSX. As discussed above, the Exchange currently assesses charges for removing

liquidity from PSX and the proposed new charge is less than the standard removal charge, which is reflective of the price improvement such orders provide to the market. The Exchange believes that the proposed change is consistent with an equitable allocation of fees and is not unfairly discriminatory because it applies the charge for removing liquidity from PSX in midpoint orders to all member organizations that remove such liquidity, regardless of the listing venue of the security of the order.

Lastly, the clarifying changes to the title of the rule section concerning credits for non-displayed orders and the text of the credit for other non-displayed orders are reasonable because they more accurately reflect the nature of the rule section and the credit provided, in light of the changes discussed above. The Exchange believes that the proposed changes are consistent with an equitable allocation of fees and are not unfairly discriminatory because the changes apply to all member organizations that use PSX.

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, as amended.⁶ The Exchange 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, the Exchange 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, the

⁶ 15 U.S.C. 78f(b)(8).

Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, the changes to the credits provided and charges assessed are intended to reduce the Exchange's costs, while still continuing to provide an incentive for members to execute shares on PSX and make use of its optional routing functionality. Because there are numerous competitive alternatives to PSX, it is likely the Exchange will lose market share as a result of the changes if they are unattractive to market participants. Accordingly, the Exchange does not believe the proposed changes will 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 Act⁷ and paragraph (f) of Rule 19b-4 thereunder.⁸ 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f).

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-2014-43 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2014-43. 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-2014-43 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

Kevin M. O'Neill
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).