

pursuant to the Regulatory Contract, however, BX retains ultimate responsibility for enforcing its rules with respect to NOS, except to the extent they are covered by an agreement with FINRA pursuant to Rule 17d-2 under the Act (“17d-2 Agreement”),¹⁹ in which case FINRA is allocated regulatory responsibility.

- Second, FINRA and BX will monitor NOS for compliance with the Exchange’s trading rules, and will collect and maintain certain related information.²⁰

- Third, FINRA will provide a report to the BOXR’s chief regulatory officer (“CRO”), on a quarterly basis, that: (i) Quantifies all alerts (of which FINRA is aware) that identify NES as a participant that has potentially violated Commission or Exchange rules, and (ii) lists all investigations that identify NES as a participant that has potentially violated Commission or Exchange rules.²¹

- Fourth, the Exchange has adopted Chapter XXXIX, Section 2(c) of the Grandfathered Rules of the Exchange, which requires NASDAQ OMX, as the holding company owning NOS and affiliated with BOX through the ownership of the Exchange, to establish and maintain procedures and internal controls reasonably designed to ensure that NOS does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange’s systems as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange members, in connection with the provision of inbound order routing to the Exchange.²²

- Fifth, NOS was authorized to route NOM Exchange Direct Orders without checking the NOM book, and orders in NOM non-system securities, inbound to the Exchange from NOM for a pilot period of twelve months, which was

subsequently extended to September 15, 2011.²³

The Exchange believes that by meeting the above-listed conditions it has set up mechanisms that protect the independence of the Exchange’s regulatory responsibility with respect to NOS, and has demonstrated that NOS cannot use any information advantage it may have because of its affiliation with the Exchange.²⁴

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.²⁵ Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange’s self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit NOS to provide inbound routing to the Exchange on a permanent basis instead of a pilot basis, subject to the other conditions described above.

The Exchange has proposed four ongoing conditions applicable to NOS’s routing activities, which are enumerated above. The Commission believes that these conditions mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that FINRA’s oversight of NOS,²⁶ combined with FINRA’s monitoring of NOS’s compliance with BOX’s rules and quarterly reporting to the BOXR’s CRO,

²³ See Notice, 76 FR at 43741. See also Securities Exchange Act Release No. 65177 (August 19, 2011) (SR-BX-2011-058). The Commission notes that the original pilot period of twelve months began on August 16, 2009, but was extended several times. See Notice, 76 FR at 43740, n.5.; and SR-BX-2011-058, *supra*.

²⁴ See BOX Routing Pilot Release, 76 FR at 43741.

²⁵ See, e.g., Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR-NASDAQ-2006-006) (order approving Nasdaq’s proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 8, 2008) (SR-Amex-2008-62) (order approving the combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR-ISE-2009-85) (order approving the purchase by ISE Holdings of an ownership interest in DirectEdge Holdings LLC); and 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR-NYSE-2008-120) (order approving a joint venture between NYSE and BIDS Holdings L.P.).

²⁶ This oversight will be accomplished through the Regulatory Contract between the Exchange and FINRA, and, as applicable, a 17d-2 Agreement.

will help to protect the independence of the Exchange’s regulatory responsibilities with respect to NOS. The Commission also believes that Chapter XXXIX, Section 2(c) of the Exchange’s Grandfathered Rules is designed to ensure that NOS cannot use any information advantage it may have because of its affiliation with the Exchange.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,²⁷ that the proposed rule change (SR-BX-2011-045) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011-22221 Filed 8-30-11; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65195; File No. SR-Phlx-2011-117]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Active SQF Port Fee and the Order Entry Port Fee

August 25, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4² thereunder, notice is hereby given that, on August 12, 2011, 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, 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 to amend the Exchange’s Fee Schedule to reflect that the Exchange will not assess a charge for the use of additional Active Specialized Quote Feed (“SQF”) Ports and Order Entry Ports in limited circumstances.

The text of the proposed rule change is available on the Exchange’s Web site

²⁷ 15 U.S.C. 78s(b)(2).

²⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁹ 17 CFR 240.17d-2.

²⁰ Pursuant to the Regulatory Contract, both FINRA and the Exchange will collect and maintain all alerts, complaints, investigations and enforcement actions in which NOS (in its capacity as a facility of Nasdaq routing orders to BOX) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The Exchange and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission’s Office of Compliance Inspections and Examinations. See Notice, 76 FR at 43741, n.10.

²¹ See *id.*

²² See chapter XXXIX, Section 2(c) of the Grandfathered Rules of the Exchange. See also Notice, 76 FR at 43741.

at <http://nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at <http://www.sec.gov>.

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 the proposed rule change is to allow member organizations to utilize additional Active SQF Ports and Order Entry Ports in very limited circumstances, at no additional charge, to accommodate member organizations that are attempting to colocate or otherwise change their technology and require extra ports during these transitions.³ The Exchange is proposing this rule change to offset costs for member organizations that are transitioning technology and require additional ports as back-up ports only while the transition is occurring.

Specifically, the Exchange would not assess the Active SQF Port Fee or the Order Entry Port Fee on member organizations for the use of additional Active SQF Ports and/or Order Entry Ports for ten (10) business days in the following limited circumstances where a member organization is: (i) Colocating to another facility; or (ii) changing technology. The member organization would be required to provide the Exchange with written notification of the date it would commence the transition and the number of additional Active SQF Ports and/or Order Entry Ports that it would require during the transition. The member organization would not be assessed a fee for the use of additional Active SQF Ports and/or

³Members require extra ports during certain technology transitions to ensure that they have functioning ports if they experience difficulties during the transition and need to send messages.

