SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76631; File No. SR-Phlx-2015-98)

December 11, 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-4 thereunder,[2] notice is hereby given that on November 30, 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.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on December 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.

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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 certain charges and fees 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.

Specifically, under subparagraph (a)(1) of the rule the Exchange is proposing to increase the charges assessed member organizations that enter orders that execute in PSX. First, the Exchange is proposing to increase the charge for executions in Nasdaq-listed securities from $0.0028 to $0.0029 per share executed. Second, the Exchange is proposing to increase the charge for executions in NYSE-listed securities from $0.0027 to $0.0028 per share executed. Lastly, the Exchange is proposing to increase the charge for executions in securities listed on exchanges other than Nasdaq and NYSE from $0.0026 to $0.0028 per share executed.

The Exchange is also proposing to increase credits provided to member organizations that provide displayed liquidity through PSX under subparagraph (a)(1) of the rule. First, the Exchange is proposing to increase the credit provided for Quotes/Orders entered by a member organization that provides and accesses 0.35% or more of Consolidated Volume during the month from $0.0028 to $0.0031 per share executed. Second, the Exchange is proposing to increase the credit provided for Quotes/Orders entered by a member organization that provides and accesses 0.25% or more of Consolidated Volume during the month from $0.0027 to $0.0029 per share executed. Lastly, the Exchange is eliminating the $0.0023 per share executed credit provided for Quotes/Orders entered by a member organization that provides and accesses daily volume of 100,000 or more shares during the month, and is increasing the "default" credit (i.e., the credit received for providing displayed liquidity that does not otherwise qualify for a higher credit) provided for all other Quotes/Orders from $0.0020 to $0.0023 per share executed.

Finally, the Exchange is proposing to eliminate text from subparagraph (a) of the rule that defines the term "regular market hours," which was erroneously left in the rule text when the tier it provided reference to was deleted. Currently, no fee or credit references the definition. Thus, the Exchange is proposing to delete the reference.

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 Sections 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 Nasdaq operates or controls and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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

3 15 U.S.C. 78f.

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

interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, for example, the Commission indicated that market forces should generally determine the price of non-core market data because national market system regulation "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[5] Likewise, in NetCoalition v. NYSE Arca, Inc., 615 F.3d 525 (D.C. Cir. 2010), the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[6] As the court emphasized, the Commission "intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost."[7]

Further, "[n]o one disputes that competition for order flow is 'fierce.' … As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for

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5 See Exchange Act Release No. 34-51808 (June 9, 2005) ("Regulation NMS Adopting Release").

6 See NetCoalition, 615 F.3d at 534.

7 Id. at 537.

granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'…."[8]

The proposed increases to the credits and charges in the fee schedule under the Exchange's Pricing Schedule under Section VIII are reflective of the Exchange's ongoing efforts to use pricing incentives 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 is proposing to increase the charges to a member organization entering an order that executes in PSX and is also proposing to increase credits provided to member organizations. As a general principle, the Exchange must, from time to time, adjust the level of fees and credits provided to most efficiently allocate reduced fees and credits in terms of market improving behavior. In this regard, the Exchange is limited in how far it may reduce fees and in the amount of credits that it can provide to market participants.

The Exchange believes that the increases to the charges assessed a member organization entering an order that executes in PSX are reasonable because they reflect the Exchange's need to adjust its credits and fees in response to the costs and benefits provided by the Exchange. In addition to covering Exchange costs, the increased fees will allow the Exchange to offer credits to market participants that provide beneficial liquidity to PSX, to the benefit of all of its participants. The Exchange notes that it is increasing the charge assessed for executions in securities listed on exchanges other than Nasdaq and NYSE by a greater amount than for securities listed on Nasdaq and NYSE because it still wishes to offer lower fees for removal of liquidity for securities not listed on Nasdaq while balancing the exchanges' fees with its credits.

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8 NetCoalition, 615 F.3d at 539 (quoting ArcaBook Order, 73 FR at 74782-74783).

The Exchange believes that the proposed increases to the charges assessed a member organization entering an order that executes in PSX are consistent with an equitable allocation of fees and are not unfairly discriminatory because they apply to all member organizations that enter orders in the securities based on the listing venue of the security.

The Exchange believes that the proposed increases to the credits provided to a member organization that provides displayed liquidity through PSX are reasonable because the Exchange seeks to improve market quality by providing increased incentives to market participants to provide beneficial displayed liquidity. To achieve this, the Exchange must, from time to time, adjust the levels of credits and the related qualification requirements in reaction to market behavior. In the present case, the Exchange is proposing to increase two of the credit tiers, eliminate the lowest credit tier, and increase the "default" credit to the level of the eliminated credit tier. The Exchange believes providing the greatest incentive to market participants that also provide and access the highest level of Consolidated Volume during the month may significantly increase the number of member organizations that provide such high levels of market improving participation, to the benefit of all participants. Elimination of the credit tier and increasing the level of the default credit to the level of the eliminated tier is reasonable as it is reflective of the Exchange's desire to make PSX an attractive venue to any member organization that is willing to provide displayed liquidity. The Exchange believes that the proposed increases to the credits provided for displayed liquidity through PSX and elimination of a credit tier are consistent with an equitable allocation of fees and are not unfairly discriminatory because they apply to all member organizations that provide displayed liquidity through PSX and meet the criteria of the credit tier. In addition, member organizations that previously would have qualified under the eliminated tier would continue to receive the same credit under the "default" credit tier.

The Exchange believes that the elimination of rule text that defines a term no longer used in the fee schedule is consistent with the protection of investors and the public interest because it will avoid investor confusion that may occur by including it.

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

The Exchange does not believe that the proposed rule changes 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 dozens of different competing exchanges and alternative trading 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 changes to charges and credits do not impose a burden on competition because the Exchange membership is optional and is the subject of competition from other exchanges. The increased credits and charges are reflective of the intent to increase the order flow on the Exchange. For these reasons, the Exchange does not believe that any of the proposed changes will impair the ability of members or competing order execution venues to

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

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, the Exchange 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.[10] 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

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

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2015-98 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-2015-98. 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 (https://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-2015-98 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.[11]

Robert W. Errett
Deputy Secretary

[11] 17 CFR 200.30-3(a)(12).