

market data feeds that can be provided over these 1G network connections, as per client request, additional NASDAQ network resources are required to monitor and interface with clients when data spikes and data gapping issues occur. The Exchange has not increased the fees for these services in over six years, while the costs have continued to rise. In addition, the copper connections provide the same services and latency as the fiber connections. NASDAQ proposes to standardize the fees for these connections as it does with the inter-cabinet connectivity fees of this rule.

The Exchange further believes that the proposed fees are reasonable in that NASDAQ's proposed fees are less than those charged by other trading venues for comparable services.<sup>8</sup>

The Exchange also believes the proposed increase in the fees for the 1Gb connectivity to NASDAQ, both fiber and copper, is equitably allocated and non-discriminatory in that all NASDAQ members have the option of selecting the 1Gb connections to NASDAQ and there is no differentiation among members with regard to the fees charged for such costs.

#### *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. Moreover, the Exchange believes that its changes with respect to fees for the 1Gb connectivity will not burden competition because the applicable fees remain competitive with those charged by other venues.

#### *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>9</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 Number SR-NASDAQ-2012-025 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-NASDAQ-2012-025. 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 a.m. and 3 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-NASDAQ-2012-025, and should be submitted on or before March 20, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

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

[FR Doc. 2012-4686 Filed 2-27-12; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-66441; File No. SR-FINRA-2012-011]**

### **Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Mediator Selection**

February 22, 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 February 9, 2012, Financial Industry Regulatory Authority, Inc. ("FINRA") 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 substantially prepared by FINRA. 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**

FINRA is proposing to amend FINRA Rule 14107 of the Code of Mediation Procedure ("Mediation Code") to provide the Director of Mediation ("Mediation Director") with discretion to determine whether parties to a FINRA mediation may select a mediator who is not on FINRA's mediator roster.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA 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, FINRA included statements concerning the purpose of and basis for the

<sup>8</sup> See Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010)(SR-NYSEArca-2010-100) at page 70049. The Exchange's proposed monthly fee of \$1,000 for a 1Gb is less than NYSE's fee of \$5,000 for the same bandwidth connection to the data center.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(a)(ii) [sic].

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 15 U.S.C. 78s(b)(1).

<sup>12</sup> 17 CFR 240.19b-4.

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. FINRA 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

FINRA is proposing to amend the Mediation Code to provide the Mediation Director with discretion to determine whether parties to FINRA mediation may select a mediator who is not on FINRA's mediator roster.

Currently, the Mediation Code permits parties to mediation to select a mediator either from a list of FINRA mediators supplied by the Mediation Director, or from a list or other source of their own choosing. Although parties usually select a FINRA mediator, under the current provision, parties may select a mediator who is not on FINRA's roster. In 1995, when FINRA implemented its mediation program, FINRA determined to permit parties to select non-FINRA mediators to ensure that parties had access to a sufficient number of mediators.

After over 15 years of administering the mediation program, FINRA's mediator roster includes many seasoned securities mediators and selection of a non-FINRA mediator raises concerns for the forum. FINRA staff carefully screens every mediator applicant, and the National Arbitration and Mediation Committee<sup>3</sup> (through its Mediation Subcommittee), reviews and approves each application before FINRA places an applicant on the roster. FINRA staff conducts a background check of approved applicants before placing them on the mediator roster.<sup>4</sup> FINRA

staff elicits evaluations of its mediators from parties and counsel and conducts periodic quality control reviews of FINRA mediators. Non-FINRA mediators are not subject to FINRA's screening process, background check, and periodic evaluation.

If a mediator expresses an interest in applying to be a FINRA mediator, and FINRA's program would benefit by adding the mediator, FINRA staff believes it would be prudent to permit a non-FINRA mediator to serve on a case.<sup>5</sup> However, if a mediator has no interest in applying for FINRA's roster or FINRA believes the mediator is not appropriate for its forum, then the Mediation Director should have the discretion to deny the parties' mediator selection. Therefore, FINRA is proposing to amend Rule 14107(a) to state that a mediator may be selected, with the Mediation Director's approval upon receipt of the parties' joint request, from a list or other source the parties choose. If the Mediation Director rejects the mediator selected, the parties would still be able to select a FINRA approved mediator or a different non-FINRA mediator subject to the same conditions as the rejected mediator, or to mediate their dispute elsewhere.

FINRA Rule 14107(c) provides that a mediator selected or assigned to mediate a matter must comply with FINRA rules relating to disclosures required of arbitrators unless, with respect to a mediator selected from a source other than a list provided by FINRA, the parties elect to waive such disclosure. FINRA is proposing to amend Rule 14107(c) to make clear that the paragraph applies to a non-FINRA mediator who is approved to serve on a FINRA mediation.

FINRA is also proposing two housekeeping amendments to Rule 14107. First, to improve user citation to Rule 14107(a), FINRA is proposing to change the bullets in Rule 14107(a) to numbers. Second, FINRA is proposing to amend Rule 14107(c) to update the citation to Rule 12408 of the Customer Code of Arbitration Procedure. Rule 12408 was re-numbered as part of

compensation (which typically ranges from \$250 to \$500 per hour).

