

unreasonably discriminate between customers, issuers, brokers, or dealers because the proposed physical port fees do not distinguish among the type of participant but rather are the same for all Members and non-members. The Commission also believes that EDGX was subject to significant competitive pressure to act equitably, fairly, and reasonably in setting the physical port fees, in light of the highly competitive nature of the market for execution and routing services.¹¹

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-EDGX-2010-06) be, and hereby is, approved.

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

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62681; File No. SR-EDGA-2010-06]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Order Approving Proposed Rule Change To Amend the EDGA Fee Schedule To Impose Fees for Physical Ports Used To Connect to EDGA Exchange

August 10, 2010.

I. Introduction

On July 1, 2010, the EDGA Exchange, Inc. ("EDGA" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its fee schedule to begin charging an annual fee to Members and non-members for certain physical ports used to connect to the Exchange's systems. The proposed rule change was published for comment in the **Federal Register** on July 9, 2010.³ The Commission received no comment letters regarding the proposal. This

order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to begin charging an annual fee to Members and non-members for physical ports used to connect to the Exchange's systems for purposes that include order entry and the receipt of Exchange data. A physical port is a port used by a Member or non-member to connect into the Exchange at the data centers where Exchange servers are located.⁴ Physical port connections can occur either through an external telecommunication circuit or a cross-connection. Currently, Members and non-members have a number of alternative methods available to them for connecting to the Exchange without the need to obtain an independent physical connection, including the use of financial extranets or service bureaus. The Exchange believes that some Members and non-members may wish to connect directly to the Exchange's systems with their own dedicated circuit connection. To support their requirements and the associated infrastructure costs related to direct circuit connectivity, EDGA proposes to charge Members and non-members the following annual fees based on the connectivity service type:

Connection service type	Annual fee per physical port
1 Gb Copper	\$5,000
1 Gb Fiber	7,500
10 Gb Fiber	10,000

Only one physical port is required to access all services for EDGA. However, Members and non-members may choose more than one physical port and different connection service types based on their needs. The Exchange notes that other market centers provide similar services to their Members and non-members.⁵

The Exchange believes that the proposal will offer market participants additional EDGA connectivity choices, providing for greater access to EDGA while allowing each market participant to choose the method of connectivity based on its specific needs.

⁴ Non-members may include non-member service bureaus that act as a conduit for orders entered by Exchange Members that are their customers, as well as sponsored participants and market data recipients.

⁵ See Securities Exchange Act Release No. 61545 (February 19, 2010), 75 FR 8769 (February 25, 2010) (order approving File No. SR-BATS-2009-032). See also Securities Exchange Act Release No. 62392 (June 28, 2010), 75 FR 38857 (July 6, 2010) (notice of filing of File No. SR-Nasdaq-2010-077).

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶ Specifically, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,⁷ which requires the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities, and Section 6(b)(5) of the Act,⁸ which requires, among other things, that the rules of a national securities exchange be 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 not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,⁹ which requires that the rules of an exchange not impose a burden on competition not necessary or appropriate in furtherance of the purpose of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,¹⁰ which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and not unreasonably discriminatory.

The Commission believes that the proposed physical port fees are equitably allocated among Members and non-members and do not unfairly or unreasonably discriminate between customers, issuers, brokers, or dealers because the proposed physical port fees do not distinguish among the type of participant but rather are the same for all Members and non-members. The Commission also believes that EDGA was subject to significant competitive pressure to act equitably, fairly, and reasonably in setting the physical port fees, in light of the highly competitive nature of the market for execution and routing services.¹¹

⁶ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b)(8).

¹⁰ 17 CFR 242.603(a).

¹¹ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (File No. SR-NYSEArca-2006-21).

¹¹ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (File No. SR-NYSEArca-2006-21).

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 62436 (July 1, 2010), 75 FR 39600.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-EDGA-2010-06) be, and hereby is, approved.

