

Response, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act, and the rules and regulations thereunder that are applicable to national securities associations.<sup>31</sup> In particular, the Commission believes the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act,<sup>32</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and in general, to protect investors and the public interest. The proposed rule change is consistent with FINRA's obligations under the Exchange Act to protect investors and the public interest because the proposed rule streamlines the rules governing broker-dealers' confirmation requirements by cross-referencing Exchange Act Rule 10b-10 while maintaining the additional disclosure requirements of NASD IM-2110-6 (*i.e.*, relating to callable securities) and extending the additional NYSE Rule 409(f) requirements (*i.e.*, relating to settlement date) to a broader range of equity securities.

The Commission believes that FINRA has adequately addressed the concerns raised by commenters with respect to the application of the settlement date provisions to mutual fund and variable annuity transactions. In particular, Amendment No. 1 limits the settlement date disclosure requirement to Regulation NMS stock and over-the-counter equity securities subject to the FINRA Rule 6600 series. We also believe that the proposed rule is consistent with the public interest and the protection of investors because information regarding the callable status of a security is generally a material fact for investors. Indeed, callable securities can subject investors to additional reinvestment risk because investors may have less attractive alternatives for reinvesting the proceeds if the issuer calls the security earlier than the investor's intended sell date, even when the security is called away at a premium. In addition, the disclosure of settlement date on a confirmation is important for investors because many of the rights and benefits associated with the beneficial ownership of a security do not confer until settlement date.<sup>33</sup> Finally, we note

<sup>31</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 17c(f).

<sup>32</sup> 15 U.S.C. 78o-3(b)(6).

<sup>33</sup> For example, an investor may not be eligible for dividend payments if the ex-dividend date falls

that the Exchange Act does not require a cost/benefit analysis with respect to proposed self-regulatory organization rules that are filed with, and approved by, the Commission.

#### V. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,<sup>34</sup> for approving the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after publication of Amendment No. 1 in the **Federal Register**. The changes proposed in Amendment No. 1 respond to specific concerns raised by commenters. In particular, Amendment No. 1 will limit the application of the settlement date provisions to transactions in Regulation NMS securities and to over-the-counter equity securities subject to the reporting requirements of the FINRA Rule 6600 series, other than direct participation programs as defined in FINRA Rule 6642.

Accordingly, the Commission finds that good cause exists to approve the proposal, as modified by Amendment No. 1, on an accelerated basis.

#### VI. 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2009-058 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-2009-058. 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

between the transaction date and the settlement date.

<sup>34</sup> 15 U.S.C. 78s(b)(2).

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 filings 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-2009-058 and should be submitted on or before November 17, 2010.

#### VII. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Exchange Act,<sup>35</sup> that the proposed rule change (SR-FINRA-2009-058), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>36</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63158; File No. SR-Phlx-2010-144]

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

October 21, 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 14, 2010, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the

<sup>35</sup> 15 U.S.C. 78s(b)(2).

<sup>36</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.

Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially 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 is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to codify 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

Recently, the Commission approved an initial fee schedule of existing fees for the Exchange's co-location services.<sup>3</sup> This filing seeks to codify additional fees not included in that schedule. These fees are: (1) A one-time \$3,000 fee for users selecting a Phase 3 2x 20 208 volt cabinet power option; (2) a one-time \$200 per shelf fee for additional cabinet shelves within a power cabinet; (3) a one-time \$175 fee per lock for single master key locks that allow customers to use a single key to access their secured equipment; and (4) a one-time per spout fee of \$750 for cable downspouts that gather and secure

cables entering customer equipment. All the foregoing products are provided only upon customer request, and the Exchange notes that use of its co-location products and services is completely voluntary and all are offered 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>4</sup> in general, and with Section 6(b)(5) of the Act,<sup>5</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>6</sup> in general, and with Section 6(b)(4) of the Act,<sup>7</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 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>8</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-2010-144 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-2010-144. 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

<sup>3</sup> Exchange Act Release No. 62395 (June 28, 2010), 75 FR 38584 (July 2, 2010).

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

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

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

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

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-2010-144 and should be submitted on or before November 17, 2010.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63157; File No. SR-BX-2010-068]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Codify Pricing for Co-Location Services

October 21, 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 14, 2010, NASDAQ OMX BX, Inc. ("BX" 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 BX. Pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> BX 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

BX proposes to codify pricing for co-location services. BX will implement the proposed change immediately. The text of the proposed rule change is available at <http://nasdaqomxbx.cchwallstreet.com>, at BX'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, BX 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. BX 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

Recently, the Commission approved an initial fee schedule of existing fees for the Exchange's co-location services.<sup>5</sup> This filing seeks to codify additional fees not included in that schedule. These fees are: (1) A one-time \$3,000 fee for users selecting a Phase 3 2x 20 208 volt cabinet power option; (2) a one-time \$200 per shelf fee for additional cabinet shelves within a power cabinet; (3) a one-time \$175 fee per lock for single master key locks that allow customers to use a single key to access their secured equipment; and (4) a one-time per spout fee of \$750 for cable downspouts that gather and secure cables entering customer equipment. All the foregoing products are provided only upon customer request, and the Exchange notes that use of its co-location products and services is completely voluntary and all are offered 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>6</sup> in general, and with Section 6(b)(5) of

the Act,<sup>7</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>8</sup> in general, and with Section 6(b)(4) of the Act,<sup>9</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 and made available on a non-discriminatory basis.

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

BX 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>10</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

<sup>9</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.

<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> Exchange Act Release No. 62396 (June 28, 2010), 75 FR 38585 (July 2, 2010).

<sup>6</sup> 15 U.S.C. 78f.

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

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).