

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82753; File No. SR–Phlx–2018–17]

### Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Section VI.A. of the Exchange's Pricing Schedule To Clarify the Exchange's Billing Practices With Respect to Permit Fees

February 21, 2018.

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 13, 2018, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“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 Substance of the Proposed Rule Change

The Exchange proposes to amend Section VI.A. of the Exchange's Pricing Schedule to clarify the Exchange's billing practices with respect to permit fees when a member organization must transfer a permit due to the fact that the individual who is designated as the permit holder on the existing permit ceases to be primarily affiliated with the member organization.

The text of the proposed rule change is set forth below. Proposed new language is italicized; deleted text is in brackets.

\* \* \* \* \*

#### NASDAQ PHLX LLC Pricing Schedule

THE EXCHANGE CALCULATES FEES ON A TRADE DATE BASIS. POLICY FOR AMENDING BILLING INFORMATION: CORRECTIONS SUBMITTED AFTER TRADE DATE AND PRIOR TO THE ISSUANCE OF AN INVOICE BY THE EXCHANGE MUST BE SUBMITTED TO THE EXCHANGE IN WRITING AND MUST BE ACCOMPANIED BY SUPPORTING DOCUMENTATION. ONLY MEMBERS MAY SUBMIT TRADE CORRECTIONS. ALL BILLING DISPUTES MUST BE SUBMITTED TO THE EXCHANGE IN WRITING AND MUST BE ACCOMPANIED BY SUPPORTING DOCUMENTATION. ALL DISPUTES

MUST BE SUBMITTED NO LATER THAN SIXTY (60) DAYS AFTER RECEIPT OF A BILLING INVOICE, EXCEPT FOR DISPUTES CONCERNING NASDAQ PSX FEES, PROPRIETARY DATA FEED FEES AND CO-LOCATION SERVICES FEES. THE EXCHANGE CALCULATES FEES ON A TRADE DATE BASIS. ONLY MEMBERS MAY SUBMIT BILLING DISPUTES.

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#### VI. Membership Fees

##### A. Permit and Registration Fees

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• **Permit Fees:** The Exchange has established the date of notification of termination of a permit as the date that permit fee billing will cease. *The Exchange will not bill a member organization for more than one monthly permit fee if the member organization transfers an existing permit to another valid permit holder that is primarily affiliated with the member organization, as set forth in Rules 908(f) and 910, provided that the transfer from one permit holder to another occurs within the same business day.* Additionally, a permit holder will be billed only one monthly permit fee if the holder transfers from one member organization to another previously unrelated member organization as a result of a merger, partial sale or other business combination during a monthly permit fee period in order to avoid double billing in the month the merger or business combination occurred.

\* \* \* \* \*

##### 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 proposal is to clarify the Exchange's practices with respect to the billing of permit fees when a member organization must transfer a permit due to the fact that the

individual who is designated as the permit holder ceases to be primarily affiliated with the member organization.

Rule 910(f)(1) of the Exchange's Rules states that an organization wishing to obtain and maintain its status on the Exchange as a member organization must, among other things, be “duly qualified by a permit holder who is primarily affiliated with such organization for purposes of nominating as provided in the By-Laws.” If the individual who is designated as the permit holder ceases to be primarily affiliated with the member organization, then the member organization's permit terminates. If the member organization wishes to maintain its trading privileges on the Exchange, it must apply to transfer the permit to another affiliated individual as the permit holder, as is permitted by Rule 908(h).<sup>3</sup>

Section VI.A. of the Exchange's Pricing Schedule, which sets forth the fees that the Exchange charges for permits, does not state whether the Exchange will bill a member organization for one or two monthly permit fees in the foregoing scenario. The existing practice of the Exchange is to bill the member organization for only one permit fee, provided that the member organization applies to transfer its permit between permit holders on the same business day. The Exchange believes that this billing practice is fair because the number of permits that the member organization maintains does not change as the result of the transfer. Instead, the transfer occurs due to the Exchange's requirement in its membership rules that the permit holder be an individual who is primarily affiliated with the member organization. The Exchange proposes to codify its billing practice in Section VI.A. of its Pricing Schedule so as to eliminate any ambiguity and confusion on this issue going forward.<sup>4</sup>

###### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the

<sup>3</sup> Rule 908(h) provides that “[a] permit may not be transferred by lease, sale, gift, involuntary transfer, or any other means or as collateral to secure any obligation, except that a permit may be transferred within the permit holder's member organization . . . .”

<sup>4</sup> To avoid being billed for a second monthly permit fee, the Exchange proposes to require member organizations to apply to transfer their permits between permit holders on the same business day as a means of differentiating the pertinent scenario from others in which member organizations apply for new or additional permits long after certain of its other permits terminate.

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

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

<sup>2</sup> 17 CFR 240.19b–4.

objectives of Section 6(b)(5) of the Act,<sup>6</sup> in particular, 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. Specifically, the proposal codifies the Exchange's existing billing practices so as to clarify that the Exchange will bill a member organization for only one monthly permit fee when the organization transfers one of its permits during a month to a new permit holder within its organization if the individual then listed as the permit holder ceases to be primarily affiliated with the organization. This clarification is just and equitable and it protects investors and the public interest because it prohibits the Exchange from double billing when a member organization applies to transfer a permit between affiliated individuals to maintain the validity of that permit in accordance with the Exchange's membership rules. The proposed change will also apply to all member organizations equally.

#### *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. The proposal is not intended to nor will it have any discernable impact on competition. The Exchange merely intends to codify its existing billing practices and to clarify them in a manner that prevents double billing of member organizations for monthly permit fees.

#### *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: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) 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)(iii) of the Act<sup>7</sup> and

subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>8</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>9</sup> normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)<sup>10</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiving the operative delay will allow it to immediately dispel any confusion that may exist among member organizations regarding the Exchange's billing practices for transferred permits. The Exchange also notes that the proposed rule change will ensure that member organizations are billed fairly for their permits and for maintaining their permits in accordance with the Exchange's membership rules. Based on the foregoing, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change as operative upon filing.<sup>11</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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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.

<sup>8</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>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>11</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2018-17 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-Phlx-2018-17. 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 website (<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 website 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2018-17 and should be submitted on or before March 20, 2018.

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

**Eduardo A. Aleman,**

*Assistant Secretary.*

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(iii).