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

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62678; File No. SR-Phlx-2010-108]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to a Proposed Price Improvement System, Price Improvement XL (PIXLSM)

August 10, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹, and Rule 19b-4 ² thereunder, notice is hereby given that on July 30, 2010, NASDAQ OMX PHLX, Inc. (“Phlx” or “Exchange”) 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 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, pursuant to Section 19(b)(1) of the Act ³ and Rule 19b-4 thereunder, ⁴ proposes to adopt new Rule 1080(n), Price Improvement XL (PIXLSM), to establish a price-improvement mechanism on the Exchange.

The text of the proposed rule change is available on the Exchange’s Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

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.

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 establish a price-improvement mechanism, PIXL, on the Exchange, which includes auto-match functionality in which a member (an “Initiating Member”) may electronically submit for execution an order it represents as agent on behalf of a public customer, broker dealer, or any other entity (“PIXL Order”) against principal interest or against any other order it represents as agent (an “Initiating Order”) provided it submits the PIXL Order for electronic execution into the PIXL Auction (“Auction”) pursuant to the proposed Rule.

Auction Eligibility Requirements

All options traded on the Exchange are eligible for PIXL. Proposed Rule 1080(n)(i) describes the circumstances under which an Initiating Member may initiate an Auction.

If the PIXL Order is for the account of a public customer and is for a size of 50 contracts or more, the Initiating Member must stop the entire PIXL Order at a price that is equal to or better than the National Best Bid/Offer (“NBBO”) on the opposite side of the market from the PIXL Order, provided that such price must be at least one minimum price improvement increment (as determined by the Exchange but not smaller than one cent) better than any limit order on the limit order book on the same side of the market as the PIXL Order. The purpose of this provision is to ensure that public customer PIXL Orders for 50 contracts or more are guaranteed at least the NBBO but do not trade ahead of other limit orders already on the Exchange’s limit order book at the existing limit order’s limit price.

For example, assume the Exchange’s disseminated market (the “PBBO”) in

the affected series is the NBBO and is 1.00 bid for 10 contracts, 1.01 offered for 20 contracts and the existing disseminated 1.00 bid is a public customer limit order. If an initiating Member submits a public customer PIXL Order to buy 100 contracts @ the market together with a contra-side Initiating Order to sell 100 contracts, the entire PIXL Order must be stopped at a price of 1.01 because the public customer limit order on the limit order book has time priority at 1.00 over the public customer PIXL order.

If the PIXL Order is for the account of a public customer and is for a size of less than 50 contracts, the Initiating Member must stop the entire PIXL Order at a price that is the better of: (i) The PBBO price on the opposite side of the market from the PIXL Order improved by at least one minimum price improvement increment, or (ii) the PIXL Order’s limit price (if the order is a limit order), provided in either case that such price is at or better than the NBBO, and at least one minimum price improvement increment better than any limit order on the book on the same side of the market as the PIXL Order. The purpose of this provision is to ensure that smaller PIXL Orders will be guaranteed price improvement by establishing a size under which a PIXL Order must be submitted at a price better than the PBBO. The Exchange believes this should especially benefit public customers.⁵ The provision concerning PIXL Orders for a size of less than 50 contracts will be effective for a pilot period scheduled to expire August 31, 2011.⁶

For example, assume the PBBO in the affected series is 1.00 bid—1.03 offer and the NBBO is 1.00—1.03. If an initiating Member submits a public customer PIXL Order to buy 25 contracts @ the market together with a contra-side Initiating Order to sell 25 contracts, the public customer PIXL Order must be stopped at least one minimum improvement increment better than the PBBO offer of 1.03 to guarantee price improvement. Therefore, in this example, the PIXL

⁵ The Exchange notes that Chicago Board Options Exchange, Inc. (“CBOE”) Rule 6.74A(a)(3) provides that any AIM Agency Order (the equivalent of a PIXL Order) for less than 50 contracts that is entered into the CBOE’s Automated Improvement Mechanism (“AIM”) is guaranteed an execution at the NBBO price improved by one minimum price improvement increment or at the AIM Agency Order’s limit price (if the order is a limit order). See Securities Exchange Act Release No. 53222 (February 3, 2006), 71 FR 7089 (February 10, 2006) (SR-CBOE-2005-60).

⁶ The Exchange proposes the one-year pilot in order to ascertain the level of price improvement attained for such smaller-sized orders during the pilot period.