

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68052; File No. SR-PHLX-2012-119)

October 12, 2012

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Phlx's Fee Schedule Governing Order Execution on its NASDAQ OMX PSX Facility

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 October 1, 2012, NASDAQ OMX PHLX LLC ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a 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 the Substance of the Proposed Rule Change

Phlx proposes to a modify Phlx's fee schedule governing order execution and routing through its NASDAQ OMX PSX ("PSX") facility. Phlx will implement the proposed change on October 1, 2012. The text of the proposed rule change is available at <http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/phlx/>, at Phlx's principal office, 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 self-regulatory organization 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 those statements may be examined at the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx is proposing to modify its fee schedule governing order execution and routing on PSX. The general purposes of the fee changes are to (i) encourage greater provision of liquidity through PSX by instituting an increase in the rebates paid with respect to liquidity-providing orders, (ii) make certain increases to the fees for accessing liquidity and routing orders, and (iii) increase fees for routing orders to the New York Stock Exchange ("NYSE") to reflect an announced price increase by that exchange.³ All of the changes pertain to securities priced at \$1 or more per share. Phlx is, however, moving the fees governing execution and routing of orders for securities priced at less than \$1 per share to a new paragraph of the fee schedule.

Under the change, PSX will pay a rebate of \$0.0028 per share executed for displayed orders entered through a NASDAQ OMX PSX market participant identifier ("MPID") through which a member organization provides shares of liquidity that represent more than 0.10% of the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities ("Consolidated Volume") during the month. In addition, in recognition of the convergence of trading in which member organizations simultaneously trade different asset classes, Phlx is introducing a pricing incentive to encourage market participants that are active in the Phlx Options Market also to trade on PSX.⁴ Specifically, Phlx

³ See SR-NYSE-2012-50 (September 26, 2012).

⁴ The incentive is similar to pricing incentives in place at the NASDAQ Stock Market with respect to its members that are also active in the NASDAQ Options Market. See NASDAQ Rule 7018.

will also pay a rebate of \$0.0028 per share executed with respect to displayed orders entered through a NASDAQ OMX PSX MPID through which the member organization provides shares of liquidity that represent more than 0.05% of Consolidated Volume during the month; provided that the member organization and any affiliated member organizations⁵ also have an average daily volume during the month of 1,000 or more electronically-delivered and executed customer contracts that add liquidity on Phlx's Options Market. Phlx will pay a rebate of \$0.0026 per share executed with respect to all other displayed orders that provide liquidity, and will pay a rebate of \$0.0010 per share executed with respect to non-displayed orders that provide liquidity. These new rebate provisions replace provisions under which Phlx paid a maximum rebate of \$0.0026 per share executed with respect to minimum life orders and displayed orders with an original size of 2,000 shares or more, but lower rebates with respect to orders for securities listed on NYSE, displayed orders with a smaller size, and non-displayed orders. Under the proposed change, the rebate paid with respect to both displayed and non-displayed orders that provide liquidity will equal or exceed currently available rebates in all cases.

In order to offset the cost of these higher rebates, Phlx is making corresponding changes to the fees charged for accessing liquidity. Specifically, PSX will charge \$0.0028 per share executed for orders entered through a NASDAQ OMX PSX MPID through which a member

⁵ For this purpose, member organizations are deemed affiliates if there is at least 75% common ownership of the member organizations. This standard corresponds to standards currently used under the NASDAQ OMX PHLX Pricing Schedule for options. See, e.g., NASDAQ OMX PHLX Pricing Schedule, Chapter II (Multiply Listed Options Fees (Includes options overlying equities, ETFs, ETNs, indexes and HOLDRS which are Multiply Listed)) (“Specialists and Market Makers are subject to a ‘Monthly Market Maker Cap’ of \$550,000 for equity option transaction fees and QCC Transaction Fees, as defined in this section above. The trading activity of separate Specialist and Market Maker member organizations will be aggregated in calculating the Monthly Market Maker Cap if there is at least 75% common ownership between the member organizations.”).

organization provides shares of liquidity that represent more than 0.10% of Consolidated Volume during the month. PSX will also charge \$0.0028 per share executed with respect to the execution on PSX of any order that is designated as eligible for routing, and \$0.0030 per share executed for all other orders that execute on PSX. The discount for routable orders, as compared with non-routable orders, is designed to provide incentives for member organizations to make use of PSX's routing services. By contrast, PSX had previously charged \$0.0019 per share executed for orders in securities listed on NSYE and \$0.0027 per share executed for other orders. The increases are necessary to ensure that Phlx covers the costs associated with the increased rebates it is offering.

With respect to fees for executions on other markets of routed orders, PSX is adopting minor increases in the fees charged for certain orders that execute on the other trading venues. Thus, with respect to PSTG and PSCN orders that execute on venues other than NYSE or NASDAQ OMX BX, and with respect to PTFY and PCRT orders that execute at the NASDAQ Stock Market, Phlx is increasing the fee from \$0.0027 per share executed to \$0.0028 per share executed. These changes will ensure that routable orders that execute at other venues pay a fee that is consistent with the fee paid with respect to such orders when they execute at PSX.

