

Exchange believes that the waiver of auction fees is reasonable because it is based on a relatively low threshold, and thus, will help to incentivize Members to register as CLPs and participate in the CLP Program and to stay registered in the CLP Program even if such Members rarely receive the applicable daily quoting incentive.

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

The Exchange does not believe that the proposed rule change imposes any burden on competition.

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

No written comments were solicited or received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and Rule 19b-4(f)(2) thereunder,<sup>9</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective upon filing.

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-BATS-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-BATS-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 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-BATS-2012-011 and should be submitted on or before March 19, 2012.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-66429; File No. SR-Phlx-2012-20]

#### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC To Modify Connectivity Options and Fees**

February 21, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on February 15, 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 and II 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 the Phlx Fee Schedule, Section X(b) regarding Exchange connectivity options and fees.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.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**

The Exchange proposes to modify the Phlx Fee Schedule, Section X(b) regarding connectivity to The NASDAQ Stock Market LLC ("NASDAQ").<sup>3</sup> Specifically, the Exchange proposes to (i) establish a connectivity fee for a 40Gb enhanced bandwidth option; and (ii) provide a waiver of installation fees for upgrades.

##### **Enhanced Bandwidth Option**

The Exchange currently offers various bandwidth options for connectivity to the Exchange, including a 10Gb fiber

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

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

<sup>3</sup> All co-location services are provided by NASDAQ Technology Services LLC.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

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

connection, a 1Gb copper connection, and a 100 MB connection.<sup>4</sup> In keeping with changes in technology, the Exchange now proposes to provide an enhanced bandwidth option to enable its clients [sic] a more efficient connection to the Exchange. The Exchange proposes a 40G [sic] fiber connection with a one-time installation fee of \$1,500, and a per-month connectivity fee of \$15,000. The growth in the size of consolidated and proprietary data feeds has resulted in demand for higher bandwidth. As the number of feeds available and the size of the feeds increases, the bandwidth required for market data feeds steadily rises. The Exchange's proposal provides the co-located client the option to select the bandwidth that is appropriate for the firm's current needs and enables it to add or change services as its needs change.

#### Waiver of Installation Fees

The Exchange also proposes to provide a waiver of the installation fees for client orders of 10Gb and 40Gb fiber connectivity to the Exchange completed between the effectiveness of this proposal and May 31, 2012. The Exchange is providing the waiver to assist its co-located clients in upgrading to higher bandwidth connections to meet the growing needs of co-located clients' business operations.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>5</sup> in general, and with Section 6(b)(4) 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 the Exchange operates or controls. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act<sup>7</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 are [sic] not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

#### Enhanced Bandwidth Option

The Exchange believes that its proposal is consistent with Section

6(b)(4) of the Act 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.

#### Reasonable Fees

The Exchange's proposal for 40Gb fiber connectivity will provide co-location clients the ability to increase data transmission and reduce latency, thereby enhancing their operations. The Exchange believes the proposed fees for 40B [sic] fiber connectivity to the Exchange are reasonable because the fees charged for the higher bandwidth allow the Exchange to cover the hardware, installation, testing and connection costs to maintain and manage the enhanced connection. The proposed fees allow the Exchange to recoup costs associated with providing the 40Gb connection and provide the Exchange a profit while providing customers the possibility of reducing the number of their connections to the Exchange. While no other Exchange currently offers the proposed 40Gb bandwidth connection, the Exchange further believes that the proposed fees are reasonable in that the proposed fees are proportionately less than the fees charged by other trading venues for similar connectivity services.<sup>8</sup>

#### Equitable Allocation

The Exchange also believes the proposed 40Gb fiber fee for connectivity to the Exchange is equitably allocated in that all Exchange members that voluntarily select this service option will be charged the same amount to cover the hardware, installation, testing and connection costs to maintain and manage the enhanced connection. The proposed fees allow the Exchange to recoup costs associated with providing the 40Gb connection and provide the Exchange a profit while providing customers the possibility of reducing the number of their connections to the Exchange. All Exchange members have the option to select this voluntary co-location service.

