

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 20      SECURITIES AND EXCHANGE COMMISSION      File No.\* SR - 2013 - \* 122  
 WASHINGTON, D.C. 20549      Form 19b-4      Amendment No. (req. for Amendments \*)

Filing by NASDAQ OMX PHLX LLC.  
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) <input type="checkbox"/>	Section 806(e)(2) <input type="checkbox"/>	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) <input type="checkbox"/>
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Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
 Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).  
 A proposed rule change to further describe the Application of Fees assessed for connectivity to the Carteret Test environment under Chapter VIII.

**Contact Information**  
 Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Sean      Last Name \* Bennett  
 Title \* Associate General Counsel  
 E-mail \* sean.bennett@nasdaqomx.com  
 Telephone \* (301) 978-8499      Fax (301) 978-8472

**Signature**  
 Pursuant to the requirements of the Securities Exchange Act of 1934,  
 has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.  
 (Title \*)  
 Date 12/11/2013      Executive Vice President and General Counsel  
 By Edward S. Knight  
 (Name \*)  
 NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.  
 Persona Not Validated - 1383935917270,

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> NASDAQ OMX PHLX LLC (“Phlx” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to further describe the application of fees assessed pursuant to subparagraph (d) of “Testing Facilities” under Chapter VIII of the Exchange’s Pricing Schedule. The Exchange is also eliminating outdated text relating to the applicability of the fees assessed for use and connectivity to the Testing Facilities.

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

\* \* \* \* \*

**NASDAQ OMX PHLX LLC<sup>1</sup> PRICING SCHEDULE**

ALL BILLING DISPUTES MUST BE SUBMITTED TO THE EXCHANGE IN WRITING AND MUST BE ACCOMPANIED BY SUPPORTING DOCUMENTATION. ALL DISPUTES MUST BE SUBMITTED NO LATER THAN SIXTY (60) DAYS AFTER RECEIPT OF A BILLING INVOICE, EXCEPT FOR DISPUTES CONCERNING NASDAQ OMX PSX FEES, PROPRIETARY DATA FEED FEES AND CO-LOCATION SERVICES FEES. AS OF JANUARY 3, 2011, THE EXCHANGE WILL CALCULATE FEES ON A TRADE DATE BASIS.

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<sup>1</sup> PHLX® is a registered trademark of The NASDAQ OMX Group, Inc.

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VIII. NASDAQ OMX PSX FEES

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

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

**Testing Facilities**[†]

The Exchange operates two test environments. One is located in Ashburn, Virginia and the other in Carteret, New Jersey. Unless otherwise noted, reference to the “Testing Facility” applies to both environments.

(a) – (c) No change.

(d) Subscribers to the Testing Facility located in Carteret, New Jersey shall pay a fee of \$1,000 per hand-off, per month for connection to the Testing Facility. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. Subscribers shall also pay a one-time installation fee of \$1,000 per hand-off, which is waived for all installations ordered prior to March 31, 2014.

The connectivity provided under this rule also provides connectivity to the other test environments of NASDAQ OMX BX, Inc. and The NASDAQ Stock Market LLC.

[† Testing Facility fees will be waived for the period ending on the sixth full calendar month following the launch of NASDAQ OMX PSX.]

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange on July 17, 2013. No other action by the Exchange is necessary for the filing of the rule change.

Questions regarding this rule filing may be directed to T. Sean Bennett, Associate General Counsel, The NASDAQ OMX Group, Inc., at (301) 978-8499 (telephone) or (301) 978-8472 (fax).

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

The Exchange is proposing to amend the Phlx Pricing Schedule to more fully describe the application of the newly-adopted fee<sup>3</sup> assessed for direct connectivity to the Testing Facility<sup>4</sup> test environment located in Carteret, New Jersey ("Carteret"). The Testing Facility provides subscribers with a virtual Exchange System test environment that closely approximates the production environment and on which they may test their automated systems that integrate with the Exchange. The Exchange recently developed a test environment located in Carteret that provides NASDAQ OMX PSX ("PSX")<sup>5</sup> equity trade testing functionality. The new test environment was developed together with equity test environments of the Phlx's sister exchanges, NASDAQ OMX BX, Inc. and The NASDAQ Stock Market LLC, also located at Carteret, New Jersey (collectively with PSX, the "Equity Markets").

In its filing with the Commission, the Exchange explained that a firm that is a member of more than one of the Equity Markets may access the testing environments of each of the Equity Markets of which it is a member through a single connectivity subscription under the new Carteret connectivity rule.<sup>6</sup> The Exchange notes that each of the Equity Markets has identical installation and hand-off fees for Carteret connectivity

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<sup>3</sup> See PHLX-2013-116 (not yet published) (<http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/pdf/phlx-filings/2013/SR-Phlx-2013-116.pdf>).

