SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67601; File No. SR-Phlx-2012-102)

August 6, 2012

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Phlx's Fee Schedule Governing Order Execution on its NASDAQ OMX PSX facility

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 July 31, 2012, NASDAQ OMX PHLX LLC ("Phlx" or the "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 Substance of the Proposed Rule Change

Phlx proposes to modify Phlx's fee schedule governing order execution on its NASDAQ OMX PSX ("PSX") facility. Phlx will implement the proposed change on August 1, 2012. The text of the proposed rule change is available at http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/phlx/, at Phlx's principal office, on the Commission's website at http://www.sec.gov, 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 self-regulatory organization 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 those statements may be examined at the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

places specified in Item IV 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 proposing to modify its fee schedule governing order execution on PSX. Effective July 2, 2012, Phlx made a number of modifications to the PSX fee schedule.[3] Because these changes have negatively impacted PSX's market share, Phlx is proposing to revert to the fee schedule in effect prior to July 2, 2012.

Under the fee schedule in effect during July 2012, for securities priced at $1 or more per share, an order that accessed liquidity through a market participant identifier ("MPID") through which a market participant provided an average daily volume of 25,000 or more shares of liquidity or accessed an average daily volume of 3.5 million or more shares of liquidity during the month paid no fee when accessing liquidity. Other orders that accessed liquidity paid $0.0005 per share executed. For securities priced at less than $1, the fee was 0.10% of the total transaction cost. Under the prior schedule, to which PSX is reverting, PSX will charge $0.0019 per share executed for orders that access liquidity in securities listed on the New York Stock Exchange ("NYSE") priced at $1 or more per share; and $0.0027 per share executed for other liquidity-accessing orders priced at $1 or more per share. For securities priced under $1, PSX will revert to the prior fee of 0.20% of the total transaction cost.

Also, during July 2012, for securities priced at $1 or more per share, Phlx charged $0.0002 per share executed for an order that provided liquidity through an MPID through which

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3 Securities Exchange Act Release No. 67387 (July 10, 2012), 77 FR 41838 (July 16, 2012) (SR-Phlx-2012-87).

a market participant provided an average daily volume of 10 million or more shares of liquidity during the month, and charged $0.0005 per share executed for other orders that provided liquidity. Under the prior schedule, to which PSX is reverting, PSX will offer a credit to liquidity providers in securities priced at $1 or more per share that varies based on the type and size of the liquidity-providing order and the market on which the stock is listed. Specifically:

- for liquidity provided through displayed orders with an original order size[4] of 2,000 or more shares, the credit will be $0.0018 per share executed for securities listed on NYSE and $0.0026 per share executed for other orders;
- for liquidity provided through displayed orders with an original order size of less than 2,000 shares, the credit will be $0.0016 per share executed for securities listed on NYSE and $0.0024 per share executed for other orders;
- for liquidity provided through Minimum Life Orders,[5] the credit will be $0.0018 per share executed for securities listed on NYSE and $0.0026 per share executed for other orders;
- for liquidity provided through non-displayed orders, the credit will be $0.0005 per share executed for securities listed on NYSE and $0.0010 per share executed for other orders.

For securities priced below $1, Phlx will continue neither to charge a fee nor to pay a rebate with respect to orders that provide liquidity. This aspect of the PSX fee schedule was not changed in July.

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4 An order will be treated as the original order if it is decremented due to executions. However, orders that are modified by the PSX Participant entering the order or by System processes other than execution and decrementation will be treated as a new order.

5 "Minimum Life Orders" are orders that may not be cancelled by the entering participant for a period of 100 milliseconds following receipt. All Minimum Life Orders must be designated as Displayed Orders.

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Sections 6(b)(4) and (5) of the Act,[7] 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 Phlx operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. All similarly situated members are subject to the same fee structure, and access to Phlx is offered on fair and non-discriminatory terms.

The pricing change that PSX made for July 2012 was premised on the belief that market participants might be attracted to a pricing model under which both liquidity accessors and liquidity providers were assessed a very low fee (ranging from $0 to $0.0005). In fact, the decrease in market share experienced by PSX has demonstrated that PSX's market participants preferred the maker-taker model that was previously in effect. Under that model, accessors of liquidity are charged a fee ranging from $0.0019 to $0.0027 per share executed for stocks priced at $1 or more, and 0.20% of the transaction cost for lower priced stocks. The Exchange believes that these fees are reasonable because they are consistent with the limitations imposed by SEC Rule 610[8] on access fees. The Exchange further believes that the proposed access fees are consistent with an equitable allocation of fees, in that they are set at levels that allow the Exchange to pay a credit to liquidity providers that is only slightly less than the corresponding access fee. Because the payment of such credits encourage liquidity providers to post orders in PSX, they also benefit liquidity accessors by increasing the likelihood of execution at or near the

6 15 U.S.C. 78f.

7 15 U.S.C. 78f(b)(4) and (5).

8 17 CFR 242.610.

inside market. The Exchange further believes that charging a lower fee with respect to securities listed on NYSE than securities listed on other exchanges is not unfairly discriminatory because the charges assessed by NYSE for executing orders are generally lower than those charged by other exchanges. In addition, pricing incentives that focus on securities listed on particular listing venues are not uncommon,[9] and provide means by which venues such as Phlx may compete more effectively with listing venues such as NYSE.

Phlx further believes that the proposed rebates for liquidity providers are reasonable because they are set at levels that had previously been effective at attracting liquidity-providing orders to PSX. In addition, Phlx believes that the proposed rebates reflect an equitable allocation of fees because they are slightly lower than the corresponding access fees. Moreover, to the extent that the level of rebates varies based on the type of order providing liquidity, the Exchange believes that the variation is not unreasonably discriminatory. Specifically, the Exchange will pay higher rebates with respect to Minimum Life Orders and displayed orders with an original size of 2,000 or more shares because the Exchange believes that the market benefits from the presence of stable orders and orders with larger size; specifically, the Exchange believes that such orders have the potential to allow market participants to trade larger volumes at more predictable prices. Accordingly, the Exchange believes that it is not unreasonably discriminatory to pay higher rebates with respect to such orders, while paying lower rebates with respect to smaller orders and non-displayed orders. Phlx also believes that it is not unreasonably discriminatory to pay lower rebates for NYSE-listed securities than for other securities, since the

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[9] See, e.g., Securities Exchange Act Release No. 66322 (February 3, 2012), 77 FR 6831 (February 9, 2012) (SR-NASDAQ-2012-020) (pricing incentives focused on securities listed on exchanges other than The NASDAQ Stock Market or NYSE).

rebates paid must be correspondingly lower to allow PSX to charge a lower access fee with respect to such securities.

Finally, Phlx notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, Phlx must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Phlx believes that the proposed rule change reflects this competitive environment because it is designed to create pricing incentives for greater use of PSX's trading services.

B. Self-Regulatory Organization's Statement on Burden on Competition

Phlx 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. Because the market for order execution is extremely competitive, members may readily opt to disfavor Phlx's execution services if they believe that alternatives offer them better value. The proposed change is designed to enhance competition by using pricing incentives to encourage greater use of PSX's trading services.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[10] 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

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

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-2012-102 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-2012-102. 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, DC 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 publicly available. All submissions should refer to File Number SR-Phlx-2012-102 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. [11]

Kevin M. O'Neill
Deputy Secretary

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[11] 17 CFR 200.30-3(a)(12).