Order Entry Ports for the ten business days. If the member organization required additional ports beyond the ten business day period, it would be assessed the applicable monthly fee for the applicable ports.⁴ The member organization would continue to be assessed Active SQF Port Fees and Order Entry Port Fees for the ports that it requested, and the Exchange provided to it, prior to the transition.⁵

For example, a member organization that was utilizing three Order Entry Ports on a monthly basis, notified the Exchange that it would be updating its technology and required use of four additional Order Entry Ports for a ten day period (from September 2, 2011, through September 15, 2011), and completed its transition in ten business days (by September 15, 2011) would only be assessed the Order Entry Port Fee, as applicable, for three Order Entry Ports. If the same member organization, using the same facts, notified the Exchange that it required use of the four additional Order Entry Ports for more than ten business days (beyond September 15, 2011), the Exchange would assess that member organization the Order Entry Port Fee, as applicable, for all seven ports, the three original ports and the four additional ports.

The Exchange currently has a tiered Active SQF Port Fee as follows:

Number of active SQF ports	Cost per port per month
0-4	\$350
5-18	1,250
19-40	2,350
41 and over	3,000

Active SQF ports refer to ports that receive inbound quotes at any time within that month. SQF is an interface that enables specialists, Streaming Quote Traders ("SQTs") and Remote Streaming Quote Traders ("RSQTs") to connect and send quotes into Phlx XL. Active SQF Port Fees are capped at \$500 per month for member organizations that are (i) Phlx Only Members;⁶ and (ii) have 50 or less SQT assignments

⁴Member organizations would be required to contact the Exchange to retain ports beyond the ten business day period as the Exchange intends to remove additional ports acquired at no cost once the ten day business day period has ended.

⁵A member organization is required to complete a form in the manner prescribed by the Exchange in order to acquire access to Active SQF Ports or Order Entry Ports.

⁶For purposes of the Active SQF Port Fee, a Phlx Only Member is a Phlx member that is not a member or member organization of another national securities exchange.

affiliated with their member organization.⁷

The Exchange currently assesses an Order Entry Port Fee of \$500 per month per mnemonic.⁸ The Order Entry Port Fee is a connectivity fee assessed on member organizations in connection with routing orders to the Exchange via an external order entry port. Member organizations access the Exchange's network through order entry ports. A member organization may have more than one order entry port.

The Exchange proposes to add text to the Fee Schedule at Section VI entitled "Access Service, Cancellation, Membership, Regulatory and Other Fees" to indicate that: There will be no cost for additional Active SQF Ports or Order Entry Ports⁹ acquired for ten business days in connection with a technology transition; notification is required to the Exchange concerning the transition; and the additional ports will be removed from the system at the end of the ten business days.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act¹¹ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that its proposal to not assess an Active SQF Port Fee or Order Entry Port Fee for ten business days where a member organization is transitioning technology is reasonable because the Exchange is seeking to accommodate member organizations by not assessing fees for additional ports related to the technology transition. The Exchange believes that ten days is ample time for member organizations to receive additional services at no cost. The Exchange believes this accommodation will assist member organizations in

⁷Active SQF Port Fees are capped at \$40,000 per month ("Cap") until December 30, 2011 for all member organizations other than those member organizations who meet the requirements of the \$500 per month cap.

⁸The Order Entry Port Fee is waived for mnemonics that are used exclusively for complex orders where one of the components of the complex order is the underlying security. The fee is assessed regardless of usage, and solely on the number of order entry ports assigned to each member organization.

⁹The additional ports refer to the ports that were acquired at no cost for ten business days. As previously mentioned, ports that were utilized by the member organization prior to the transition will continue to be assessed the current fees.

¹⁰15 U.S.C. 78f(b).

¹¹15 U.S.C. 78f(b)(4).

effectively and efficiently transitioning technology and avoiding interruption to their business, which in turn benefits the market place.

The Exchange believes that this proposal is equitable and not unfairly discriminatory because the Exchange is offering the additional ports at no charge to all member organizations that transition technology. These member organizations who would receive the additional ports at no costs are being offered these services because they are in a special circumstance, a transition of technology, and this proposal would prevent additional extraordinary costs related to the transition.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹² 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. Please include File

Number SR-Phlx-2011-117 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-2011-117. 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 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; 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-2011-117 and should be submitted on or before September 21, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Elizabeth M. Murphy,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65197; File No. SR-EDGX-2011-27]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGX Rule 1.5(q)

August 25, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that, on August 19, 2011, EDGX Exchange, Inc. (the "Exchange" or "EDGX") 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 self-regulatory organization. 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

EDGX Exchange, Inc. ("EDGX" or the "Exchange"), proposes to amend EDGX Rule 1.5(q) to change the starting time of the Pre-Opening Session from 8 a.m. Eastern Time ("ET") to 7 a.m. E.T. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange's Web site at <http://www.directedge.com>, at the Exchange's principal office, and at the Public Reference Room of the Commission.

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 self-regulatory organization 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 filing is to amend EDGX Rule 1.5(q) to change the starting

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.