

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67123; File No. SR-Phlx-2012-75)

June 5, 2012

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that, on May 30, 2012, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the 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 to amend certain Routing Fees to recoup costs incurred by the Exchange in routing to The NASDAQ Options Market LLC (“NOM”).

While the changes proposed herein are effective upon filing, the Exchange has designated these changes to be operative on June 1, 2012.

The text of the proposed rule change is available on the Exchange’s Website at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXfilings>, 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, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

---

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

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

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 filing is to recoup costs that the Exchange incurs for routing and executing certain orders in equity and index options to NOM. The Exchange’s Pricing Schedule at Section V currently includes the following Routing Fees for routing Customer, Professional, Firm, Broker-Dealer and Market Maker<sup>3</sup> orders to away markets.

<b>Exchange</b>	<b>Customer</b>	<b>Professional</b>	<b>Firm/Broker-Dealer/Market Maker</b>
NYSE AMEX	\$0.11	\$0.31	\$0.55
BATS Penny	\$0.55	\$0.55	\$0.55
BATS non-Penny	\$0.86	\$0.91	\$0.91
BOX	\$0.11	\$0.11	\$0.55
CBOE	\$0.11	\$0.31	\$0.55
CBOE orders greater than 99 contracts in RUT, RMN, NDX, MNX, ETFs, ETNs and HOLDRs	\$0.29	\$0.31	\$0.55
C2	\$0.55	\$0.56	\$0.55
ISE	\$0.11	\$0.29	\$0.55
ISE Select Symbols	\$0.31	\$0.39	\$0.55
NYSE ARCA (Penny Pilot)	\$0.55	\$0.55	\$0.55
NYSE ARCA (Standard)	\$0.11	\$0.11	\$0.55
NOM	\$0.54	\$0.54	\$0.55

<sup>3</sup> For the purposes of Routing Fees, a Market Maker includes Specialists (see Rule 1020) and ROTs (Rule 1014(b)(i) and (ii), which includes SQTs (see Rule 1014(b)(ii)(A)) and RSQTs (see Rule 1014(b)(ii)(B)).

NOM (NDX and MNX)	\$0.56	\$0.56	\$0.55
-------------------	--------	--------	--------

The Exchange is proposing to amend the current “NOM (NDX and MNX)” Routing Fees by renaming those fees as “NOM – MNX.” The Exchange is proposing to adopt separate Routing Fees for NOM – NDX as follows:

Exchange	Customer	Professional	Firm/Broker-Dealer/Market Maker
NOM - NDX	\$0.11	\$0.81	\$0.81

NOM recently amended its fees relating to options on the Nasdaq 100 Index traded under the symbol NDX to assess Professionals, Firms, Non-NOM Market Makers and NOM Market Makers (“Non-Customers”) a \$0.70 per contract Fee for Removing Liquidity.<sup>4</sup> The Exchange is proposing to amend its Routing Fees to adopt new NDX NOM Routing Fees to account for the revised Customer and Non-Customer NOM NDX Fees to Remove Liquidity and other routing costs incurred by the Exchange when routing to NOM.

In May 2009, the Exchange adopted Rule 1080(m)(iii)(A) to establish Nasdaq Options Services LLC (“NOS”), a member of the Exchange, as the Exchange’s exclusive order router.<sup>5</sup> NOS is utilized by the Exchange’s fully automated options trading system, PHLX XL<sup>®</sup>,<sup>6</sup> solely

<sup>4</sup> See SR-NASDAQ-2012-068. NOM is not assessing a Customer a Fee to Remove Liquidity in NDX. NOM previously assessed the following Fees for Removing Liquidity for NDX and MNX: \$0.50 per contract for Customers, \$0.50 per contract for Professionals, \$0.50 per contract for Firms, \$0.50 per contract for Non-NOM Market Makers and \$0.40 per contract for NOM Market Makers. The Exchange recently adopted separate fees for NDX as noted herein.

<sup>5</sup> See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32).

<sup>6</sup> This proposal refers to “PHLX XL” as the Exchange’s automated options trading system. In May 2009 the Exchange enhanced the system and adopted corresponding rules referring to the system as “Phlx XL II.” See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32). The Exchange intends

to route orders in options listed and open for trading on the PHLX XL system to destination markets. Each time NOS routes to away markets NOS is charged a \$0.06 clearing fee and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which fees are passed through to the Exchange. The Exchange currently recoups clearing and transaction charges incurred by the Exchange as well as certain other costs incurred by the Exchange when routing to away markets, such as administrative and technical costs associated with operating NOS, membership fees at away markets, and technical costs associated with routing.<sup>7</sup>

The Exchange also proposes to amend Section V to relocate note 13 to reference the ISE Select Symbols Routing Fee and remove the stray asterisk that is currently next to the ISE Select Symbols title. The Exchange believes that the asterisk is more appropriately placed near the fee it is describing.

As with all fees, the Exchange may adjust these Routing Fees in response to competitive conditions by filing a new proposed rule change.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>9</sup> in

---

to submit a separate technical proposed rule change that would change all references to the system from “Phlx XL II” to “PHLX XL” for branding purposes.

<sup>7</sup> The Exchange is therefore adopting NOM’s Fees for Removing Liquidity of \$0.70 per contract for Professional, Firm, Non-NOM Market Maker and NOM Maker Makers orders, a \$0.06 clearing cost and another \$0.05 per contract associated with administrative and technical costs associated with operating NOS, a total of \$0.81 per contract. The Exchange would only assess a Customer the 0.06 clearing cost and another \$0.05 per contract associated with administrative and technical costs associated with operating NOS (a total of \$0.11 per contract) because a Customer is not assessed a Fee for Removing Liquidity on NOM.

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

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

particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the proposed amendment to the current NOM Routing Fees to rename the current fees to apply solely to options on the one-tenth value of the Nasdaq 100 Index traded under the symbol MNX and adopt separate fees for NDX orders routed to NOM is reasonable because the two separate categories take into account the different fees for removing liquidity assessed by NOM for MNX and NDX. The Exchange seeks to recoup costs incurred when routing orders to NOM on behalf of its members.

The Exchange believes that the proposed amendment to the current NOM Routing Fees to rename those fees as “NOM-MNX” and not otherwise amend those fees but adopt separate Routing Fees for NDX options routed to NOM is equitable and not unfairly discriminatory because the Exchange will uniformly apply the NOM-MNX and NOM-NDX Routing Fees to its members.

The proposed NOM Routing Fees for NDX are reasonable because they seek to recoup costs that are incurred by the Exchange when routing Customer, Professional, Firm, Broker-Dealer and Market Maker orders to NOM on behalf of members. Each destination market’s transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange along with other administrative and technical costs that are incurred by the Exchange. The Exchange believes that the proposed Routing Fees would enable the Exchange to recover the remove fees assessed to Non-Customers by NOM for NDX options, plus clearing and other administrative and technical fees for the execution of Customer and Non-Customer orders when routed to NOM. The Exchange also believes that the proposed NOM NDX Routing Fees are equitable and not unfairly discriminatory because they would be uniformly applied to all

Non-Customer NDX orders that are routed to NOM and to cover the costs for Customer NDX orders that are routed to NOM.

The Exchange believes that the proposed technical amendment to relocate the note in Section V is reasonable, equitable and not unfairly discriminatory because it will further clarify the note and the ISE Select Symbols Routing Fee.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>10</sup> 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:

---

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

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-2012-75 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-2012-75. 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 website (<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, 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 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-2012-75 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>11</sup>

Kevin M. O'Neill  
Deputy Secretary

---

<sup>11</sup> 17 CFR 200.30-3(a)(12).