

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

In accordance with Section 6(b)(8) of the Act,<sup>9</sup> the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed modification to its ADV calculation is pro-competitive and will result in lower total costs to end users, a positive outcome of competitive markets. Moreover, this proposed rule change conforms the rules of the Exchange with those of other markets that have adopted substantially similar rules for excluding certain days from their ADV calculations. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

### 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>10</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>11</sup> because it establishes a due, fee, or other charge imposed by Topaz.

At any time within 60 days of the filing of such 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 Number SR-Topaz-2013-12 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-Topaz-2013-12*. 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 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-Topaz-2013-12 and should be submitted on or before January 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Kevin M. O'Neill,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71036; File No. SR-Phlx-2013-116]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees Under the PHLX Pricing Schedule for Use of the Carteret Testing Facility Test Environment

December 11, 2013.

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 November 27, 2013, 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 the Substance of the Proposed Rule Change

The Exchange proposes to establish fees under the Pricing Schedule for use of the Testing Facility ("NTF") test environment located in Carteret, New Jersey, which will provide a virtual equities trading environment for testing. The Exchange will begin assessing the fees immediately; however, the installation fee will be waived for subscriptions ordered through March 31, 2014.

The text of the proposed rule change is below. Proposed new language is italicized.

\* \* \* \* \*

#### NASDAQ OMX PHLX LLC<sup>1</sup> PRICING SCHEDULE

ALL BILLING DISPUTES MUST BE SUBMITTED TO THE EXCHANGE IN WRITING AND MUST BE ACCOMPANIED BY SUPPORTING DOCUMENTATION. ALL DISPUTES

<sup>9</sup> 15 U.S.C. 78f(b)(8).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

<sup>12</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.

MUST BE SUBMITTED NO LATER THAN SIXTY (60) DAYS AFTER RECEIPT OF A BILLING INVOICE, EXCEPT FOR DISPUTES CONCERNING NASDAQ OMX PSX FEES, PROPRIETARY DATA FEED FEES AND CO-LOCATION SERVICES FEES. AS OF JANUARY 3, 2011, THE EXCHANGE WILL CALCULATE FEES ON A TRADE DATE BASIS.

<sup>1</sup> PHLX® is a registered trademark of The NASDAQ OMX Group, Inc.

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## VIII. NASDAQ OMX PSX FEES

\* \* \* \* \*

### Testing Facilities<sup>y</sup>†

*The Exchange operates two test environments. One is located in Ashburn, Virginia and the other in Carteret, New Jersey. Unless otherwise noted, reference to the “Testing Facility” applies to both environments.*

(a)–(c) No change.

(d) *Subscribers to the Testing Facility located in Carteret, New Jersey shall pay a fee of \$1,000 per hand-off, per month for connection to the Testing Facility. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. Subscribers shall also pay a one-time installation fee of \$1,000 per hand-off, which is waived for all installations ordered prior to March 31, 2014.*

† Testing Facility fees will be waived for the period ending on the sixth full calendar month following the launch of NASDAQ OMX PSX.

\* \* \* \* \*

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

In its filing with the Commission, NASDAQ 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 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

The Exchange is proposing to amend the Pricing Schedule to establish fees for

connection to a test environment. Specifically, the Exchange proposes a one-time, per hand-off installation fee and a per hand-off monthly fee assessed for direct connectivity to the Testing Facility<sup>3</sup> test environment located in Carteret, New Jersey (“Carteret”), which is also the location of the Exchange’s primary trading System.<sup>4</sup> The Testing Facility provides subscribers with a virtual Exchange System test environment that closely approximates the production environment and on which they may test their automated systems that integrate with the Exchange. For example, the Testing Facility provides subscribers a virtual System environment for testing upcoming Exchange releases and product enhancements, as well as testing firm software prior to implementation.

The Testing Facility is currently housed solely in the Exchange’s Ashburn, Virginia facility (“Ashburn”). In addition to housing the Testing Facility, Ashburn is also an Exchange disaster recovery facility and, as such, some member firms connect to Ashburn for disaster recovery purposes in addition to trading system testing. The Exchange currently assesses fees on members for physical connectivity to Ashburn.<sup>5</sup> In addition, member firms pay fees to third party connectivity providers to provide connection from the member firm to Ashburn. The relatively large distance to between the Ashburn Testing Facility and the majority of NASDAQ OMX firms results in expensive connectivity costs for customers that connect via telecommunication providers. As a consequence, a large majority of member firms do not connect to Ashburn for Testing Facility connectivity. In an effort to improve the utility of the Testing Facility, the Exchange is developing a test environment located in Carteret that will provide the same functionality as the equity trading testing functionality of Ashburn, yet more closely approximate the live PSX<sup>6</sup> trading environment due to its proximity to the System and upgraded hardware. In particular, the Carteret test environment will take advantage of technology upgrades the Exchange is making to its trading-related systems. Unlike the

<sup>3</sup> See <http://www.nasdaqtrader.com/Trader.aspx?id=TestingFacility> for a description of the Testing Facility.

<sup>4</sup> As defined by Rule 3301(a). The Exchange’s System is mirrored at other locations as well.