<sup>4</sup> See <http://www.nasdaqtrader.com/Trader.aspx?id=TestingFacility> for a description of the Testing Facility.

<sup>5</sup> PSX is the Phlx equity market.

<sup>6</sup> Supra note 3.

and these fees relate to the physical connection to the hardware infrastructure that houses all three test environments of the Equity Markets. Members of the Equity Markets must separately pay port fees to connect to the individual test environments of the Equity Markets of which it is a member within the hardware infrastructure housing them.<sup>7</sup>

Therefore, a firm that is a member of multiple Equity Markets is not charged the Carteret connectivity fees for a hand-off under each of the identical rules of such markets, but rather is assessed a single market's Carteret connectivity fees. Consequently, a member organization of PSX using the Carteret test environment may be assessed the connectivity fee under the rules of the Equity Markets of which it is a member, yet pay the PSX port fee to connect to the PSX test environment. Similarly, a member organization may subscribe to Carteret connectivity under the Phlx Pricing Schedule and not have an obligation to pay the same fee under the rules of the other Equity Markets of which it is a member, but have an obligation to pay those markets' port fees. Accordingly, the Exchange is hereby adding rule text to Carteret connectivity fee rule to reflect that the connectivity provided by the rule also provides access to the test environments of NASDAQ OMX BX, Inc. and The NASDAQ Stock Market LLC.<sup>8</sup>

The Exchange is also eliminating text from the Testing Facilities rule that relates to a general waiver of fees under the rule, which was effective with the launch of PSX and ended six months thereafter. PSX launched in October 2010,<sup>9</sup> and consequently the

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<sup>7</sup> Phlx Pricing Schedule, Chapter VIII Testing Facilities subparagraph (a), NASDAQ Rule 7030(d)(1)(B), and BX Rule 7030(d)(1).

<sup>8</sup> The Exchange notes that the other Equity Markets have identical language concerning the other Equity Markets' test environment connectivity provided by their Carteret connectivity fees.

<sup>9</sup> See <http://www.nasdaqtrader.com/Tradernews.aspx?id=eta2010-56>.

fee waiver period has expired. Accordingly, the Exchange is removing the text relating to this fee waiver period.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>10</sup> in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>11</sup> in particular. The Exchange believes that proposal is with Section 6(b)(4) of the Act<sup>12</sup> 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 new fees are reasonable and equitably allocated because all member organizations receive a single hand-off to the hardware infrastructure that houses the Carteret test environments for the same fee, which is not duplicated based on the number of Equity Markets of which a firm is a member. As discussed above, the other Equity Markets have identical rules concerning Carteret connectivity, which, like the Exchange rule, allow the Equity Markets to recapture the costs associated with purchasing, installing, and maintaining the hand-off hardware. The Exchange believes it is reasonable to assess the Carteret connectivity fees of a single Equity Market as it will allow for the recapture of these costs, yet also avoid assessing duplicative fees when such costs are not incurred by the other Equity Markets. The Exchange notes that members of the Equity Markets must pay fees under the rules of each of the Equity Markets for port connections within the hardware infrastructure that contains the test environments to gain

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<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

access to each of the test environments.<sup>13</sup> Accordingly, the Exchange believes that the application of the hand-off fees is reasonably and equitably allocated.

The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act<sup>14</sup> in that it is designed to promote just and equitable principles of trade, 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 and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers. The Exchange does not believe that assessing a single fee for connectivity to the hardware that houses the Equity Markets' test environments is unfairly discriminatory to members of only one of the Equity Markets because the fees provide the identical service, namely physical connection to the hardware infrastructure that houses the test environments. There is no competitive advantage provided to members of multiple Equity Markets because the fees are uniform and the connectivity provided is identical. Moreover, the Exchange believes that assessing the Carteret connectivity fees under the rules of only one of the Equity Markets will keep fees low, thereby encouraging participants to connect to the Carteret test environment, which, in turn, will help Carteret more closely mirror the live trading environment. Providing a more useful and accurate testing environment will serve to improve live trading on the Exchange and the national market system by offering member organizations the ability to accurately test changes prior to implementing them in the live trading environment, thereby reducing the likelihood of a potentially disruptive system failure in the live trading environment,

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<sup>13</sup> Supra note 7.

<sup>14</sup> 15 U.S.C. 78f(b)(5).



which has the potential to affect all market participants. Last, the Exchange believes elimination of the rule text under the Testing Facilities rule that refers to an expired period will serve to avoid investor confusion, which may be caused by continuing to include an expired fee waiver in the rules of the Exchange.

