

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-74170; File No. SR-Phlx-2015-08)

January 29, 2015

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 January 16, 2015, 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 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.

Currently, for non-displayed orders the Exchange assesses a charge of "\$0.0003 per share executed charge for a midpoint pegged order ("midpoint order)". The Exchange proposes to delete this so that the charge for orders with midpoint pegging to access liquidity will revert to the \$0.0024 per share executed charge currently assessed on member organizations that enter orders that execute in PSX.

Additionally, the Exchange proposes to eliminate the \$0.0003 per share executed charge for orders that execute against resting midpoint liquidity and add a \$0.0010 per share credit for orders with midpoint pegging that provide liquidity.

The current \$0.0005 per share executed credit for other non-displayed orders that provide liquidity will remain unchanged, but within the Pricing Schedule it will follow the charge listed in the paragraph immediately above for purposes of clarity. This makes it clear that the word "other" in "other non-displayed orders that provide liquidity" refers to orders other than "orders with midpoint pegging".

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act³ in general, and furthers the objectives of Sections 6(b)(4) and (b)(5) of the Act⁴ 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 discriminate between customers, issuers, brokers or dealers. The proposed changes are reasonable because they reflect the Exchange's need to adjust its credits and fees in response to the costs and benefits provided. Credits provided by the Exchange are given in lieu of assessing normal fees, and accordingly provide incentives to market participants to enter such orders. The proposed changes balance the Exchange's desire to provide certain incentives to market participants with the costs the Exchange incurs in providing such incentives.

Thus, the proposed change with respect to the elimination of the \$0.0003 per share executed charge for a midpoint pegged order is reasonable because by eliminating the charge within this part of the Pricing Schedule, the charge will become the already existing current charge of \$0.0024 per share executed assessed on member organizations that enter orders that execute in PSX, regardless of the listing venue of the security. The Exchange also believes that the proposed change is consistent with an equitable allocation of fees and is not unfairly discriminatory because it applies to all member organizations that enter orders that execute in PSX, regardless of the listing venue of the security.

The Exchange believes that eliminating the \$0.0003 per share executed charge for orders that execute against resting midpoint liquidity is reasonable for the reasons discussed above regarding the Exchange's need to adjust its credits and fees. The Exchange also believes that it

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(4) and (5).

is consistent with an equitable allocation of fees and is not unfairly discriminatory because it applies to all market participants.

The Exchange believes that adding a \$0.0010 per share credit for orders with midpoint pegging that provide liquidity is reasonable for the reasons discussed above regarding the Exchange's need to adjust its credits and fees. Specifically, the Exchange believes that the \$0.0010 per share credit for orders with midpoint pegging will incentivize market participants to add liquidity using orders with midpoint pegging. The Exchange also believes that the \$0.0010 per share credit for orders with midpoint pegging is consistent with an equitable allocation of fees and is not unfairly discriminatory because it applies to all market participants that provide liquidity using orders with midpoint pegging, regardless of the listing venue of the security of the order.

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.⁵ 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 Exchange believes that the degree to which fee changes in this market may impose any burden

⁵ 15 U.S.C. 78f(b)(8).

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. 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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,⁶ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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.

⁶ 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. Please include File Number SR-Phlx-2015-08 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Phlx-2015-08. 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 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-2015-08 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.⁷

Jill M. Peterson
Assistant Secretary

⁷ 17 CFR 200.30–3(a)(12).