

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59857; File No. SR-Phlx-2009-41)

May 4, 2009

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Elimination of Options Transaction Charge for Customer Executions in Options on RUT, RMN, MNX and NDX

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> notice is hereby given that on April 29, 2009, NASDAQ OMX PHLX, Inc. ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission ("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 parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate the options transaction charge of \$0.12 per contract side for customer executions in options on the Russell 2000® Index (the "Full Value Russell Index" or "RUT"), options on the one-tenth value Russell 2000® Index<sup>2</sup>

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

<sup>2</sup> Russell 2000® is a trademark and service mark of the Frank Russell Company, used under license. Neither Frank Russell Company's publication of the Russell Indexes nor its licensing of its trademarks for use in connection with securities or other financial products derived from a Russell Index in any way suggests or implies a representation or opinion by Frank Russell Company as to the attractiveness of investment in any securities or other financial products based upon or derived from any Russell Index. Frank Russell Company is not the issuer of any such securities or other financial products and makes no express or implied warranties of merchantability or fitness for any particular purpose with respect to any Russell Index or any data included or reflected therein, nor as to results to be obtained by any person or any entity from the use of the Russell Index or any data included or reflected therein.

(the "Reduced Value Russell Index" or "RMN"), options on the Nasdaq 100 Index<sup>3</sup> traded under the symbol NDX ("NDX") and options on the one-tenth value of the Nasdaq 100 Index traded under the symbol MNX ("MNX").

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions settling on or after May 1, 2009.

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, at the principal office of the Exchange, 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, Phlx 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 Phlx has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

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<sup>3</sup> NASDAQ(R), NASDAQ-100(R) and NASDAQ-100 Index(R) are registered trademarks of The NASDAQ OMX Group, Inc. (which with its affiliates are the "Corporations") and are licensed for use by NASDAQ OMX PHLX, Inc. in connection with the trading of options products based on the NASDAQ-100 Index(R). 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 Corporations make no warranties and bear no liability with respect to the options products.

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

1. Purpose

The purpose of the proposed rule change is to eliminate the options transaction charge of \$.12 per contract side for customer executions in options on the Russell 2000® Index (the "Full Value Russell Index") traded under the symbol RUT, options on the one-tenth value Russell 2000® Index (the "Reduced Value Russell Index") traded under the symbol RMN (together referred to as "Russell Products"), options on the Nasdaq 100 Index traded under the symbol NDX and options on the one-tenth value of the Nasdaq 100 Index traded under the symbol MNX (together referred to as "Nasdaq Products"), in order that the Exchange may remain competitive and continue to attract order flow.

The Exchange currently assesses an options transaction charge for customer executions in options on the Nasdaq Products, namely NDX and MNX,<sup>4</sup> and options on the Russell Products, namely, RUT and RMN,<sup>5</sup> of \$.12 per contract side. The Exchange will continue to assess payment for order flow fees<sup>6</sup> and surcharge fees<sup>7</sup> on the Russell Products and the Nasdaq Products. The Exchange proposes to eliminate the \$.12 per contract side

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<sup>4</sup> See Securities Exchange Release No. 58049 (June 27, 2008), 73 FR 38286 (July 3, 2008) (SR-Phlx-2008-46). See also 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 Products).

<sup>5</sup> See Securities Exchange Act Release No. 59243 (January 13, 2009), 74 FR 4272 (January 23, 2009) (SR-Phlx-2008-86). See also Securities Exchange Act Release No. 55305 (February 15, 2007), 72 FR 8240 (February 23, 2007) (SR-Phlx-2006-65).

<sup>6</sup> See proposed rule change SR-Phlx-2009-39. See also Securities Exchange Act Release No. 57851 (May 22, 2008), 73 FR 31177 (May 30, 2008)(SR-Phlx-2008-38).

<sup>7</sup> See Securities Exchange Act Release No. 58772 (October 10, 2008), 73 FR 63037 (October 22, 2008)(SR-Phlx-2008-72).

options transaction charge for customer executions in options on NDX, MNX, RUT and RMN to remain competitive with other exchanges and attract additional order flow to the Exchange.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act")<sup>8</sup>, in general, and furthers the objectives of Section 6(b)(4)<sup>9</sup> of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members and other persons using its facilities. By eliminating the \$.12 per contract side options transaction charge, the Exchange believes that members will benefit by not having an options transaction charge for customer executions in options on RUT, RMN, NDX and MNX and the Exchange will benefit by attracting order flow.

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 that is not necessary or appropriate in furtherance of 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.

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (f)(2) of Rule 19b-4<sup>11</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2009-41 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-Phlx-2009-41. This file number should

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

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 also will be available for inspection and copying at the principal office of Phlx. 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-2009-41 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>12</sup>

Florence E. Harmon  
Deputy Secretary

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