

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63188; File No. SR-Phlx-2010-146]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Prices for Co-Location Services

October 27, 2010.

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 October 25, 2010, 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. Pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> Phlx has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing. 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 is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to modify pricing for co-location services. The text of the proposed rule change is available at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, at the Exchange's principal office, on the Commission's Web site at <http://www.sec.gov>, and at the Commission's Public Reference Room. The Exchange will implement the proposed rule change immediately.

#### 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 Exchange is proposing to modify its fee schedule<sup>5</sup> for co-location services.<sup>6</sup> These modifications are summarized below:

First, as a result of the entry of the Direct Edge and BATS Y exchanges into the public market and the availability of other data feeds, the Exchange is implementing and modifying its telecommunications installation and connectivity fees to accommodate these data linkages for co-located customers. The new fees are: (1) \$125 per-month fee for connectivity to the Arca Best Bid and Offer feed; (2) a \$1,500 per-month fee for connectivity to the new BATS Y exchange; and (3) a one-time fee of \$1000 for the installation of telecommunications connectivity for the Direct Edge exchange, along with a per-month fee of \$2500 for each of its two markets, EDGA and EDGX. In connection with foregoing, the Exchange notes that its installation fee for Direct Edge is equal to that currently charged for installation of SIAC, CME,<sup>7</sup> and BATS connectivity, and that the monthly rates proposed are based on the anticipated bandwidth needed to accommodate a particular fee and are similar to connectivity fees imposed by other vendors.<sup>8</sup>

Next, to provide additional flexibility for customers to select only the equipment they need, the Exchange proposes to separate its current combined \$1750 installation fee for cooling fans and perforated tiles into separate fees of \$1,500 for the fans and \$250 for the tiles.

Further, in the area of providing internet bandwidth to users, the Exchange, responding to decreased demand for lower-level bandwidth options, is eliminating its current 256kb, 500kb, and 1.5Mb options and replacing them with new 3Mb, 4Mb, and 5Mb

options priced at \$700, \$900, and \$1,100 per-month respectively.

Finally, the Exchange is offering various services related to hardware installation, security and storage including: A custom installation fee, which will vary depending upon cost, for installing customized equipment to meet individual customer needs; cabinet caging, a metal security fencing option to protect customer equipment at a monthly rate of \$3,000, with installation fees individually determined by the size and complexity of the equipment to be caged; and, lastly, a monthly cabinet equipment storage fee in the amount of \$500. This storage fee differs from the equipment storage fee of \$100 in the current fee schedule, which relates to temporary storage of equipment by the Exchange itself rather than in a customer controlled cabinet.

As with all the Exchange' [sic] co-location offerings, use of the above products and services is completely voluntary, and all products and services are available on a non-discriminatory basis.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>9</sup> in general, and with Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. In particular, the filing codifies and makes transparent uniform fees imposed for co-location services.

In addition, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>11</sup> in general, and with Section 6(b)(4) of the Act,<sup>12</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 the Exchange operates or controls. In particular, the Exchange notes that the use of co-location services is entirely voluntary

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

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

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

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

<sup>5</sup> This schedule includes modifications made by SR-Phlx-2010-144, filed with the Commission on October 14, 2010.

<sup>6</sup> Co-location services are a suite of hardware, power, telecommunication and other ancillary products and services that allow users to place their trading and communications equipment in close physical proximity to the quoting and execution facilities of the Exchange.

<sup>7</sup> The Exchange is also removing from the fee schedule an incorrect duplicate \$1000 installation fee for CME market data connectivity.

<sup>8</sup> Separate fees for market data are charged independently by individual markets.

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78f.

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

and made available on a non-discriminatory basis.

#### *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.

#### *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>13</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, as amended, 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2010-146 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-Phlx-2010-146. 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 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 available publicly. All submissions should refer to File Number SR-Phlx-2010-146 and should be submitted on or before November 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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**BILLING CODE 8011-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-63189; File No. SR-NASDAQ-2010-135]**

#### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Prices for Co-Location Services**

October 27, 2010.

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 October 15, 2010, The NASDAQ Stock Market LLC ("NASDAQ" 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 NASDAQ. Pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> NASDAQ has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing. 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**

NASDAQ proposes to change to modify [sic] pricing for co-location services NASDAQ will implement the proposed change immediately [sic]. The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com/>, at NASDAQ's principal office, on the Commission's Web site 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, 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 these statements may be examined at the places specified in Item IV below. NASDAQ 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 is proposing to modify its fee schedule<sup>5</sup> for co-location services.<sup>6</sup> These modifications are summarized below:

First, as a result of the entry of the Direct Edge and BATS Y exchanges into the public market and the availability of other data feeds, the Exchange is implementing and modifying its

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

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

<sup>5</sup> This schedule includes modifications made by SR-NASDAQ-2010-133, filed with the Commission on October 14, 2010.

<sup>6</sup> Co-location services are a suite of hardware, power, telecommunication and other ancillary products and services that allow users to place their trading and communications equipment in close physical proximity to the quoting and execution facilities of the Exchange.

<sup>13</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>14</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.