

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58728; File No. SR-Phlx-2008-70)

October 3, 2008

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the NASDAQ OMX PHLX, Inc. Relating to an Order Entry Port Fee

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 September 24, 2008, the Philadelphia Stock Exchange, Inc. ("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 Phlx. 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, pursuant to Section 19(b)(1) of the Act³ and Rule 19b-4 thereunder,⁴ proposes to adopt a monthly order entry port fee of \$250 assessed per member organization order entry mnemonic.⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

⁵ For purposes of this proposal, order entry mnemonics are codes that identify member organization order entry ports. Member organizations send order flow to the Exchange via these order entry ports. A member organization may have more than one order entry port. To clarify, order entry mnemonics would not include those mnemonics entered through internal Exchange applications, such as the Floor Broker Management System, because the proposed fee is intended to help cover the costs of establishing and maintaining connectivity to the Exchange through external order entry ports. (See Exchange Rule 1063).

While changes to the Exchange's fee schedule pursuant to this proposal are effective upon filing, the Exchange has designated the proposed monthly \$250 order entry port fee to be implemented beginning October 1, 2008.

The text of the proposed rule change is available on the Exchange's Website at http://www.phlx.com/regulatory/reg_rulefilings.aspx.

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 adopting the proposed order entry port fee is to establish a connectivity fee in connection with routing orders to the Exchange. Member organizations access the Exchange's network through these order entry ports. Currently, member organizations do not pay for this service.⁶ The Exchange believes that it is appropriate for members to pay a uniform monthly fee to support the infrastructure associated with market access.

⁶ The proposed order entry port fee is different than the "SQF Port Fee and Corresponding Credit" that appears on Appendix A of the Exchange's fee schedule. "SQF" stands for specialized quote feed and is a proprietary quoting system that allows specialists, streaming quote traders and remote streaming quote traders to connect and send quotes into Phlx XL, bypassing the Exchange's Auto-Quote System. See Exchange Rule 1080, Commentary .01(b). Thus, the proposed order entry port fee would be assessed in connection with sending orders to

The \$250 per month order entry port fee would be assessed per member organization order entry mnemonic. The \$250 per month order entry port fee would be assessed on any order entry mnemonic that was active during that billing month.⁷

The proposed monthly \$250 order entry port fee is scheduled to be implemented beginning October 1, 2008.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(4) of the Act⁹ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange member organizations. The Exchange believes that the proposed order entry port fee is reasonable and should allow member organizations to connect to the Exchange without being unduly financially burdensome. The Exchange believes that the proposal is an equitable allocation of reasonable fees among member organizations because the proposed order entry port fee would be assessed on those member organizations who send orders to the Exchange through these external order entry ports.

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

the Exchange, while the SQF port fee is assessed in connection with sending quotes to the Exchange.

⁷ For purposes of this proposal, an order entry mnemonic would be considered active if a member organization sends at least one order to the Exchange using that order entry mnemonic during the applicable billing month.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

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 Act¹⁰ and paragraph (f)(2) of Rule 19b-4¹¹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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.

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-2008-70 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission,

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2008-70. 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 inspection and copying 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 will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-2008-70 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Florence E. Harmon
Acting Secretary

¹² 17 CFR 200.30-3(a)(12).