4. 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. Because all members of the Equity Markets are provided with the identical hand-off, regardless of the Equity Markets rule under which the fee is assessed, and because such a connection does not impart any competitive advantage to firms that are members of more than one of the Equity Markets, Phlx does not believe that assessing the fees only once is impactful to competition in any respect.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>15</sup> the Exchange 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.

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

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advanced Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-Phlx-2013-122

December \_\_, 2013

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Further Describe the Application of Fees Assessed for Connectivity to the Carteret Test Environment under Chapter VIII of the Exchange's Pricing Schedule

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 December 11, NASDAQ OMX PHLX LLC ("Phlx" or the "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 Substance of the Proposed Rule Change

The Exchange proposes a rule change to further describe the application of fees assessed pursuant to subparagraph (d) of "Testing Facilities" under Chapter VIII of the Exchange's Pricing Schedule. The Exchange is also eliminating outdated text relating to the applicability of the fees assessed for use and connectivity to the Testing Facilities.

The text of the proposed rule change is below. Proposed new language is underlined.

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

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

**NASDAQ OMX PHLX LLC<sup>1</sup> PRICING SCHEDULE**

ALL BILLING DISPUTES MUST BE SUBMITTED TO THE EXCHANGE IN WRITING AND MUST BE ACCOMPANIED BY SUPPORTING DOCUMENTATION. ALL DISPUTES MUST BE SUBMITTED NO LATER THAN SIXTY (60) DAYS AFTER RECEIPT OF A BILLING INVOICE, EXCEPT FOR DISPUTES CONCERNING NASDAQ OMX PSX FEES, PROPRIETARY DATA FEED FEES AND CO-LOCATION SERVICES FEES. AS OF JANUARY 3, 2011, THE EXCHANGE WILL CALCULATE FEES ON A TRADE DATE BASIS.

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<sup>1</sup> PHLX® is a registered trademark of The NASDAQ OMX Group, Inc.

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**VIII. NASDAQ OMX PSX FEES**

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**Testing Facilities[†]**

The Exchange operates two test environments. One is located in Ashburn, Virginia and the other in Carteret, New Jersey. Unless otherwise noted, reference to the “Testing Facility” applies to both environments.

(a) – (c) No change.

(d) Subscribers to the Testing Facility located in Carteret, New Jersey shall pay a fee of \$1,000 per hand-off, per month for connection to the Testing Facility. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. Subscribers shall also pay a one-time installation fee of \$1,000 per hand-off, which is waived for all installations ordered prior to March 31, 2014.

The connectivity provided under this rule also provides connectivity to the other test environments of NASDAQ OMX BX, Inc. and The NASDAQ Stock Market LLC.

[† Testing Facility fees will be waived for the period ending on the sixth full calendar month following the launch of NASDAQ OMX PSX.]

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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 IV 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 is proposing to amend the Phlx Pricing Schedule to more fully describe the application of the newly-adopted fee<sup>3</sup> assessed for direct connectivity to the Testing Facility<sup>4</sup> test environment located in Carteret, New Jersey ("Carteret"). The Testing Facility provides subscribers with a virtual Exchange System test environment that closely approximates the production environment and on which they may test their automated systems that integrate with the Exchange. The Exchange recently developed a

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<sup>3</sup> See PHLX-2013-116 (not yet published) (<http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/pdf/phlx-filings/2013/SR-Phlx-2013-116.pdf>).

<sup>4</sup> See <http://www.nasdaqtrader.com/Trader.aspx?id=TestingFacility> for a description of the Testing Facility.

test environment located in Carteret that provides NASDAQ OMX PSX (“PSX”)<sup>5</sup> equity trade testing functionality. The new test environment was developed together with equity test environments of the Phlx’s sister exchanges, NASDAQ OMX BX, Inc. and The NASDAQ Stock Market LLC, also located at Carteret, New Jersey (collectively with PSX, the “Equity Markets”).

In its filing with the Commission, the Exchange explained that a firm that is a member of more than one of the Equity Markets may access the testing environments of each of the Equity Markets of which it is a member through a single connectivity subscription under the new Carteret connectivity rule.<sup>6</sup> The Exchange notes that each of the Equity Markets has identical installation and hand-off fees for Carteret connectivity and these fees relate to the physical connection to the hardware infrastructure that houses all three test environments of the Equity Markets. Members of the Equity Markets must separately pay port fees to connect to the individual test environments of the Equity Markets of which it is a member within the hardware infrastructure housing them.<sup>7</sup> Therefore, a firm that is a member of multiple Equity Markets is not charged the Carteret connectivity fees for a hand-off under each of the identical rules of such markets, but rather is assessed a single market’s Carteret connectivity fees. Consequently, a member organization of PSX using the Carteret test environment may be assessed the connectivity fee under the rules of the Equity Markets of which it is a member, yet pay the PSX port fee to connect to the PSX test environment. Similarly, a member organization may

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<sup>5</sup> PSX is the Phlx equity market.