<sup>5</sup> The Exchange assesses fees for direct connection to Ashburn and fees for co-location connectivity. See Chapters XI and X(b), respectively.

<sup>6</sup> PSX is the Exchange’s equity trading platform.

Ashburn test environment, the Carteret test environment will provide dedicated connectivity to the facility via a cross-connection to either a member firm’s direct connection router in Carteret or its co-location cabinet.<sup>7</sup> This connectivity will also provide connectivity to the trading test environments of the Phlx’s sister exchanges, The NASDAQ Stock Market LLC and NASDAQ OMX BX, Inc., also located in Carteret, New Jersey.<sup>8</sup> The Exchange will ultimately sunset the trading testing functionality at Ashburn, yet retain post trade reporting and ACES functionality at that location.<sup>9</sup>

The Exchange notes that, because the Carteret facility also houses the System, subscribers to the Carteret test environment will no longer need to pay for third party connectivity to Ashburn if the sole purpose for connecting to Ashburn is for trading testing. Such member firms may use an existing connection to Carteret to access the Testing Facility through the use of a dedicated switch port and cross connect within the facility. The Exchange is proposing to assess a fee for connection to the test environment within the Carteret facility. Specifically, the Exchange proposes assessing a \$1,000 per hand-off, per month fee assessed for connectivity to the Carteret test environment for either 1Gb or 10Gb, and a one-time per hand-off installation fee of \$1,000, which will cover the Exchange’s costs incurred in setting up a subscriber in the Carteret facility. The Exchange is proposing to waive the installation fee through March 31, 2014, after which the Exchange will begin phasing out trading testing at the Ashburn test environment.

The Exchange is also making a minor clarifying change to the rule in light of the operation of dual Testing Facility test environments.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>10</sup> in general, and with

<sup>7</sup> Member firms currently use their connectivity to the Ashburn test environment for both testing and disaster recovery purposes.

<sup>8</sup> Similar to colocation connectivity under Chapter X(b) of the Pricing Schedule, firm that is a member of multiple NASDAQ OMX exchanges may access the testing environments of the exchanges of which it is a member through a single connectivity subscription.

<sup>9</sup> The Exchange is not upgrading the hardware used for post trade reporting and ACES testing at this time, but may do so in the future. As noted, the new hardware implemented in the Carteret test environment is part of the larger technology upgrade to the System’s hardware also located in Carteret.

<sup>10</sup> 15 U.S.C. 78f(b).

Sections 6(b)(4) and 6(b)(5) of the Act,<sup>11</sup> in particular. The Exchange believes that proposal is with Section 6(b)(4) of the Act<sup>12</sup> 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. The new fees are equitably allocated because all member firms receive connectivity to the Carteret test environment for the same fee. The Exchange believes that offering subscribers the option to subscribe to either 1Gb or 10Gb for the same fee is an equitable allocation because, unlike the live trading environment, there is no competitive advantage to possessing a higher capacity switch port in the test environment. The test environment is designed to closely mirror the live equity trading environment for PSX participants, including matching the capacity of each participant's live environment switch port. In the absence of any competitive advantage, charging a uniform fee for both 1Gb and 10Gb switch ports is an equitable allocation of fees. The Exchange believes that charging a uniform fee rather than mirroring the fees for the live trading environment<sup>13</sup> will encourage member firms to subscribe to Carteret, and further encourage those that subscribe to use the same hardware as is used by them for connectivity to the live trading environment. The Exchange also believes that waiver of the installation fee for all installations ordered prior to March 31, 2014 is an equitable allocation as it is available to all member firms during the time frame; thus any member firm may avail itself of the free period if it so chooses.

The new fees are reasonable because they are designed to cover the costs the Exchange has incurred in developing and offering the new test environment. The proposed fee should allow the Exchange to recoup these costs and make a profit, while providing member firms with a superior test environment that more closely mirrors that of the live trading environment on the Exchange. The Exchange believes that offering both 1Gb and 10Gb connectivity for the same fee is reasonable as the increased incremental cost it incurs by offering the 10Gb switch port at the lower fee is outweighed by the benefit all subscribers will receive if Carteret participants use hardware identical to what they use in the live trading

environment, hence furthering the goal of creating a test environment that closely mirrors the live trading environment. Waiver of the installation fee for a limited period is reasonable because the Exchange believes such a waiver will attract new users to the test environment, thus ensuring a certain minimum level of monthly revenue to support the facility initially.

