

## V. 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-FINRA-2013-017 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-2013-017. 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-2013-017 and should be submitted on or before April 4, 2013.

## VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2)<sup>21</sup> of the Act, that the

proposed rule change (SR-FINRA-2013-017) be and hereby is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

Kevin M. O'Neill,  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69076; File No. SR-Phlx-2013-19]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Fee Schedule Governing Order Routing for the NASDAQ OMX PSX Facility

March 8, 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 February 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 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 Substance of the Proposed Rule Change

PHLX proposes to change the fee schedule governing order routing for the NASDAQ OMX PSX facility ("PSX"). The text of the proposed rule change is available at <http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/phlx/>, at PHLX'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 self-regulatory organization 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.

<sup>22</sup> See 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.

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

PHLX is amending its fee schedule governing order routing to establish fees for routing orders using its two new order routing strategies, XDRK and XCST.<sup>3</sup> All of the changes pertain to securities priced at \$1 or more per share.

With respect to XDRK and XCST orders that access liquidity in the PSX System, members will be charged \$0.0028 per share. With respect to XDRK and XCST orders that provide liquidity in the PSX System, under the existing fee schedule, XDRK and XCST orders will be treated no differently than other orders and member organizations will receive a credit of \$0.0028 or \$0.0026 per share executed, depending upon the specifics of the order. With respect to XCST orders that execute on NASDAQ OMX BX, member organizations will receive a credit of \$0.0014 per share executed. With respect to XDRK and XCST orders that execute on a venue other than PSX or NASDAQ OMX BX, there will be no charge or credit.

##### 2. Statutory Basis

PHLX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>4</sup> in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>5</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.

The proposed pricing for XDRK and XCST orders executed on PSX is reasonable because it is the same as the

<sup>3</sup> XDRK orders, pursuant to Rule 3315(a)(1)(A)(viii), check the System for available shares and simultaneously route to certain destinations on the System routing table that are not posting Protected Quotations within the meaning of Regulation NMS (i.e. "dark venues" or "dark pools"). XCST orders, pursuant to Rule 3315(a)(1)(A)(ix), check the System for available shares and simultaneously route to select dark venues and to certain low cost exchanges. See Securities Exchange Act Release No. 68838 (February 6, 2013), 78 FR 9977 (February 12, 2013) (SR-Phlx-2013-08).

<sup>4</sup> 15 U.S.C. 78f.

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

<sup>21</sup> 15 U.S.C. 78s(b)(2).

current pricing for other routed order types executing on PSX. The proposed pricing for XCST orders executed on NASDAQ OMX BX is reasonable because it is the same as the current pricing for other routed order types, namely PSTG, PSCN, PTFY and PCRT orders, executed on BX. For XDRK and XCST orders that execute on a venue other than PSX and BX, there will be no charge or credit, which PHLX believes is reasonable because, by definition, these routing strategies only route to low cost venues. Moreover, the Exchange is seeking to create more interest in PSX and in PSX participants sending routable orders to it, and is therefore willing to forego recouping its costs in order to attract liquidity.

The proposed pricing for XDRK and XCST orders is consistent with an equitable allocation of fees because such pricing shall apply equally to all PSX participants. Finally, the changes are not unfairly discriminatory because they solely apply to members that opt to route XDRK and XCST orders. Moreover, the lower cost of these routing strategies as compared with other existing routing strategies is not unfairly discriminatory because it is consistent with the lower costs associated with routing to the venues that are accessed by the new 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 ensure that the charges for use of the PSX routing facility to route reflect changes in the cost of such routing.

#### *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 routing is extremely competitive, members may readily opt to disfavor PHLX's routing services if they believe that alternatives offer them better value. Moreover, by introducing new routing options and charging fees that PHLX believes to be reasonable, PHLX believes that it is increasing its competitiveness vis-à-vis

other trading venues. For this reason and the reasons discussed in connection with the statutory basis for the proposed rule change, PHLX does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. PHLX also does not believe that the proposal raises issues of competition among its own market participants, because the proposal applies fee and credits equally to all participants.

#### *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 is effective upon filing pursuant to Section 19(b)(3)(A)<sup>6</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>7</sup> thereunder, because it establishes a due, fee, or other charge imposed by Phlx.

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 under Section 19(b)(2)(B)<sup>8</sup> of the Act to determine whether the proposed rule change 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*

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- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2013-19 on the subject line.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

<sup>8</sup> 15 U.S.C. 78s(b)(2)(B).

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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<sup>9</sup> 17 CFR 200.30-3(a)(12).