<sup>6</sup> Supra note 3.

<sup>7</sup> Phlx Pricing Schedule, Chapter VIII Testing Facilities subparagraph (a), NASDAQ Rule 7030(d)(1)(B), and BX Rule 7030(d)(1).

subscribe to Carteret connectivity under the Phlx Pricing Schedule and not have an obligation to pay the same fee under the rules of the other Equity Markets of which it is a member, but have an obligation to pay those markets' port fees. Accordingly, the Exchange is hereby adding rule text to Carteret connectivity fee rule to reflect that the connectivity provided by the rule also provides access to the test environments of NASDAQ OMX BX, Inc. and The NASDAQ Stock Market LLC.<sup>8</sup>

The Exchange is also eliminating text from the Testing Facilities rule that relates to a general waiver of fees under the rule, which was effective with the launch of PSX and ended six months thereafter. PSX launched in October 2010,<sup>9</sup> and consequently the fee waiver period has expired. Accordingly, the Exchange is removing the text relating to this fee waiver period.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>10</sup> in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>11</sup> in particular. The Exchange believes that proposal is with Section 6(b)(4) of the Act<sup>12</sup> 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

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<sup>8</sup> The Exchange notes that the other Equity Markets have identical language concerning the other Equity Markets' test environment connectivity provided by their Carteret connectivity fees.

<sup>9</sup> See <http://www.nasdaqtrader.com/Tradernews.aspx?id=eta2010-56>.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

controls. The new fees are reasonable and equitably allocated because all member organizations receive a single hand-off to the hardware infrastructure that houses the Carteret test environments for the same fee, which is not duplicated based on the number of Equity Markets of which a firm is a member. As discussed above, the other Equity Markets have identical rules concerning Carteret connectivity, which, like the Exchange rule, allow the Equity Markets to recapture the costs associated with purchasing, installing, and maintaining the hand-off hardware. The Exchange believes it is reasonable to assess the Carteret connectivity fees of a single Equity Market as it will allow for the recapture of these costs, yet also avoid assessing duplicative fees when such costs are not incurred by the other Equity Markets. The Exchange notes that members of the Equity Markets must pay fees under the rules of each of the Equity Markets for port connections within the hardware infrastructure that contains the test environments to gain access to each of the test environments.<sup>13</sup> Accordingly, the Exchange believes that the application of the hand-off fees is reasonably and equitably allocated.

The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act<sup>14</sup> in that it is designed to promote just and equitable principles of trade, 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 and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers. The Exchange does not believe that assessing a single fee for connectivity to the hardware that houses the Equity Markets' test environments is unfairly discriminatory to

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<sup>13</sup> Supra note 7.

<sup>14</sup> 15 U.S.C. 78f(b)(5).



members of only one of the Equity Markets because the fees provide the identical service, namely physical connection to the hardware infrastructure that houses the test environments. There is no competitive advantage provided to members of multiple Equity Markets because the fees are uniform and the connectivity provided is identical. Moreover, the Exchange believes that assessing the Carteret connectivity fees under the rules of only one of the Equity Markets will keep fees low, thereby encouraging participants to connect to the Carteret test environment, which, in turn, will help Carteret more closely mirror the live trading environment. Providing a more useful and accurate testing environment will serve to improve live trading on the Exchange and the national market system by offering member organizations the ability to accurately test changes prior to implementing them in the live trading environment, thereby reducing the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants. Last, the Exchange believes elimination of the rule text under the Testing Facilities rule that refers to an expired period will serve to avoid investor confusion, which may be caused by continuing to include an expired fee waiver in the rules of the Exchange.

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. Because all members of the Equity Markets are provided with the identical hand-off, regardless of the Equity Markets rule under which the fee is assessed, and because such a connection does not impart any competitive advantage to firms that are members of more than one of the Equity Markets, Phlx does not believe that assessing the fees only once is impactful to competition in any respect.

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 change has become effective pursuant to Section 19(b)(3)(A) of the Act,<sup>15</sup> and paragraph (f)<sup>16</sup> of Rule 19b-4, thereunder.

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.

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-2013-122 on the subject line.

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

<sup>16</sup> 17 CFR 240.19b-4(f)

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-2013-122. 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 website 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-2013-122, 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.<sup>17</sup>

Kevin M. O'Neill  
Deputy Secretary

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