The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act<sup>14</sup> 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 and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers. The Exchange does not believe that the proposed fees are unfairly discriminatory to subscribers to 10Gb live trading environment connectivity because, unlike the live trading environment where the capacity of connectivity to the Exchange may confer a competitive advantage to a market participant and therefore price differentiation is appropriate for the benefit conferred, there is no such benefit conferred in the trade test environment. The Exchange does not believe that the proposed fees are unfairly discriminatory among subscribers to the Carteret test facility because all member firms that subscribe to the service will be assessed the same fees. Because the proposed fees do not discriminate between 1Gb and 10Gb connectivity options, member firms are able to subscribe to Carteret without regard to the cost of their switch port capacity election. The Exchange believes that by not discriminating on this basis it will encourage participants to connect to the Carteret test environment in the same manner as they do to the live trading environment, and thereby help Carteret more closely mirror the live trading environment, as discussed above. Providing a more useful and accurate testing environment will serve to improve live trading on the Exchange and the national market system by permitting member firms the ability to accurately test changes prior to implementing them in the live trading environment, thereby reducing the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants. Last, the Exchange does not believe that waiver of the installation fee is unfairly

discriminatory as it is uniformly applied for a limited time, during which any member firm may subscribe.

#### *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. Because the new test environment more closely approximates the live trading environment, subscribing member firms will be able to more accurately test their trading systems and avoid potentially disruptive system failures in the live trading environment.

#### *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 change has become effective pursuant to Section 19(b)(3)(A) of the Act,<sup>15</sup> and paragraph (f)<sup>16</sup> of Rule 19b-4, 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.

### **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 Number SR-Phlx-2013-116 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.

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

<sup>16</sup> 17 CFR 240.19b-4(f).

<sup>11</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> Members are assessed a monthly fees of \$5,000 for 10 Gb and \$1,000 for 1 Gb direct connectivity to PSX. See Chapter XI of the Pricing Schedule.

<sup>14</sup> 15 U.S.C. 78f(b)(5).

All submissions should refer to File Number SR-Phlx-2013-116. 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 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 offices 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-2013-116, and should be submitted on or before January 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

[FR Doc. 2013-29892 Filed 12-16-13; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71039; File No. SR-BX-2013-060]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees

December 11, 2013.

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 December 2, 2013, NASDAQ OMX BX, Inc. ("BX" 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 Chapter XV, Section 2 entitled "BX Options Market—Fees and Rebates" to amend various fees for routing options to away markets.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxbx.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 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 this filing is to amend the Routing Fees in Section 2(3) of Chapter XV in order to recoup costs the Exchange incurs for routing and executing certain orders in equity options to away markets. Today, the Exchange assesses a Non-Customer a \$0.95 per contract Routing Fee to any options exchange. The Customer Routing Fee for option orders routed to The NASDAQ Options Exchange LLC ("NOM") and NASDAQ OMX PHLX LLC ("PHLX") is a \$0.05 per contract Fixed Fee in addition to the actual transaction fee assessed. The Customer Routing Fee for option orders routed to all other options exchanges<sup>3</sup> (excluding

NOM and PHLX) is a fixed fee of \$0.15 per contract ("Fixed Fee") in addition to the actual transaction fee assessed. If the away market pays a rebate, the Routing Fee is \$0.00 per contract.<sup>4</sup>

The Exchange proposes to increase the Customer Routing Fixed Fee of \$0.15 per contract when an option order is routed to all other exchanges to \$0.20 per contract. With respect to the fixed costs, the Exchange incurs a fee when it utilizes Nasdaq Options Services LLC ("NOS"), a member of the Exchange and the Exchange's exclusive order router.<sup>5</sup> Each time NOS routes an order to an away market, NOS is charged a clearing fee<sup>6</sup> and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which fees are passed through to the Exchange. The Exchange currently recoups clearing and transaction charges incurred by the Exchange as well as certain other costs incurred by the Exchange when routing to away markets, such as administrative and technical costs associated with operating NOS, membership fees at away markets, Options Regulatory Fees ("ORFs") and technical costs associated with routing options. The Exchange assesses the actual away market fee at the time that the order was entered into the Exchange's trading system. This transaction fee would be calculated on an order-by-order basis since different away markets charge different amounts.

A new market entrant recently adopted an ORF.<sup>7</sup> The Exchange proposes to increase its Fixed Fee from \$0.15 to \$0.20 per contract to recoup costs associated with increased costs.

###### 2. Statutory Basis

BX believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act<sup>9</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and

Miami International Securities Exchange, LLC ("MIAX"), NYSE Arca, Inc. ("NYSE Arca"), NYSE MKT LLC ("NYSE Amex") and Topaz Exchange, LLC ("Gemini").

<sup>4</sup> For all Routing Fees, the transaction fee will continue to be based on the away market's actual transaction fee or rebate for particular market participants and in the case that there is no transaction fee or rebate assessed by the away market, the Fixed Fee.

<sup>5</sup> See BX Rules at Chapter VI, Section 11(e) (Order Routing).

<sup>6</sup> The Options Clearing Corporation ("OCC") assesses \$0.01 per contract side.

<sup>7</sup> Gemini adopted an ORF of \$0.0010 per contract. See Securities Exchange Act Release No. 70200 (August 14, 2013), 78 FR 51242 (August 20, 2013) (SR-Topaz-2013-01).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4), (5).

<sup>3</sup> Including BATS Exchange, Inc. ("BATS"), BOX Options Exchange LLC ("BOX"), the Chicago Board Options Exchange, Incorporated ("CBOE"), C2 Options Exchange, Incorporated ("C2"), International Securities Exchange, LLC ("ISE"), the

<sup>17</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.