

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66111; File No. SR-Phlx-2011-187)

January 5, 2012

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Waive PSX Port Pair Fees for Certain Newly-Added Routable Port Pairs

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 December 28, 2011, NASDAQ OMX PHLX LLC (“Exchange” or “PHLX”), 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 offer a waiver of PSX Port Pair fees for certain newly-added routable port pairs during the months of January through March, 2012.

The text of the proposed rule change is below. Proposed new language is underlined.

VIII. NASDAQ OMX PSX FEES

Access Services Fees†

The following charges are assessed by the Exchange for ports to establish connectivity to the NASDAQ OMX PSX market, as well as ports to receive data from the NASDAQ OMX PSX market:

\$400 per month for each port pair, other than Multicast ITCH® data feed pairs, for which the fee is \$1000 per month. The \$400 port pair fee will be waived from January 2012 through March

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

2012 for a single port pair subscribed to by a member used for routing during this free period.

To be eligible for the fee waiver, the member must increase the number of routable ports it has as of December 31, 2011 and must send routable order flow through the designated port pair at some point during the free period, otherwise the monthly fee will apply.

An additional \$200 per month for each Internet port that requires additional bandwidth.

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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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is amending its fee schedule to waive fees assessed on a single port pair used for routing orders from PSX, during the months of January through March, 2012. The Exchange recently began allowing orders placed on the Exchange to route away from PSX for execution.³ The Exchange is proposing to waive, for a limited time, the fee assessed for a single port pair under Chapter VIII of the NASDAQ OMX PHLX Fee Schedule, applicable to a member firm that adds an additional port and uses that port for routing on the PSX market during the months of January through March, 2012. The Exchange believes that waiving the port pair

³ See Securities Exchange Act Release No. 65469 (October 3, 2011), 76 FR 62486 (October 7, 2011) (SR-Phlx-2011-108).

fee will encourage market participants to utilize the routing function of the market, and to take advantage of new routing strategies made available to market participants.⁴

A member is eligible to subscribe only one free port pair under the proposed fee waiver program and the port must be eligible for routing. The free port pair must be a newly-subscribed port pair and must be net additive to the number of port pairs a member firm is subscribed to as of December 31, 2011 (i.e., it cannot replace an existing port pair). Additional port pairs subscribed to by a member firm and used for routing purposes will not be eligible for the proposed fee waiver. A member firm may add a routable port pair that meets the requirements noted above at any point during the free period, and will not be assessed a fee for the port pair for the months remaining in the free period, so long as routable order flow is sent through the port pair at some point during the free period. If no routable order flow is sent through the designated port pair during the free period, the port pair fee will apply to all months the new port pair is subscribed to. For example, if on January 25, 2012, Firm ABCD adds a routable port on PSX, the port pair would be free for the duration of the free period, so long as the member firm sends routable order flow through the port pair at some point during the free period. At the end of the free period, the member will be assessed the normal monthly fee, beginning with April 2012. If the member firm does not send routable order flow through the newly-added port pair, the member firm would be assessed the full fee for each of the months that it had subscribed to the new port pair during the free period (in the example above, all three months of the free period). A member firm is under no obligation to continue subscription to the routable port pair at the end of the free period, and may cancel its subscription at any time prior to the expiration of the free period with no charge.

⁴ Id.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁵ in general, and with Section 6(b)(4) of the Act,⁶ 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. The Exchange believes that the proposed fee waiver is reasonable as it is narrowly focused, of limited duration, and is designed to encourage PSX market participants to use the full functionality of the market, thereby increasing liquidity available to investors. The Exchange believes that the proposed fee waiver is equitable since it applies to any PSX participant that seeks to use the routing function of the market and subscribes a new port pair for routing during the free period. To date, no member firms have subscribed new port pairs for the purpose of routing from PSX. As noted, a member firm is not penalized for cancelling its routing port pair at the end of the free period.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(4).

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁷ and subparagraph (f)(2) 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

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 No. SR-Phlx-2011-187 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 No. SR-Phlx-2011-187. 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

⁷ 15 U.S.C. 78s(b)(3)(a)(ii).

⁸ 17 CFR 240.19b-4(f)(2).

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 No. SR-Phlx-2011-187 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).