

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80305; File No. SR-Phlx-2017-25)

March 24, 2017

Self-Regulatory Organizations; NASDAQ PHLX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Exchange's Pricing Schedule at Section VII(A)

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 March 20, 2017, NASDAQ 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 Section VII(A) of the Exchange's Pricing Schedule, as described in further detail below.

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on May 1, 2017.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqphlx.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule at Section VII(A), entitled "Option Trading Floor Fees," to add certain new fees that it will charge to members, member organizations and non-members that install and operate server and telecommunications equipment on the premises of the Exchange, and connect such servers and equipment to off-site locations, such as their remote offices, in connection with conducting a floor trading business.

The Exchange recently moved to a new state-of-the-art operations center.³ The new operations center will provide significantly upgraded facilities for the Exchange's members and member organizations to conduct their floor trading business. Among these upgraded facilities are a new trading floor, equipped with intercooled Erich Keller workstations specifically

³ The Exchange relocated its premises from 1900 Market Street in Philadelphia, Pennsylvania to a new location at FMC Tower, 2929 Walnut Street in Philadelphia, Pennsylvania.

designed for trading floors, and a new data center supported by enhanced power supplies.⁴ The Exchange anticipates increased utility and operational costs due to the above described enhancements. In the past, members and member organizations installed and operated their own server and telecommunications equipment on the premises of the Exchange in an ad hoc manner, supervised by the Exchange. In an effort to establish greater oversight and control over such activities, to standardize the manner in which these activities occur, and to generally provide for a more secure and orderly operating environment for both the Exchange and its members and member organizations, the Exchange will provide dedicated, segregated, and access-limited space (“cabinets”) in its new data center to members, member organizations and non-members for their telecommunications vendors to house servers and telecommunications equipment.⁵ Furthermore, the Exchange will provide for the connection of such servers and equipment to the trading floor and to off-site locations, including the remote offices of members and member organizations.

The Exchange proposes to charge its members, member organizations and non-members new fees for providing them with these upgraded facilities and services. In particular, the Exchange proposes to charge monthly fees for providing dedicated half cabinets (\$250 per month) or whole cabinets (\$800 per month) in its data center to house the servers and telecommunications equipment of its members, member organizations and non-members and their telecommunications vendors.⁶ The Exchange also proposes to charge a monthly fee of \$50

⁴ The new trading floor will be driven by brand new 300 kVA UPS units, with an 800kw back-up generator

⁵ The Exchange will assign each member, member organization and non-member a minimum of one half cabinet in its new data center.

⁶ The Exchange proposes to charge substantially less for half cabinets than whole cabinets to incentivize members, member organizations, and non-members to make efficient use

to connect one cabinet to another cabinet and the same monthly fee to connect a cabinet to off-site locations, including to a member's or member organization's remote office.⁷ Lastly, the Exchange proposes a fee of \$150 per hour (billable on a quarter hour basis) for "remote hands," meaning technical support that Exchange personnel provides with respect to the installation, configuration, maintenance, and repair of hardware, cables, and circuits.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the provisions of Section 6(b) of the Act,⁸ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁹ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities, and does not unfairly discriminate between customers, issuers, brokers or dealers.

The proposed fees are equitable and non-discriminatory in that they are applicable to all members, member organizations and non-members that choose to house their servers and telecommunications equipment on the premises of the Exchange and to connect such equipment to their trading desks and remote offices. The proposed fees are also reasonable insofar as they permit the Exchange to recover its expected costs of hosting and providing connectivity to the servers and equipment of members, member organizations and non-members in the new environment. Moreover, as the Exchange explains in footnote 6 herein, the fees for half and

of the limited space in the new data center. That is, the Exchange seeks to discourage the purchase of a whole cabinet if the purchase of a half cabinet would suffice.

⁷ The proposed Pricing Schedule refers to this as a "Cabinet to MPOE Connectivity" fee, where "MPOE" refers to the "Main Point of Entry," meaning the place within the Exchange's facilities where members and member organizations can connect to the Exchange using external telecommunications lines.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and (5).

whole cabinets, in particular, are reasonable insofar as the Exchange designed them to encourage efficient allocation of limited space in the new data center. Lastly, the proposed fees are similar to, if not often less than, fees that competing exchanges charge their customers for similar services.¹⁰

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 structure is designed to ensure a fair and efficient use of Exchange facilities and services while allowing the Exchange to recoup some of its costs for providing those facilities and services to members, member organizations, and non-members. Moreover, the rates of the proposed fees will be comparable with those charged by other competing exchanges.¹¹

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.

¹⁰ See e.g., NYSE Arca Options Fees and Charges, at 13-21 (charging vendor equipment room cabinet fee of \$2,150 per cabinet per month and a telecom move/add/change fee of \$100 per hour on a pro-rated basis), available at https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf; New York Stock Exchange Price List 2017, at 17 (charging Internet Equipment Monthly Hosting Fee of \$1,000 per rack (equivalent to a cabinet), \$600 per half rack, and \$400 per quarter rack per month), available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf; CBOE Fee Schedule, at 10 (charging \$100 per month per equipment shelf (with 24 shelves equivalent to a half cabinet); \$50 per month for outside connectivity; and \$100 per hour for after-hours technical support, but with a four hour minimum).

¹¹ See id.

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.¹²

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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-2017-25 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-2017-25. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

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, 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-2017-25, 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.¹³

Eduardo A. Aleman
Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12).