

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59925; File No. SR-Phlx-2009-43)

May 14, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of
Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to the Order Entry Port
Fee

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 7, 2009, NASDAQ OMX PHLX, Inc. ("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 modify the manner in which members are assessed the Order Entry Port Fee of \$250 a month. The Exchange proposes to delete endnote 60, which references the Order Entry Port Fee and defines an active order entry port, and instead charge members the \$250 monthly fee regardless of whether the order entry port is active.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be implemented on June 1, 2009.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, 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 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 modify the manner in which the Order Entry Port Fee is billed to members. The Order Entry Port Fee is a connectivity fee assessed on members in connection with routing orders to the Exchange via an external order entry port. Currently, members access the Exchange's network through order entry ports. A member organization may have more than one order entry port. Member are assessed a monthly fee of \$250 in connection with sending orders to the Exchange. The \$250 monthly Order Entry Port Fee is assessed per member organization order entry mnemonic.³ Specifically, the fee is currently assessed on any order entry mnemonic that is active during a billing month. An order entry mnemonic is considered

³ Order entry mnemonics are codes that identify member organization order entry ports.

active if a member organization sends at least one order to the Exchange using that order entry mnemonic during the applicable billing month.⁴

The Exchange proposes to assess the \$250 monthly Order Flow Port Fee on members regardless of whether the order entry mnemonic is active during the billing month. Accordingly, the Exchange proposes to delete endnote 60 which states, “[a]n order entry mnemonic is considered active if a member organization sends at least one order to the Exchange using that order entry mnemonic during the applicable billing month.” Instead, the Exchange proposes to assess members the \$250 monthly fee, regardless of usage, and solely on the number of order entry ports assigned to each member organization. Per this proposal, whether or not the order entry port is active will not be considered in billing the monthly fee of \$250, only the amount of order entry ports per member organization will determine the amount billed to a member organization.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act⁶ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The proposal would continue to uniformly assess the Order Entry Port Fee on members in order to support the costs of the infrastructure

⁴ See Securities Exchange Act Release No. 58728 (October 3, 2008), 73 FR 59695 (October 9, 2008) (SR-Phlx-2008-70). See also the Exchange’s Fee Schedule at endnote 60.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

associated with market access. The fee remains reasonable in that members will continue to be charged a flat rate for this service based on the number of order entry ports.

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.

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 Act⁷ and paragraph (f)(2) of Rule 19b-4⁸ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act.

Comments may be submitted by any of the following methods:

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ 17 CFR 240.19b-4(f)(2).

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-2009-43 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-2009-43. 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 Web site (<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 inspection and copying 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 Phlx. 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-2009-43 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).