

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78784; File No. SR-Phlx-2016-91)

September 8, 2016

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Exchange's Pricing Schedule Under Section VIII with Respect to Execution and Routing of Orders in Securities Priced at \$1 or More Per Share

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 31, 2016, NASDAQ PHLX LLC ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission (the "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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule under Section VIII, entitled "NASDAQ PSX FEES," ("Pricing Schedule") with respect to execution and routing of orders in securities priced at \$1 or more per share.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on September 1, 2016.

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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 add a credit tier for order execution and routing applicable to the use of the order execution and routing services of the NASDAQ PSX System ("PSX System") by member organizations for all securities traded at \$1 or more per share.

Specifically, the Exchange proposes to amend its Pricing Schedule to include a new credit tier for providing liquidity through the PSX System for displayed quotes/orders. The new credit tier will be for \$0.0027 per share executed for displayed quotes/orders entered by a member organization that provides and accesses 0.15% or more of consolidated volume ("Consolidated Volume") during the month.

The proposed new credit tier is positioned to fall between two similar existing credit tiers. It will provide a higher credit, \$0.0027 per share executed, than an existing credit tier, \$0.0025 per share executed, but it also has a higher threshold of required activity. The new credit tier requires a member to provide and access 0.15% of Consolidated Volume during the month versus the existing 0.05% for the \$0.0025 credit tier.

Alternatively the new credit tier will provide a lower credit than the existing \$0.0029 per share executed credit tier, but also has a lower required Consolidated Volume threshold. The

\$0.0029 per share executed credit tier requires a member to provide and access 0.25% of Consolidated Volume during the month, while the new credit tier only requires a member to provide and access 0.15% of Consolidated Volume during the month.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,³ in general, and with Section 6(b)(4) and 6(b)(5) of the Act,⁴ 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 is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change to the credit tiers under the Exchange's Pricing Schedule, Section VIII, are reflective of the Exchange's ongoing efforts to use pricing incentive programs to attract order flow to the Exchange and improve market quality. The goal of these pricing incentives is to provide meaningful incentives for members to increase their participation on the Exchange.

The Exchange believes that the new credit tier for displayed quotes/orders for a member organization providing liquidity through the PSX System of \$0.0027 per share executed in The NASDAQ Stock Market LLC ("Nasdaq") - listed securities, securities listed on the New York Stock Exchange ("NYSE"), and securities listed on exchanges other than Nasdaq and NYSE is reasonable because it is consistent with other credits that the Exchange provides to members that access and/or provide liquidity. As a general principle the Exchange chooses to offer credits to members in return for market improving behavior. The various credits the Exchange provides

³ 15 U.S.C. 78f.

⁴ 15 U.S.C. 78f(b)(4) and (5).

for members require them to significantly contribute to market quality by accessing and/or providing certain levels of Consolidated Volume. The proposed credit tier will be provided to members that provide and access liquidity in all securities of 0.15% or more of Consolidated Volume during the month.

The Exchange also believes that this proposed rule change is consistent with an equitable allocation of fees and are not unfairly discriminatory because the new credit tier for non-displayed orders/quotes is uniformly available to all members and affects all members equally and in the same way. Additionally, the proposed new credit tier will further encourage market participant activity and will also support price discovery and liquidity provision.

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.⁵ The Exchange notes that it operates in a highly competitive market in which market participants can readily favor dozens of different competing exchanges and alternative trading systems if they deem charges at a particular venue to be excessive, or credit opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its charges and credits to remain competitive with other exchanges. Because competitors are free to modify their own charges and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which changes to charges and credits in this market may impose any burden on competition is extremely limited.

⁵ 15 U.S.C. 78f(b)(8).

In this instance, the proposed new credit tier for member organizations entering orders in the PSX System for displayed orders that provide liquidity does not impose a burden on competition because Exchange membership is optional and is the subject of competition from other exchanges. These adjustments are reflective of the intent to increase the order flow on the Exchange. For these reasons, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Moreover, because there are numerous competitive alternatives to the use of the Exchange, it is likely that the Exchange will lose market share as a result of the changes if they are unattractive to market participants.

Accordingly, the Exchange does not believe that the proposed rule change will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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) of the Act⁶ and paragraph (f) of Rule 19b-4⁷ thereunder. 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

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f).

Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change 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-2016-91 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2016-91. 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, 100 F Street, NE, Washington, D.C. 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 Number SR-Phlx-2016-91, 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.⁸

Brent J. Fields
Secretary

⁸ 17 CFR 200.30-3(a)(12).