

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63443; File No. SR-Phlx-2010-170]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees for Direct Access to Exchange Data

December 6, 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 November 24, 2010, NASDAQ OMX PHLX LLC (“Phlx” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, 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 an amendment to the fee schedule to assess “direct access” fees on customers receiving Exchange data within the Exchange’s co-location facility. The rule filing also deletes outdated dated verbiage in the fee schedule to eliminate confusion regarding application of the fees. The Exchange will implement the proposed change on December 1, 2010. The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, 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 Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

Phlx is amending its fee schedule to correct an anomaly that effectively exempts certain customers residing within the Exchange’s co-location facility from paying a monthly fee for direct access to Exchange data, while customers that receive data from an extranet and reside outside the co-location facility are assessed the fee. The inequity is a result of the definition of “direct access” in the fee schedule, which does not by its terms clearly apply to data feeds provided to customers through distributors located within the co-located facility. This rule filing will expand the definition of “direct access” and thereby operate to assess the same fee on all firms that have access to the Exchange’s raw data feeds, whether co-located or not.

The Exchange, like other data providers, assesses fees for its real time market data. In general, a customer that receives a data feed directly from the Exchange is assessed a “direct access” fee. If the customer then distributes the data, it is a “distributor” as defined under the fee schedule and pays an “internal” or “external” distributor fee, depending upon whether it distributes the data internally or externally. A “distributor” is broadly defined to include any entity that distributes the Exchange’s data, whether it receives the data feed directly from the Exchange or indirectly through another entity. Distributor fees apply to distributors located within the Exchange’s co-location facility as well as those outside of it.

The definition of what constitutes “direct access,” however, is limited to several types of communications connections, none of which accurately describe the systems by which data is delivered through distributors located within the co-location facility to their customers also located within the co-location facility. As a result, the distributor’s customers in the co-location facility are not charged a direct access fee, even though they receive the Exchange’s data in its raw data format and have the same low latency data access as non-co-located extranet customers that pay the Direct Access fee.

To correct this disparity, this rule filing will include within the definition of “direct access” the receipt of Exchange data within the co-location facility. It will also delete terms that, while describing various means by

which data is currently accessed, do not clearly or adequately describe all viable technological means of accessing data. More specifically, the terms “Exchange-operated Web site, system or application” are deleted, as they are limiting terms that do not clearly encompass potential technological means of accessing Exchange data. Their elimination does not impact the fees of any customer currently assessed a Direct Access fee, but should preclude the need for future rule changes to the definition of direct access, as the means by which those same customers access data evolve over time.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>3</sup> in general, and with Sections 6(b)(5) of the Act,<sup>4</sup> in particular. 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. The filing permits transparent, uniform fees for direct access to Exchange data for all customers, whether co-located or not.

In addition, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6 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. In particular, the Exchange notes that the amendment corrects an anomaly that effectively exempts certain customers receiving the data from paying a direct access fee.

#### 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, as amended.

<sup>3</sup> 15 U.S.C. 78f.

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

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

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

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

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

*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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>7</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 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-2010-170 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-2010-170. 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-2010-170 and should be submitted on or before January 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

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

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-63442; File No. SR-BX-2010-081]

**Self-Regulatory Organizations; The NASDAQ OMX BX Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees for Direct Access to Exchange Data**

December 6, 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 November 24, 2010, The NASDAQ OMX BX Inc. ("BX" or "The 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. 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 an amendment to the fee schedule to assess "direct access" fees

on customers receiving Exchange data within the Exchange co-location facility. The rule filing also deletes outdated verbiage in the fee schedule to eliminate confusion regarding application of the fees, and corrects a minor typographical error in the rule. BX will implement the proposed change on December 1, 2010. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/>.

**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

BX is amending its fee schedule to correct an anomaly that effectively exempts certain customers residing within the Exchange's co-location facility from paying a monthly fee for direct access to Exchange data, while customers that receive data from an extranet and reside outside the co-location facility are assessed the fee. The inequity is a result of the definition of "direct access" in the fee schedule, which does not by its terms clearly apply to data feeds provided to customers through distributors located within the co-located facility. This rule filing will expand the definition of "direct access" and thereby operate to assess the same fee on all firms that have access to the Exchange's raw data feeds, whether co-located or not. It will also delete terms that are obsolete or generally limiting, given the evolution of technologies and systems through which data may be accessed.

The Exchange, like other data providers, assesses fees for its real time market data. In general, a customer that receives a data feed directly from the Exchange is assessed a "direct access" fee. If the customer then distributes the data, it is a "distributor" as defined

<sup>8</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>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).