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November 17, 2008

Ms. Florence E. Harmon  
Acting Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**RE: SR-CBOE-2008-105**

Dear Ms. Harmon:

The NASDAQ OMX Group, Inc., operator of both The Nasdaq Stock Market, LLC and NASDAQ OMX PHLX, Inc, submits this comment letter regarding SR-CBOE-2008-105, which proposes to institute a transaction-based “Options Regulatory Fee.” We believe that the proposal should be promptly abrogated and urge the Securities and Exchange Commission (“Commission”) to do so. The Options Regulatory Fee applies to options transactions executed by a member, even if such transactions do not take place on the CBOE. We do not believe that it is appropriate to permit a fee that raises cross-market regulatory issues and has market structure implications to take effect upon filing. Accordingly, we believe that the proposal is not properly filed as immediately effective pursuant to Section 19(b)(3)(A).

Although the CBOE's proposal is not slated to become operative until January 1, we believe that the proposal should nevertheless be abrogated and refiled pursuant to Section 19(b)(2). We believe that a fee that applies across multiple markets charged by a competing exchange raises competitive issues that warrant public comment and the benefit of Commission analysis. Broker-dealers who are members of more than one options exchange could have a unique and important view about the incentives the proposed fee may create. There should be an opportunity for those views to be aired and fully considered prior to effectiveness.

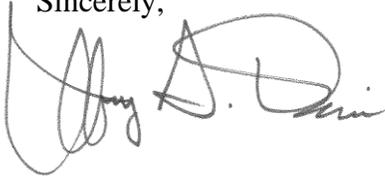
Additionally, the Commission staff has considered certain fee filings inappropriate for effectiveness upon filing. For example, fees applicable to non-members, such as listing fees, are ordinarily filed pursuant to Section 19(b)(2). Similarly, options linkage fees, even where applicable only to members, have similarly been

considered inappropriate for effectiveness upon filing. We believe that this filing should similarly be subject to filing pursuant to Section 19(b)(2).<sup>1</sup>

The CBOE states that it is reasonable for it to charge for trades done on another exchange, because its surveillance efforts often require it to look at activity across all options markets. Nasdaq recognizes that surveillance in a competitive environment requires regulators to look across all markets. In fact, many of our regulatory programs look at all of our members' activity. CBOE cites several examples, including insider trading, which is subject to a Regulatory Services Agreement whereby the costs are shared by the Plan participants; presumably, the insider trading regulation costs that the CBOE seeks to recover are the CBOE's portion under that Agreement. We believe that there are many benefits to self-regulatory organizations ("SROs") moving toward more efficient, shared and independent regulatory structures. Instead of funding duplicative regulation of activity that spans multiple markets, we can work to centralize such surveillance and achieve the efficiencies our joint members seek.

For these reasons, we believe the proposed Options Regulatory Fee should be abrogated and considered under Section 19(b)(2) of the Act.

Sincerely,

A handwritten signature in black ink, appearing to be "J. D. [unclear]", written over a horizontal line.

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<sup>1</sup> The Commission has determined that the fees charged for orders entered by a member firm on an away market are considered non-member fees. Under the Commission's Linkage Pilot, if a member of Market A enters a linkage order on Market B and that linkage order is routed to Market A and executed on Market A, the execution fee charged by Market A to the member firm is considered a non-member fee that must be filed pursuant to Section 19(b)(2). *See, e.g.*, Securities Exchange Act Release No. 57588 (March 31, 2008).