

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58049; File No. SR-Phlx-2008-46)

June 27, 2008

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees for Options on the Full-Size Nasdaq 100 Index and Options on the Mini Nasdaq 100 Index

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 June 13, 2008, the Philadelphia Stock Exchange, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member, pursuant to Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with 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

Phlx proposes to assess equity option charges, as opposed to index option charges, on:

(1) options on the full value of the Nasdaq 100 Index⁵ traded under the symbol NDX (the “Full-

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ NASDAQ[®], NASDAQ-100[®] and NASDAQ-100 Index[®] are registered trademarks of The NASDAQ OMX Group, Inc. (which with its affiliates are the “Corporations”) and are licensed for use by the Philadelphia Stock Exchange, Inc. in connection with the trading of options products based on the NASDAQ-100 Index[®]. The options products have not been passed on by the Corporations as to their legality or suitability. The options products are not issued, endorsed, sold, or promoted by the Corporations. The

size Nasdaq 100 Index”); and (2) options on the one-tenth of the value of the Nasdaq 100 Index traded under the symbol MNX (the “Mini Nasdaq 100 Index”) (collectively referred to herein as the “Nasdaq Index Products”).⁶ Therefore, the Exchange proposes to charge the Nasdaq Index Products, which are index options, in a similar manner that it charges for equity options, except that there will be a fee assessed for customer transactions.⁷ Specifically, for purposes of the option transaction charge, the Exchange proposes to adopt a specific customer option transaction charge of \$0.12 per contract side customer execution transaction fee on the Nasdaq Index Products.

In addition, the Exchange proposes to adopt a \$0.10 per contract side license fee on “firm-related” comparison and transaction charges for the Nasdaq Index Products.⁸ This license

Corporations make no warranties and bear no liability with respect to the options products.

⁶ See Securities Exchange Act Release No. 57936 (June 6, 2008), 73 FR 33481 (June 12, 2008) (SR-Phlx-2008-36) (proposed rule change relating to the listing and trading of options on the Nasdaq Index Products).

⁷ Phlx has clarified that the index option transaction charge for customer executions, which is currently \$0.40 per contract, applies to broker-dealer transactions. Pursuant to this proposed rule change, Phlx has stated that broker-dealer transactions in MNX and MDX index options will be assessed the equity option transaction charges as set forth on the Exchange’s current Summary of Equity Option and RUT and RMN Charges fee schedule. Pursuant to that fee schedule, the broker-dealer equity option transaction charges are either \$0.45 per contract for AUTOM-delivered orders or \$0.25 per contract for non-AUTOM-delivered orders. Email communication to Heather Seidel, Assistant Director, Division of Trading and Markets (“Division”), Commission, and Leah Mesfin, Special Counsel, Division, Commission, from Cynthia Hoekstra, Vice President, Phlx, on June 24, 2008.

⁸ Specifically, “firm-related” charges include equity option firm/proprietary comparison charges, equity option firm/proprietary transaction charges, equity option firm/proprietary facilitation transaction charges, index option firm (proprietary and customer executions) comparison charges, index option firm/proprietary transaction charges, and index option firm/proprietary facilitation transaction charges (collectively the “firm-related charges”).

fee will be imposed only after the Exchange's \$60,000 firm-related equity option and index option comparison and transaction charge cap is reached.⁹

In addition, the Exchange proposes to amend its Summary of Equity Option and RUT and RMN Charges to reflect that a \$0.10 license fee on the Nasdaq Index Products will be assessed in connection with the Exchange's current cap on Registered Options Traders ("ROT") comparison charges and ROT and specialist transaction charges¹⁰ on non-AUTOM delivered equity option contracts¹¹ when an ROT or specialist executes over 14,000 contracts calculated on a daily basis. These terms apply only to transactions when an ROT or specialist is the contra-party to a customer order.¹² Therefore, after the 14,000 non-AUTOM delivered contract level is reached in a specific option, additional comparison and transaction charges are not assessed on subsequent option contracts in excess of 14,000 that are executed on that day in that specific option when the ROT or specialist is the contra-party to a customer order. Even when the 14,000

⁹ Currently, the Exchange imposes a per contract side license fee for equity option and index option "firm" transactions on certain licensed products (collectively "licensed products") after the \$60,000 cap per member organization on all "firm-related" equity option and index option comparison and transaction charges combined is reached. Therefore, when a member organization exceeds the \$60,000 cap (comprised of firm-related charges), the member organization is charged \$60,000, plus the applicable license fee per contract side for any contracts in licensed products (if any) over those that were included in reaching the \$60,000 cap. Thus, such firm-related charges in the aggregate for one billing month may not exceed \$60,000 per month per member organization. For a complete list of the licensed products that are assessed a license fee per contract side after the \$60,000 cap is reached, see \$60,000 "Firm Related" Equity Option and Index Option Cap on the Exchange's fee schedule.

