

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68473; File No. SR-Phlx-2012-140)

December 19, 2012

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 12, 2012, 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 Permit Fee and Order Entry Port Fee.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated the proposed amendment to be operative on January 2, 2013.

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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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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 increase the Permit Fee in Section VI, entitled “Membership Fees” at Part A entitled “Permit and Registration Fees” of the Pricing Schedule to recoup costs associated with the administration of the Exchange’s members. The Exchange also proposes to amend Section VII entitled “Other Member Fees” at Part B entitled “Port Fees” of the Pricing Schedule to increase the Order Entry Port<sup>3</sup> Fee. The Exchange believes that this increase is necessary to keep pace with escalating technology costs.

Permit Fee

The Exchange assesses two different Permit Fees based on whether a member or member organization is transacting business on the Exchange. The Exchange assesses members and member organizations that are transacting business on the Exchange a Permit Fee of \$2,000 per month. A member or member organization will be assessed the

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<sup>3</sup> 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. Members access the Exchange's network through order entry ports. A member organization may have more than one order entry port.

\$2,000 monthly Permit Fee if that member or member organization: (1) transacts its option orders in its assigned Phlx house account in a particular month; or (2) is a clearing member of The Options Clearing Corporation or a Floor Broker; or (3) for those member organizations which are under common ownership, transacts at least one options trade in a Phlx house account that is assigned to one of the member organizations under common ownership.<sup>4</sup> The Exchange assesses members and member organizations that are not transacting business on the Exchange a Permit Fee of \$7,500 per month. A member or member organization is assessed the \$7,500 Permit Fee for not transacting business on the Exchange if that member is either: (i) not a PSX Only Participant;<sup>5</sup> or (ii) not engaged in an options business at Phlx in a particular month. In addition, a member or member organization that sponsors an options participant<sup>6</sup> would pay an additional Permit Fee for each sponsored options participant.

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<sup>4</sup> For purposes of the Permit Fee, "common ownership" is defined as at least 75% common ownership between the member organizations.

<sup>5</sup> Applicants that apply for membership solely to participate in the NASDAQ OMX PSX equities market are not assessed a Permit Fee, Application Fee, Initiation Fee, or Account Fee. See Securities Exchange Act Release No. 61863 (April 7, 2010), 75 FR 20021 (April 16, 2010) (SR-Phlx-2010-54).

<sup>6</sup> See Exchange Rule 1094 titled Sponsored Participants. A Sponsored Participant may obtain authorized access to the Exchange only if such access is authorized in advance by one or more Sponsoring Member Organizations. Sponsored Participants must enter into and maintain participant agreements with one or more Sponsoring Member Organizations establishing a proper relationship(s) and account(s) through which the Sponsored Participant may trade on the Exchange.

The Exchange is proposing to increase the \$2,000 Permit Fee for members transacting business on the Exchange to \$2,100 per month. The Exchange is seeking to recoup costs incurred from the membership administration function.<sup>7</sup>

#### Order Entry Port Fee

The Exchange currently assesses an Order Entry Port Fee per month, per mnemonic<sup>8</sup> of \$500. This fee is assessed on members regardless of whether the order entry mnemonic is active<sup>9</sup> during the billing month. The fee is assessed regardless of usage, and solely on the number of order entry ports assigned to each member organization.<sup>10</sup> The Exchange proposes to increase the Order Entry Port Fee from \$500 to \$550 per month, per mnemonic. The Exchange believes that this increase would allow the Exchange to keep pace with increasing technology costs.

#### 2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>11</sup> in general, and furthers the objectives of Section

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<sup>7</sup> The Exchange is not amending the Permit Fee for members who are not transacting business on the Exchange.

<sup>8</sup> Order entry mnemonics are codes that identify member organization order entry ports.

<sup>9</sup> An 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. See Securities Exchange Act Release No. 58728 (October 3, 2008), 73 FR 59695 (October 9, 2008) (SR-Phlx-2008-70).

<sup>10</sup> The Exchange waives the \$500 per month per mnemonic Order Entry Port Fee for mnemonics used exclusively for complex orders where one of the components of the complex order is the underlying security.

<sup>11</sup> 15 U.S.C. 78f(b).

6(b)(4) of the Act<sup>12</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that the proposed increase to the Permit Fee for members transacting business on the Exchange is reasonable because the Exchange is seeking to recoup costs related to membership administration. The proposed fee is in the range of similar fees at other exchanges and less than other fees.<sup>13</sup> In addition, the Exchange believes that the Permit Fee is equitable and not unfairly discriminatory, because unlike other exchanges, Phlx's Permit Fees are the same for every options permit holder that is conducting business at the Exchange. The Exchange also believes that the increased fee is equitable and not unfairly discriminatory because the Permit Fee for not transacting business on the Exchange remains substantially higher as is the case today.

The Exchange believes that the increase to the Order Entry Port Fee is reasonable because it would allow the Exchange to keep pace with increasing technology costs. The Exchange believes that the increase to the Order Entry Port Fee is equitable and not

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<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> See the Chicago Board Options Exchange, Incorporated's Fees Schedule. Per month a Market Maker Trading Permit is \$5,500, a SPX Tier Appointment is \$3,000, a VIX Tier Appointment is \$2,000, a Floor Broker Trading Permit is \$9,000, an Electronic Access Permit is \$1,600 and there is no access fee for a CBSX Trading Permit. See also the International Securities Exchange LLC's Schedule of Fees. Per month an Electronic Access Member is assessed \$500.00 for membership and a market maker is assessed from \$2,000 to \$4,000 per membership depending on the type of market maker. See also C2 Options Exchange, Incorporated's Fees Schedule. Per month, a market-maker is assessed a \$5,000 permit fee, an Electronic Access Permit is assessed a \$1,000 permit fee and a SPXM Tier appointment is assessed a \$4,000 fee after March 31, 2013. See also NYSE Arca, Inc.'s Fee Schedule. Per month, a Floor Broker, Office and Clearing Firm are assessed a \$1,000 per month fee for the first Options Trading Permit ("OTP") and \$250 thereafter, and a market maker is assessed a \$4,000 per month fee for one to four OTPs and \$2,000 thereafter.

unfairly discriminatory because all members would be subject to the same fees and waivers related to the Order Entry Port Fee.

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. The proposed fee increases are competitive with fees at other options exchanges.

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.<sup>14</sup> 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:

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2012-140 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-2012-140. 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 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-2012-140 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.<sup>15</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).