<sup>5</sup> If the SEC approves the proposed rule change, FINRA would require any non-FINRA mediator who serves on a case to pay the \$200 annual fee charged to FINRA mediators who are active on the roster prior to serving on the case, as well as the \$150 mediation case fee. Further, FINRA would require the non-FINRA mediator to complete the application process for inclusion on the mediator roster.

another FINRA proposed rule change and is now identified as Rule 12405.<sup>6</sup>

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>7</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that giving the Mediation Director discretion to determine whether parties may select a mediator who is not on FINRA's mediator roster would protect the quality and integrity of the process for users of FINRA's mediation program.

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

FINRA 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.

*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**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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:

<sup>6</sup> See Securities Exchange Act Release No. 63799 (Jan. 31, 2011), 76 FR 6500 (Feb. 4, 2011) (Order Approving File No. SR-FINRA-2010-053).

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

<sup>3</sup> The National Arbitration and Mediation Committee (NAMC) makes recommendations to FINRA staff regarding recruitment, qualification, training, and evaluation of arbitrators and mediators. The NAMC also makes recommendations on rules, regulations, and procedures that govern the conduct of arbitration, mediation, and other dispute resolution matters before FINRA.

The NAMC members include investor representatives, securities industry professionals and FINRA arbitrators and mediators. A majority of the NAMC members and its chair are public (non-industry) representatives. This diverse composition ensures a neutral approach in the administration of Dispute Resolution's forum, promoting fairness to all parties.

<sup>4</sup> Upon approval to join the roster, FINRA mediators pay an annual \$200 fee to remain active on the roster. Additionally, FINRA deducts \$150 for each FINRA mediation from the mediator's

*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-FINRA-2012-011 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-FINRA-2012-011. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2012-011 and should be submitted on or before March 20, 2012.

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

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

[FR Doc. 2012-4595 Filed 2-27-12; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-66438; File No. SR-Phlx-2012-16]

**Self-Regulatory Organizations;  
NASDAQ OMX PHLX LLC; Notice of  
Filing and Immediate Effectiveness of  
Proposed Rule Change To Modify  
Certain External and Inter-Cabinet  
Connectivity Fees**

February 22, 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 February 14, 2012, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("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 the Substance  
of the Proposed Rule Change**

The Exchange proposes to modify certain external and inter-cabinet connectivity fees. The text of the proposed rule change is available at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, at the Exchange's principal office, 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 Exchange proposes to amend the Phlx Fee Schedule, Section X(b), to reduce fees for low latency connectivity to Toronto and Chicago venues; and to

increase certain fees for other forms of connectivity.

**Low Latency Connectivity**

On December 20, 2011, the Commission approved the Exchange's offering of low latency point-to-point telecommunications connectivity from the Exchange's co-location facility to select financial trading and co-location venues in the metropolitan New York/New Jersey area, Toronto, and Chicago.<sup>3</sup> The enhanced point-to-point connectivity provides the Exchange's co-location customers the opportunity to obtain low latency network connectivity with greater ease and at a competitive price.<sup>4</sup>

The Exchange now proposes a pass-through reduction in the fees for connectivity to Toronto and Chicago venues as follows: (1) For 100MB connectivity to the Toronto area, a reduction of the installation fee from \$5,150 to \$4,850, and a reduction of the per-month connectivity fee from \$4,350 to \$4,100; (2) for 1G connectivity to the Toronto area, a reduction of the installation fee from \$8,200 to \$7,700, and a reduction of the per-month connectivity fee from \$10,450 to \$9,850; (3) for 10G connectivity to the Toronto area, a reduction of the installation fee from \$15,150 to \$14,200, and a reduction of the per-month connectivity fee from \$32,400 to \$28,400; (4) for 100MB connectivity to the Chicago area, a reduction of the installation fee from \$4,850 to \$3,500, and a reduction of the per-month connectivity fee from \$8,350 to \$7,350; (5) for 1G connectivity to the Chicago area, a reduction of the installation fee from \$5,900 to \$4,900, and a reduction of the per-month connectivity fee from \$16,400 to \$12,800; (6) for 10G connectivity to the Chicago area, a reduction of the installation fee from of [sic] \$12,050 to \$10,650, and a reduction of the per-month connectivity fee from \$39,750 to \$26,900.

The reductions in fees are the result of the Exchange obtaining a reduction in the fees charged to the Exchange by the Toronto and Chicago low latency telecommunication carriers. The Exchange is passing along the entire savings of the reduction in fees to the subscribers of the Toronto and Chicago low latency connectivity service.

**Increasing the 1Gb Connectivity Fees**

The Exchange further proposes to raise the 1Gb connectivity fees to The

<sup>3</sup> See Securities Exchange Act Release No. 66011 (December 20, 2011), 76 FR 80999 (December 27, 2011)(SR-Phlx-2011-142).

<sup>4</sup> *Id.* at 80999.

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

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

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