¹⁰ The Exchange does not currently assess a comparison charge on specialist transactions. Therefore, the cap applies to ROT comparison and transaction charges combined and separately to specialist transaction charges.

¹¹ For purposes of this fee, orders delivered via the Floor Broker Management System are deemed to be non-AUTOM delivered orders. See Phlx Rule 1063.

¹² See Securities Exchange Act Release No. 54659 (October 27, 2006), 71 FR 64603 (November 2, 2006) (SR-Phlx-2006-67) (capping ROT comparison charges and ROT and specialist transaction charges when certain requirements are met).

cap is reached, the license fee will be imposed on applicable ROTs and specialists for equity option transactions on those licensed products that carry a license fee.¹³

This proposal is schedule to become effective for transactions settling on or after June 16, 2008.

The text of the proposed rule change is available at the Exchange's principal office, on the Exchange's Web site at http://www.phlx.com/regulatory/reg_rulefilings.aspx, 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 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 this proposal is to assess equity option charges, including payment for order flow charges, on the Nasdaq Index Products that are competitive with charges assessed on these same products by other exchanges.¹⁴

¹³ For a complete list of the licensed products that are currently assessed a license fee per contract side after the 14,000 equity option contract is reached, see \$60,000 "Firm Related" Equity Option and Index Option Cap on the Exchange's fee schedule.

¹⁴ See e.g., Securities Exchange Act Release Nos. 57052 (December 27, 2007), 73 FR 523 (January 3, 2008) (SR-Amex-2007-140) (assessing license fee of \$0.16 per contract side for NDX and MNX options); 51351 (March 9, 2005), 70 FR 12917 (March 16, 2005) (relating to transaction fees and license fees for the Nasdaq Index Products); 57128

The purpose of assessing the Nasdaq Index Products a license fee of \$0.10 per contract side after reaching the \$60,000 cap and the 14,000 cap as described herein is to help defray licensing costs associated with the trading of these products, while still capping member organizations' fees enough to attract volume from other exchanges.¹⁵ The caps operate this way in order to offer an incentive for additional volume without leaving the Exchange with significant out-of-pocket costs. This proposal is schedule to become effective for transactions settling on or after June 16, 2008.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act¹⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁷ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members, as all the applicable equity option charges will be assessed on the Nasdaq Index Products. Additionally, assessing customer transaction and license fees on the Nasdaq Index Products, as described herein, should help the Exchange remain competitive by attracting additional order flow to the Exchange.

(January 10, 2008), 73 FR 2969 (January 16, 2008) (SR-ISE-2008-02) (assessing license fee of \$0.16 per contract for trading in options on NDX and MNX); 52983 (December 20, 2005), 70 FR 76475 (December 27, 2005) (SR-ISE-2005-047) (adopting a flat execution fee for public customer orders in "Premium Products"); 52493 (September 22, 2005), 70 FR 56941 (September 29, 2005) (SR-Amex-2005-087) (certain transaction fees applicable to the Nasdaq Index Products); and 55193 (January 30, 2007), 72 FR 5476 (February 6, 2007) (SR-CBOE-2006-111) (amending certain public customer fees for other indexes, ETFs and HOLDRs).

¹⁵ Id.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4).

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

Because the foregoing rule change is establishing or changing a due, fee, or other charge applicable only to a member, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁸ and Rule 19b-4(f)(2) thereunder.¹⁹ At any time within 60 days of the filing of such 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-2008-46 on the subject line.

Paper Comments:

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁹ 17 CFR 240.19b-4(f)(2).

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2008-46. 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, on official business days between the hours of 10:00 a.m. and 3:00 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-2008-46 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.²⁰

Florence E. Harmon
Acting Secretary

²⁰ 17 CFR 200.30-3(a)(12).