

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84573; File No. SR-Phlx-2018-70)

November 9, 2018

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend General 8 of the Exchange’s Rules

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 29, 2018, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 General 8 of the Exchange’s Rules, as described below.

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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Exchange proposes to amend General 8 of its Rules, which govern the provision by the Exchange of colocation, connectivity, and direct connectivity services and related products, and which set forth the fees that the Exchange charges for those products and services, to: (1) clarify that all of the products and services set forth in General 8 are shared among the Nasdaq Inc. affiliated exchanges – The Nasdaq Stock Market LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, and Nasdaq GEMX, LLC (collectively, the “Nasdaq, Inc. Exchanges”) – meaning that a firm need only purchase these products and services once to be able to use them to connect to all of the Nasdaq, Inc. Exchanges to which the firm is otherwise entitled to connect, and to receive the third party services and market data feeds that it is otherwise entitled to receive; and (2) make other non-substantive changes that will further the objective of harmonizing General 8 with parallel rules that exist among the other Nasdaq, Inc. Exchanges.³

The Nasdaq, Inc. Exchanges offer colocation, connectivity, and direct connectivity services and related products to their customers on a shared basis, meaning that a customer may utilize these products and services to gain access to any or all of the Nasdaq, Inc. Exchanges to which they are otherwise entitled to receive access under the Rules. The Nasdaq, Inc. Exchanges only charge customers once for these shared products and services, even to the extent that customers use the products and services to connect to more than one of the Nasdaq, Inc.

³ The other Nasdaq, Inc. Exchanges plan to file similar proposals in the near future.

Exchanges. For example, a firm that is a member or member organization, as applicable, of all six Nasdaq, Inc. Exchanges, and which co-locates its servers in the Nasdaq Data Center by purchasing a 10 GB fiber connection, cabinet space, cooling fans, and patch cables, only needs to purchase these products and services once to use them to connect to all six Nasdaq, Inc. Exchanges.

Likewise, the Rules were intended to provide for connectivity to third-party services and market data feeds on a shared basis, meaning that a firm need only purchase a subscription to these services once, regardless of whether the firm is a member or member organization, as applicable, of multiple Nasdaq, Inc. Exchanges.

Historically, the Exchange has billed customers on a shared basis for all of the products and services currently set forth in General 8. Presently, however, only certain provisions of General 8 state this fact expressly. That is, provisions in General 8 pertaining to connectivity to the Exchange, direct circuit connectivity to the Exchange, and point-of-presence connectivity to the Exchange, each state that they include connectivity to the other markets of the Nasdaq, Inc. Exchanges. However, other provisions in General 8 – such as cabinets, cabinet power, fiber and wireless connectivity to market data feeds, and fiber and wireless connectivity to third party services – do not contain such language.

Notwithstanding the absence of express language in these provisions of General 8, the Exchange believes that it is or should be apparent that a firm need only pay once to purchase products and services – like server cabinets, power supplies, and cables – that the firm will use to connect to multiple Nasdaq, Inc. Exchanges or to connect to third party services or market data feeds. Indeed, the Exchange is aware of no actual customer confusion on this issue.

Nevertheless, the Exchange believes that the existing Rules would benefit from clarification so as to avoid the potential for any confusion in the future.

Accordingly, the Exchange proposes to amend General 8 by doing the following: (1) deleting the existing selective references therein to shared connectivity services; and (2) replacing selective references with the following language, which will serve as a general preface to General 8:

The connectivity products and services that this Rule describes are shared among all of the Nasdaq, Inc. exchanges (The Nasdaq Stock Market, LLC, Nasdaq BX, Inc., Nasdaq PHLX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, and Nasdaq GEMX, LLC). Fees for these products and services are also the same among all of the Nasdaq, Inc. exchanges. As such, a firm need only purchase the products and services listed below from any Nasdaq, Inc. exchange once to connect to any and all of the Nasdaq, Inc. exchanges to which it is otherwise entitled to connect, or to connect to third party market data feeds or services. For example, if a firm purchases connectivity to one Nasdaq, Inc. exchange and then subsequently qualifies to connect to a second Nasdaq, Inc. exchange, then the firm may utilize its existing services for connecting to the first exchange to also connect to the second exchange, without incurring an additional charge.

This preface will clarify that all products and services set forth in General 8 are offered on a shared basis and that a firm need only purchase them once from any of the Nasdaq, Inc. Exchanges.

