

taken.<sup>131</sup> The MSRB also stated that it will monitor matters relating to the timing of disclosures in order to determine whether any further action in this area is merited.<sup>132</sup> In addition, the MSRB stated that it will monitor whether the proposal has achieved the effect of providing issuers with adequate information about actual or potential material conflicts of interest and whether the amount of third-party payments or other additional information should be required.<sup>133</sup>

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>134</sup> that the proposed rule change (SR-MSRB-2011-09), as modified by Amendment No. 2, be, and it hereby is, approved.

By the Commission.

**Elizabeth M. Murphy,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66926; File No. SR-Phlx-2012-56]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Phlx's Fee Schedule Governing Routing From Its NASDAQ OMX PSX Facility

May 4, 2012.

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 April 26, 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 modify Phlx's fee schedule governing routing from its NASDAQ OMX PSX ("PSX")

facility. Phlx will implement the change on May 1, 2012. The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, 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 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

Phlx is making a minor modification to the schedule governing fees for use of the routing services of its PSX facility. Specifically, for PSCN<sup>3</sup> and PSTG<sup>4</sup> orders that execute at NASDAQ OMX BX ("BX"), Phlx currently charges \$0.0027 per share executed. However, because BX currently pays a rebate with respect to orders that access liquidity, Phlx is proposing to replace the fee with a credit equal to the \$0.0014 per share executed credit paid by BX. The change

<sup>3</sup> PSCN is a routing option under which orders check the System for available shares and then are sent to destinations on the System routing table. If shares remain unexecuted after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center. PSKP is a form of PSCN in which the entering firm instructs the System to bypass any market centers included in the PSCN System routing table that are not posting Protected Quotations within the meaning of Regulation NMS.

<sup>4</sup> PSTG is a routing option under which orders check the System for available shares and then are sent to destinations on the System routing table. If shares remain unexecuted after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another accessible market center, the System shall route the order to the locking or crossing market center. PSKN is a form of PSTG in which the entering firm instructs the System to bypass any market centers included in the PSTG System routing table that are not posting Protected Quotations within the meaning of Regulation NMS.

is intended to encourage greater use of the routing facilities of PSX.

###### 2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general, and with Sections 6(b)(4) and (5) of the Act,<sup>6</sup> 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 change is reasonable because the proposed credit is equal to the credit paid by BX with respect to orders that it executes. The change is consistent with an equitable allocation of fees because it will bring the economic attributes of using the PSCN and PSTG routing strategies in line with the cost of executing orders at BX. Finally, the change is not unfairly discriminatory because it solely applies to members that opt to use the PSCN and PSTG routing strategies.

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 the PSX routing facility.

##### 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 the PSX routing facility.

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>131</sup> See Response Letter II and Response Letter IV.

<sup>132</sup> See Response Letter II.

<sup>133</sup> See Response Letter IV.

<sup>134</sup> 15 U.S.C. 78s(b)(2).

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

<sup>2</sup> 17 CFR 240.19b-4.

*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.<sup>7</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*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-Phlx-2012-56 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 No. SR-Phlx-2012-56. This file number should be included on the subject line if email 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 Web site 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 available publicly. All submissions should refer to File No. SR-Phlx-2012-56 and should be submitted on or before May 31, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-66925; File No. SR-Phlx-2012-53]

**Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule**

May 4, 2012.

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 April 25, 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 increase the Remote Specialist Fee from \$50 per option allocation per month to \$200 per

option allocation per month. While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on May 1, 2012.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, 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 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 VI. C (Membership Fees) to increase the Exchange's Remote Specialist Fee to better account for and recoup costs associated with maintaining a remote specialist post on the Exchange's trading floor.

Exchange Rule 501, Specialist Appointment, and Exchange Rule 1020, Registration and Functions of Options Specialists, allow qualified Exchange members to act as off-floor specialists in one or more options classes ("Remote Specialist").<sup>3</sup> The Exchange staffs and administers a physical location or post on the trading floor to provide on-floor market participants with a physical location to trade in options classes allocated to a Remote Specialist. This physical location on the Exchange's trading floor requires Exchange operations and regulatory staff to be present at this post. The Exchange incurs operational and regulatory costs to maintain this post and defrays such

<sup>3</sup> See Securities Exchange Act Release No. 64591 (June 8, 2011), 76 FR 33383 (June 2, 2011) (SR-Phlx-2011-79). A Remote Specialist is an options specialist in one or more classes that may not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Rule 501.

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).