

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68196; File No. SR-Phlx-2012-128)

November 8, 2012

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Fees Assessed Under Section VII. C. of the Pricing Schedule

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 26, 2012, NASDAQ OMX PHLX LLC (“PHLX” or “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

The Exchange proposes to modify fees assessed under Section VII. C. of the PHLX Pricing Schedule relating to the Central Registration Depository (“CRD system”), which are collected by FINRA. PHLX is proposing that the implementation date of the proposed rule change will be January 2, 2013. The text of the proposed rule change is available at <http://nasdaqomxphlx.cchwallstreet.com>, 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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the proposed rule change. The text of those statements may be examined at the places specified in Item III [sic] 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 amending its fees assessed under Section VII. C. of the PHLX Pricing Schedule to reflect a recent fee change made by FINRA,³ relating to the CRD system.⁴ The fees assessed under Section VII. C. are collected and retained by FINRA via the CRD system for the registration of associated persons of Exchange members that are not also FINRA members. The Exchange originally adopted the fees under Section VII. C. to mirror the fees assessed by FINRA on its members for use of the CRD system in connection with the Exchange's participation in Web CRD.⁵ FINRA recently amended the fees assessed for use of the CRD system, which will become effective January 2, 2013.⁶ The CRD system fees are use-based and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a member of an exchange that is not a FINRA member. Accordingly, the Exchange is proposing to amend the

³ See Securities Exchange Act Release No. 67247 (June 25, 2012), 77 FR 38866 (June 29, 2012) (SR-FINRA-2012-030).

⁴ The CRD system is the central licensing and registration system for the U.S. securities industry. The CRD system enables individuals and firms seeking registration with multiple states and self-regulatory organizations to do so by submitting a single form, fingerprint card and a combined payment of fees to FINRA. Through the CRD system, FINRA maintains the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

⁵ See Securities Exchange Act Release No. 53688 (April 20, 2006), 71 FR 24885 (April 27, 2006) (SR-Phlx-2006-24). See also, Section 4(b)(3) of Schedule A to the FINRA By-Laws.

⁶ Supra note 3.

fees under Section VII. C. to mirror those assessed by FINRA, which will be implemented concurrently with the amended FINRA fees on January 2, 2013.⁷

In addition to increasing the existing CRD system fees, FINRA adopted a new fee for the additional processing of each initial or amended Form BD that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings.⁸ Member firms use the Form BD to, among other things, report disclosure matters in which they or a control affiliate have been involved. Prior to the adoption of the new fee, FINRA did not have a fee designed to cover the costs associated with the review of Form BD notwithstanding the review is similar to that performed of member firms' Forms U4 and U5. Such reviews include confirming that the matter is properly reported; reviewing any documentation submitted and determining whether additional documentation is required; conducting any necessary independent research; and, depending on the matter reported, analyzing whether the event or proceeding subjects the individual or member to a statutory disqualification pursuant to Section 3(a)(39) of the Act.⁹ FINRA adopted a \$110 fee for the review of a Form BD, which mirrors the increased fee adopted for the review of Forms U4 and U5. As such, the Exchange is adopting the identical fee

⁷ The Exchange notes that it is not adopting all of the changes made in the FINRA filing. Certain fees and requirements are specific to FINRA and the Exchange elected to not adopt them because either such fees did not apply to Exchange-only members or such fees did not directly cover the costs associated with the use of the CRD system. For example, under FINRA Section 4(h) of Schedule A FINRA assesses a fee of \$10 per day, up to \$300 for each day that a new disclosure event or a change in the status of a previously reported disclosure event is not timely filed on an initial or amended Form U5 or an amended Form U4. [sic] This fee provides a financial incentive to a FINRA member to file its Forms U4 and U5 timely. The Exchange elected to not adopt such a fee applicable to its members that are not also FINRA members.

⁸ Id.

⁹ 15 U.S.C. 78c(a)(39).

for FINRA's review of a Form BD submitted by Exchange members that are not members of FINRA.

The Exchange is proposing that the implementation date of the proposed rule change will be January 2, 2013. Specifically, the proposed initial/transfer registration, disclosure filing, and fingerprint fees would become effective for filings or fingerprints submitted on or after January 2, 2013. Lastly, the proposed system processing fee would become effective for the 2013 Renewal Program.¹⁰

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹¹ in general, and with Section 6(b)(4) of the Act¹² and Section 6(b)(5) of the Act,¹³ 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 it does not unfairly discriminate between customers, issuers, brokers or dealers. All similarly situated members are subject to the same fee structure, and every member firm must use the CRD system for registration and disclosure.

The change is reasonable because the proposed fees are identical to those adopted by FINRA for use of the CRD system for disclosure and the registration of associated persons of FINRA members. As FINRA noted in amending its fees, it believed the fees are reasonable based on the increased costs associated with operating and maintaining the CRD system, and

¹⁰ As part of FINRA's 2013 Renewal Program, Preliminary Renewal Statements reflecting the proposed \$45 system processing fee will be made available to members in the fourth quarter of 2012.

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(4).

¹³ 15 U.S.C. 78f(b)(5).

listed a number of enhancements made to the CRD system since the last fee increase, including: (1) incorporation of various uniform registration form changes; (2) electronic fingerprint processing; (3) Web EFT™, which allows subscribing firms to submit batch filings to the CRD system; (4) increases in the number and types of reports available through the CRD system; and (5) significant changes to BrokerCheck, including making BrokerCheck easier to use and expanding the amount of information made available through the system. These increased costs are similarly borne by FINRA when a member of the Exchange that is not a member of FINRA uses the CRD system. Accordingly, the fees collected for such use should likewise increase in lockstep with the fees assessed FINRA members, as is proposed by the Exchange.

The proposed change, like FINRA's proposal, is consistent with an equitable allocation of fees because the fees will apply equally to all individuals and members required to report information to the CRD system. Thus, those members that register more individuals or submit more filings through the CRD system will generally pay more in fees than those members that use the CRD system to a lesser extent.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁴ PHLX has designated this proposal as

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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-2012-128 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-2012-128. 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-2012-128, 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.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).