In addition to adding this preface, the Exchange also proposes several other non-substantive amendments to General 8 to correct technical errors and to harmonize it with parallel provisions set forth in the rules of the other Nasdaq, Inc. Exchanges. These changes will

reconcile minor, non-substantive differences in the phrasing and placement of text between the Exchange’s General 8 and the other Nasdaq, Inc. Exchanges’ Sections 8. The amendments will also remove certain references to the names “Phlx” or “Nasdaq PHLX” or replace them with general references to “the Exchange.” Finally, the amendments will amend General 8, Section 1(b), which provides for discounted pricing for having multiple millimeter or microwave wireless subscriptions, to state that such pricing applies to subscriptions under General 8, Section 1(b) “and/or any other provision of these Rules that provides for such subscriptions, as may exist, from time to time.” The intended result of the proposed changes – along with similar changes that the other Nasdaq, Inc. Exchanges plan to propose – will be to generalize General 8 and render it completely identical across all six Nasdaq, Inc. Exchanges. (The Exchange notes that The Nasdaq Stock Market LLC and Nasdaq BX, Inc. offer wireless subscriptions under both General 8, Section 1(b) and Rule 7015/Equity 7, Section 115 of their respective rulebooks.)

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁴ in general, and that it furthers the objectives of Section 6(b)(4) of the Act,⁵ 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Likewise, the Exchange believes that its proposal is consistent with Section 6(b)(5) of the Act,⁶ in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

⁶ 15 U.S.C. 78f(b)(5).

The Exchange believes that it is equitable for the Exchange and the other Nasdaq, Inc. Exchanges to collectively charge a firm only once for the products and services set forth in General 8 because the same instance of such products and services may be used by the firm to connect to any or all of the Nasdaq, Inc. Exchanges to which it is otherwise entitled to connect. Said otherwise, the Exchange does not believe that it would be fair for the Nasdaq, Inc. Exchanges to each charge separate fees to a firm to, say, rent the same cabinet space in the same data center or to purchase the same wires to connect its servers to the market data feed. Moreover, the practice of charging a firm once for products and services with shared applicability among the Nasdaq, Inc. Exchanges is not unfairly discriminatory because each of the Nasdaq, Inc. Exchanges makes the products and services that are set forth in General 8 of their respective rulebooks available to all similarly situated members at the same prices.

Meanwhile, the Exchange believes that it is just and equitable, and in the interests of the public and investors, for the Exchange to amend General 8 to clarify the existing practice of the Nasdaq, Inc. Exchanges to charge firms once to purchase shared products and services, and to codify that practice where it is not stated expressly in the Rule. Although the Exchange believes that such codification and clarification of General 8 are not necessary in this instance – given that it should be (and in the Exchange’s experience, it is) apparent to firms that each of the Nasdaq, Inc. Exchanges will not charge them more than once to, say, rent the same cabinet space or to purchase the same wires or power supplies – the Exchange believes, nevertheless, that the public and investors will benefit from increased clarity to General 8. Even if the proposal is not needed to dispel any actual confusion about the Rules, it will help to limit any potential confusion in the future.

The Exchange also believes that it is just and equitable, and in the interests of the public and investors, to harmonize the language of General 8 among all six of the Nasdaq, Inc. Exchanges. Given that General 8 in each of the Nasdaq, Inc. Exchanges' rulebooks sets forth the same products, services, and associated fees that are assessed on a shared basis, the language of General 8 should be uniform across these Exchanges avoid any confusion about unintended disparities. The proposal makes minor, non-substantive changes to accomplish this harmonization, which include removing references that are idiosyncratic to this Exchange and are not common among all of the Nasdaq, Inc. Exchanges.

Lastly, the Exchange believes that its proposals to amend General 8 are non-controversial because they merely codify and clarify the Exchange's existing interpretation of General 8, serve the interests of the public and investors in promoting a more clear and transparent Rulebook that is harmonized with the shared rules of the other Nasdaq, Inc. Exchanges, and because the proposals will not impact competition or limit access to or availability of the Exchange or its systems.

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 proposals merely codify and clarify existing practice of the Nasdaq, Inc. Exchanges to collectively charge a customer only once to connect to any or all of the Nasdaq, Inc. Exchanges of which it is a member and to connect to third party services. The proposals also harmonize Section 8 with corresponding provisions of the rulebooks of the other Nasdaq, Inc. 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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6) thereunder.⁸

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act⁹ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁰ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. Waiver of the operative delay would allow the Exchange to immediately amend its rules to specify that the products and services set forth in General 8 are shared among the Nasdaq, Inc. Exchanges and to harmonize General 8 with parallel rules of the other Nasdaq, Inc. Exchanges. The Commission believes that waiver of the 30-day operative delay is consistent with the

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 17 CFR 240.19b-4(f)(6)(iii).

protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.¹¹

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 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-2018-70 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-2018-70. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹¹ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-Phlx-2018-70, 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.¹²

Brent J. Fields
Secretary

¹² 17 CFR 200.30-3(a)(12).