

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–FINRA–2013–001 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–2013–001. 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 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 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–2013–001 and should be submitted on or before February 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Kevin M. O’Neill,**

*Deputy Secretary.*

[FR Doc. 2013–00969 Filed 1–17–13; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34–68648; File No. SR–Phlx–2013–02]**

**Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reduce the Fees Assessed for Certain Co-location Services**

January 14, 2013.

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 January 2, 2013, NASDAQ OMX PHLX LLC (“PHLX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a 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 the Substance of the Proposed Rule Change**

The Exchange proposes to reduce the fees assessed under Section X(a) of the PHLX Fee Schedule for certain co-location services. PHLX is proposing that the implementation date of the proposed rule change will be January 2,

2013. The text of the proposed rule change is available at <http://nasdaqomxphlx.cchwallstreet.com>, at PHLX’s principal office, 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 those statements may be examined at the places specified in Item III [sic] below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Section X(a) of the PHLX Fee Schedule to reduce the monthly recurring cabinet (“MRC”) fees assessed for the installation of certain new co-location cabinets. The reduced MRC fees will apply to new cabinets ordered by customers using the CoLo Console<sup>3</sup> during the months of January and February of 2013, provided that such cabinets are fully operational by May 31, 2013. The reduced fee shall apply to any cabinet that increases the number of dedicated cabinets beyond the total number dedicated to that customer as of December 31, 2012 (“Baseline Number”), for so long as the total number of dedicated cabinets exceeds that customer’s Baseline Number. The reduced MRC fees will apply for a period of 24 months from the date the new cabinet becomes fully operational under Phlx rules, provided that the customer’s total number of cabinets continues to exceed the Baseline Number.

The Exchange proposes to reduce the applicable fees as follows:

Cabinet type	Current ongoing monthly fee	Reduced ongoing monthly fee
Low Density .....	\$4,000	\$2,000
Medium Density .....	5,000	2,500
Medium-High Density .....	6,000	3,500

<sup>16</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> The “CoLo Console” is Phlx’s web-based ordering tool, and it is the exclusive means for ordering colocation services.

Cabinet type	Current ongoing monthly fee	Reduced ongoing monthly fee
High Density .....	7,000	4,500
Super High Density .....	13,000	8,000

New cabinets shall be assessed standard installation fees.

Phlx proposes to reduce colocation cabinet fees by different amounts to maintain a sliding scale of lower fees for

higher density cabinets on a per kilowatt basis. The chart below reflects this scale:

Cabinet type	Max kW	Reduced MRC fee	Discount %	Fee per kW
Low Density .....	2.88	\$2,000	50.00	\$694.44
Medium Density .....	5	2,500	50.00	500.00
Medium-High Density .....	7	3,500	41.67	500.00
High Density .....	10	4,500	35.71	450.00
Super High Density .....	17	8,000	38.46	470.59

## 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)(4) of the Act,<sup>5</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. The proposed reduced fee will be assessed equally on all customers that place an order for a new cabinet during the designated period. The proposed amendments will provide an incentive for customers to avail themselves of the designated co-location services.

Phlx's proposal to reduce fees by differing amounts is fair and equitable because it reflects the economic efficiency of higher density colocation cabinets. First, the underlying costs for co-location cabinets consists of certain fixed costs for the data center facility (space, amortization, etc.) and certain variable costs (electrical power utilized and cooling required). The variable costs are in total higher for the higher power density cabinets, as reflected in their higher current prices. Second, the higher density cabinets were introduced later than the lower density cabinets (High Density cabinet was introduced in 2009 and the Super High Density cabinet was introduced in 2011). Due to the competitive pressures that existed in 2011 and 2012, the fees for Super High Density cabinets were further reduced in 2012 to be more comparable with the lower fee per kilowatt of the High Density cabinet. As a result of these already-reduced rates on higher density

cabinets, Phlx has greater flexibility to discount fees for lower density cabinets, on a per kilowatt basis.

Phlx operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, Phlx must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Phlx believes that the proposed rule change reflects this competitive environment because it is designed to ensure that the charges for use of the Phlx colocation facility remain competitive.

### 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. To the contrary, the Exchange's voluntary fee reduction is a response to increased competition for colocation services by other exchanges and trading venues. As more venues offer colocation services, competition drives costs lower. The Exchange, in order to retain existing orders and to attract new orders, is forced to offer a lower effective rate for aggregate cabinet demand. This competition benefits users, members, and investors by lowering the average aggregate cost of trading on the Exchange.

### 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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>6</sup> PHLX has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2013-02 on the subject line.

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

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

*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-2013-02. 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 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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-2013-02, and should be submitted on or before February 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68633; File No. SR-FINRA-2013-005]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Interim Form for Funding Portals Under the Jumpstart Our Business Startups Act

January 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 10, 2013, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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

FINRA is proposing to adopt the Interim Form for Funding Portals ("IFFP"). The IFFP is an online form for prospective intermediaries that intend to apply for membership with FINRA as funding portals ("prospective funding portal members") pursuant to Title III of the Jumpstart Our Business Startups Act (the "JOBS Act"). FINRA is inviting prospective funding portal members, on a voluntary basis, to submit information to FINRA using the IFFP until FINRA and the SEC adopt final rules with respect to registered funding portals.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA 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 JOBS Act<sup>4</sup> is aimed at increasing American job creation and economic growth and, in furtherance of that aim, contains provisions relating to securities offered or sold pursuant to crowdfunding.<sup>5</sup> Intermediaries in transactions involving the offer or sale of securities for the account of others pursuant to the crowdfunding exemption must, among other things, register with the SEC as a funding portal<sup>6</sup> or broker and must register with an applicable self-regulatory organization.<sup>7</sup>

The SEC is considering rules to require registration of funding portals and to implement the provisions of the JOBS Act.<sup>8</sup> FINRA is developing rules that would apply to SEC-registered funding portals that become FINRA members, although the precise nature of FINRA's rules will depend upon the rules that the SEC adopts.<sup>9</sup> Pending the implementation of these FINRA and SEC rules, FINRA invites prospective funding portal members, on a voluntary basis, to submit information to FINRA using the proposed IFFP.<sup>10</sup> The

<sup>4</sup> Public Law 112-106, 126 Stat. 306 (2012).

<sup>5</sup> In general, crowdfunding refers to the use of the Internet by small businesses to raise capital through limited investments from a large number of investors. The JOBS Act creates an exemption (the "crowdfunding exemption") from registration under the Securities Act of 1933 ("Securities Act") for securities offered by issuers pursuant to Title III of the JOBS Act. See Securities Act Section 4(a)(6) (15 U.S.C. 77d(a)(6)).

<sup>6</sup> The term "funding portal" is defined under Exchange Act Section 3(a)(80) (15 U.S.C. 78c(80)).

<sup>7</sup> See Securities Act Section 4A (15 U.S.C. 77d-1).

<sup>8</sup> See, e.g., Securities Act Release No. 9354 (August 29, 2012), 77 FR 54464 (September 5, 2012) (Proposed Rule: Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings); see also Spotlight: Jumpstart Our Business Startups Act, available at: <http://www.sec.gov/spotlight/jobs-act.shtml>.

<sup>9</sup> See *Regulatory Notice* 12-34 (July 2012).

<sup>10</sup> The IFFP is attached to this filing as Exhibit 3 and is available on the FINRA Web site at: [www.finra.org/fundingportals](http://www.finra.org/fundingportals). Prospective funding portal members would submit their information via a dedicated FINRA email address using the online version of the IFFP on the FINRA Web site.

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>7</sup> 17 CFR 200.30-3(a)(12).