The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act<sup>9</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 are [sic] not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

#### Removes Impediments and Perfects Mechanism of a Free and Open Market

Furthermore, the enhanced 40Gb fiber connectivity assists the co-located clients in making their network connectivity more efficient, as clients could consolidate the number of connections to the Exchange. Due to the continuous growth of the size of consolidated and proprietary market data feeds transmitted over the Exchange connections, clients need to monitor their connections for data spikes and data gapping issues which can result in potential trading errors, trading losses and may require network resource intervention to resolve. The Exchange believes the enhanced 40Gb connection will remove impediments to and perfect the mechanism of a free and open market and a national market system because the enhanced connectivity option will remove the potential for data spikes and data gapping issues that result from the transmission of the growing size of the consolidated and proprietary market data feeds.

#### Protects Investors and the Public Interest

The Exchange also believes that the reduction in latencies attributed to the enhanced 40Gb connection option further serves to protect investors and the public interest. The reduction in latencies will remove the potential for data spikes and data gapping issues that result from the transmission of the growing size of the consolidated and proprietary market data feeds. Such data spiking and data gapping issues have the potential of disrupting the marketplace which could negatively impact the investors as well as the public interest.

#### Not Unfairly Discriminatory

The Exchange also believes the proposed 40Gb fiber fee for connectivity to the Exchange is not unfairly discriminatory in that all Exchange members have the option of selecting the 40Gb connection to the Exchange, and there is no differentiation among members with regard to the fees charged for this option. Furthermore, the Exchange believes the [sic] providing all Exchange Members the proposed

<sup>4</sup> See Exchange Fee Schedule, Section X(b), Connectivity to Nasdaq.

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

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> NYSE charges \$10,000 per month for 10Gb LCN (Liquidity Center Network) Connection. See [https://usequities.nyx.com/sites/usequities.nyx.com/files/nyse\\_arca\\_marketplace\\_fees\\_1.3.2012.pdf](https://usequities.nyx.com/sites/usequities.nyx.com/files/nyse_arca_marketplace_fees_1.3.2012.pdf), page 13. Furthermore, ISE charges \$4,000 per month for 10Gb Ethernet network connections. See [http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee\\_schedule.pdf](http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee_schedule.pdf), page 9. By contrast, the Exchange is proposing to offer four times the bandwidth for a monthly fee of \$15,000.

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

connectivity option for the proposed fees, which covers the hardware, installation, testing and connection costs to maintain and manage the enhanced connection, promotes just and equitable principles of trade.

#### Waiver of Installation Fees

The Exchange believes that its proposal for the waiver of installation fees is consistent with Section 6(b) of the Act<sup>10</sup> in general, and with Section 6(b)(4) of the Act,<sup>11</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.

#### Reasonable Waiver of Fees

The Exchange believes that its proposal to waive the 10Gb and 40Gb fiber connection installation fees is reasonable because it is being provided to assist its co-located clients in upgrading to higher bandwidth connections to meet the growing needs of the co-located clients' business operations at a time in the industry when the ever-increasing size of consolidated and proprietary data fees are [sic] causing higher demand for larger bandwidth options to reduce potential disruption in the marketplace.

#### Equitably Allocated

The Exchange also believes the proposal to waive the 10Gb and 40Gb fiber connection installation fee is equitably allocated in that all Exchange members that voluntarily select these service options will be afforded the waiver of fees until May 31, 2012. All Exchange members have the option to select these voluntary co-location services.

#### Not Unfairly Discriminatory

The Exchange also believes the proposal to waive the 10Gb and 40Gb fiber connection installation fee is not unfairly discriminatory in that the waiver of fees is provided to all Exchange members that volunteer for these particular service options, and there is no differentiation among members with regard to the waiver of fees for these options.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition 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

No written comments were either solicited or received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will facilitate trading activities by providing members an option to enhance the efficiency of their trading through the 40Gb connectivity. Therefore, the Commission designates the proposal operative upon filing.<sup>14</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.

#### 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>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

#### 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-2012-20 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-2012-20. 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-Phlx-2012-20, and should be submitted on or before March 19, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

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