Finally, to reflect recent increases in the fees charged by NYSE with respect to orders routed to it by PSX, Phlx is raising the fee for PSTG and PSCN orders routed to NYSE from \$0.0023 per share executed to \$0.0025 per share executed; the fee for PMOP orders routed to NYSE from \$0.0025 per share executed to \$0.0027 per share executed; and the fee for PTFY orders routed to NYSE from \$0.0022 per share executed to \$0.0024 per share executed.

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁶ in general, and with Sections 6(b)(4) and (5) of the Act,⁷ 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 Phlx operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. All similarly situated member organizations are subject to the same fee structure, and access to Phlx is offered on fair and non-discriminatory terms.

The Exchange believes that the proposed fees for accessing liquidity are reasonable because they are consistent with the limitations imposed by SEC Rule 610⁸ on access fees. The Exchange further believes that the proposed access fees are consistent with an equitable allocation of fees, in that they are set at levels that allow the Exchange to pay a credit to liquidity providers. Because the payment of such credits encourages liquidity providers to post orders in PSX, they also benefit liquidity accessors by increasing the likelihood of execution at or near the inside market. Phlx further believes that the discounted access fees for orders entered through MPIDs that satisfy a volume requirement are not unreasonably discriminatory because they are designed to provide incentives to member organizations to increase their participation in PSX and are consistent in their purpose with similar volume-based pricing incentives offered by numerous other exchanges. Similarly, Phlx believes that the discounted fee for orders that are eligible for routing is not unreasonably discriminatory because it is a reasonable means of

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4) and (5).

⁸ 17 CFR 242.610.

encouraging member organizations to make use of PSX's routing services but does not differ to a great extent from the fees otherwise charged for order execution. Finally, PSX believes that these discounts are consistent with an equitable allocation of fees because they are designed to serve the appropriate purposes of encouraging greater use of PSX's execution and routing facilities but do not deviate to an unreasonable extent from the access fee otherwise charged by PSX.

Phlx further believes that the proposed rebates for liquidity providers are reasonable because they are set at levels that are equal to or higher than the rebates currently offered, and are designed to attract greater numbers of liquidity-providing orders to PSX. In addition, Phlx believes that the proposed rebates reflect an equitable allocation of fees because they are set at levels that do not deviate significantly from the access fees charged by PSX. Phlx further believes that the proposed higher rebates for displayed liquidity provided through MPIDs that satisfy a volume requirement are not unreasonably discriminatory because they are designed to provide incentives to member organizations to increase their participation in PSX and are consistent in their purpose with similar volume-based pricing incentives offered by numerous other exchanges. Similarly, Phlx believes that the proposed higher rebate with respect to displayed liquidity provided by certain member organizations that are active in both PSX and Phlx's Options Market is not unreasonably discriminatory because it is responsive to the convergence of trading in which member organization [sic] simultaneously trade different asset classes within a single strategy. Phlx also notes that cash equities and options markets are linked, with liquidity and trading patterns on one market affecting those on the other. Accordingly, pricing incentives that encourage market participant activity in both markets recognize that activity in the options markets may also support price discovery and liquidity

provision in PSX. This proposed rebate is also not unreasonably discriminatory because the Exchange is offering an alternative means of earning an identical rebate that does not require participation in Phlx's Options Market. Phlx further believes that the proposal to pay higher rebates with respect to displayed orders than with respect to non-displayed orders is not unreasonably discriminatory because Phlx believes that it is reasonable to use pricing incentives to encourage the use of displayed orders, which contribute more to price discovery and market transparency, than non-displayed orders.

The proposed changes to fees for routing orders to NYSE are reasonable because they reflect the increase in the fee that will be charged by NYSE to Phlx with respect to such orders. The change is consistent with an equitable allocation of fees because it will bring the economic attributes of routing orders to NYSE in line with the cost of executing orders there. Finally, the change is not unfairly discriminatory because it solely applies to member organizations that opt to route orders to NYSE.

The other proposed increases in routing fees are reasonable because they are very small in magnitude (\$0.0001 per share executed for affected orders). The changes are consistent with an equitable allocation of fees because the resulting fees are consistent with the fee charged for the execution of routable orders at PSX. Thus, member organizations are encouraged to use routable orders through a favorable execution rate and the increased likelihood of finding liquidity at PSX that may be promoted through the higher liquidity provider rebates adopted through the proposal. Phlx believes that it is equitable under these circumstances to charge a fee for routing the orders to other venues that is more consistent with PSX's own execution fee. Finally, the change is not unreasonably discriminatory because it applies solely to member organizations that opt to use the routing strategies subject to the price change.

Phlx also 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. In such an environment, Phlx 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. Phlx believes that the proposed rule change reflects this competitive environment because it is designed to create pricing incentives for greater use of PSX's trading and routing services.

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

Phlx 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. Because the market for order execution is extremely competitive, member organizations may readily opt to disfavor Phlx's execution and routing services if they believe that alternatives offer them better value. The proposed change is designed to enhance competition by using pricing incentives to encourage greater use of PSX's trading and routing services.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.⁹ 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

⁹ 15 U.S.C. 78s(b)(3)(a)(ii).

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-2012-119 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-2012-119. 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 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 offices 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-2012-119, 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.¹⁰

Kevin M. O'Neill
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).