

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75889; File No. SR-Phlx-2015-78)

September 10, 2015

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to 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-4² thereunder, notice is hereby given that, on September 1, 2015, NASDAQ OMX PHLX LLC ("Phlx" or "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 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.

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on September 1, 2015.

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.

¹ 15 U.S.C. 78s(b)(1).

² 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 amend a charge and certain credits 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 proposes to slightly decrease the charge to a member organization entering an order that executes in PSX from \$0.0027 to \$0.0026 per share executed in securities on exchanges other than Nasdaq and NYSE.

Phlx also proposes to increase the credit for non-displayed orders from \$0.0020 to \$0.0023 per share executed for all orders with midpoint pegging that provide liquidity, but simultaneously decrease the credit from \$0.0005 to \$0.0000 per share executed for other non-displayed orders that provide liquidity.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,³ in general, and with Section 6(b)(4) and 6(b)(5) of the Act,⁴ 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed changes to the charge and credits in the fee schedule under the Exchange's Pricing Schedule under Section VIII are reflective of the Exchange's ongoing efforts to use pricing incentive programs to attract order flow to the Exchange and improve market quality. The goal of these pricing incentives is to provide meaningful incentives for members to increase their participation on the Exchange.

The Exchange believes that the slight decrease in the charge to a member organization entering an order that executes in PSX from \$0.0027 to \$0.0026 per share executed in securities on exchanges other than Nasdaq and NYSE is reasonable because it provides such member organizations with a modest benefit of entering orders on the PSX System of securities listed on exchanges other than Nasdaq and NYSE and should incentivize more participants in the market.

Phlx also believes that this proposed rule changes is consistent with an equitable allocation of fees and are not unfairly discriminatory because it is uniformly available to all members entering order that execute on PSX for securities listed on exchanges other than Nasdaq and NYSE and affects all such members equally and in the same way.

³ 15 U.S.C. 78f.

⁴ 15 U.S.C. 78f(b)(4) and (5).

The Exchange is also proposing to increase the non-displayed order credit for non-displayed orders from \$0.0020 to \$0.0023 per share executed for all orders with midpoint pegging that provide liquidity, but simultaneously decrease the credit from \$0.0005 to \$0.0000 per share executed for other non-displayed orders that provide liquidity. The Exchange believes the proposed change to increase the credit for all non-displayed orders with midpoint pegging that provide liquidity is reasonable because it provides member organizations with a credit designed to incentivize increased midpoint liquidity on PSX. Additionally, the Exchange believes providing a greater credit will act as an incentive for members to increase their participation on the Exchange. The Exchange believes that the proposed change to decrease to the credit for other non-displayed orders that provide liquidity is reasonable because the Exchange no longer needs to provide an incentive for members to provide liquidity in other non-displayed orders. The Exchange also believes the proposed change will incentivize greater use of midpoint orders over other non-displayed orders and thus increase the activity at the midpoint on the market, which, is beneficial to all members.

The Exchange believes that the proposed rule changes to non-displayed order credits are consistent with an equitable allocation of fees and are not unfairly discriminatory because they are uniformly available to all members and affect all members equally and in the same way.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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.⁵ Phlx notes that it operates in a highly competitive market in which market participants can readily favor dozens of different competing exchanges and alternative trading

⁵ 15 U.S.C. 78f(b)(8).

systems if they deem charges at a particular venue to be excessive, or credit opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its charges and credits to remain competitive with other exchanges. Because competitors are free to modify their own charges and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which changes to charges and credits in this market may impose any burden on competition is extremely limited.

In this instance, the slight decrease to the charge to member organizations entering orders in the PSX System and to credits for non-displayed orders with midpoint pegging that provide liquidity and for other non-displayed orders that provide liquidity do not impose a burden on competition because Exchange membership is optional and is the subject of competition from other exchanges. These adjustments are reflective of the intent to increase the order flow on the Exchange. For these reasons, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Moreover, because there are numerous competitive alternatives to the use of the Exchange, it is likely that the Exchange will lose market share as a result of the changes if they are unattractive to market participants.

Accordingly, Phlx does not believe that the proposed rule 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)(ii) of the Act.⁶ 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 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-2015-78 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.

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-Phlx-2015-78. 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-2015-78 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

Robert W. Errett
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(12).