

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66838; File No. SR-Phlx-2012-50)

April 20, 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”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on April 11, 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 BATS Exchange, Inc. (“BATS”).

The Exchange intends for these amendments to be effective upon filing, except with respect to the amendments related to the Firm/Broker-Dealer/Market Maker category, which Routing Fees will be operative on April 27, 2012 when SR-Phlx-2012-41 becomes operative.³

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities and Exchange Act Release No. 66754 (April 6, 2012) (SR-Phlx-2012-41) which filing is immediately effective and will become operative on April 27, 2012.

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 the 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 BATS. The Exchange’s Pricing Schedule at Section V currently includes the following Routing Fees for routing Customer, Professional, Firm, Broker-Dealer and Market Maker orders to away markets.⁴

Exchange	Customer	Professional	Firm/Broker-Dealer/Market Maker
NYSE AMEX	\$0.11	\$0.31	\$0.55
BATS	\$0.55	\$0.55	\$0.55
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

⁴ The Exchange recently amended its Pricing Schedule to adopt a “Firm/Broker-Dealer/Market Maker” Routing Fee category. See Securities and Exchange Act Release No. 66755 (April 6, 2012) (SR-Phlx-2012-42). The pricing change was filed for immediate effectiveness with an operative date of April 27, 2012.

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

* These fees are applicable to orders routed to ISE that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See ISE’s Schedule of Fees for the complete list of symbols that are subject to these fees.

The Exchange is proposing to amend the current BATS Routing Fees by renaming those fees as “BATS Penny.”⁵ The Exchange is not proposing to amend the current rate of \$0.55 per contract for Customers, Professionals, Firms, Broker-Dealers, and Market Makers, but proposes to apply those fees solely to Penny options routed to BATS.

The Exchange proposes to create new Routing Fees to BATS for non-Penny options. BATS recently adopted a \$0.75 per contract non-Penny fee for customers that remove liquidity from the BATS Options order book and a \$0.80 per contract non-Penny fee for professionals, firms and market makers that remove liquidity from the BATS Options order book.⁶ The Exchange is proposing to adopt BATS non-Penny Routing Fees to account for the new BATS fees for removing liquidity and other routing costs incurred by the Exchange when routing to BATS, as follows:

⁵ BATS defines Penny options as those issues that are quoted pursuant to BATS Rule 21.5, Interpretation and Policy .01.

⁶ See SR-BATS-2012-015.

Exchange	Customer	Professional	Firm/Broker-Dealer/Market Maker
BATS non-Penny	\$0.86	\$0.91	\$0.91

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.⁷ NOS is utilized by the Exchange’s fully automated options trading system, PHLX XL[®],⁸ solely 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.⁹

⁷ See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32).

⁸ 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 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.

⁹ The Exchange is therefore adopting BATS non-Penny Routing Fees to account for the BATS fees of \$0.75 per contract for customer orders and \$0.80 per contract for professional, firm and market maker orders, the \$0.06 clearing cost and another \$0.05 per contract associated with administrative and technical costs associated with operating NOS.

The Exchange intends for these amendments to be effective upon filing, except with respect to the amendments related to the Firm/Broker-Dealer/Market Maker category, which Routing Fees will be operative on April 27, 2012 when SR-Phlx-2012-41 becomes operative.¹⁰

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 Act¹¹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹² in 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 BATS Routing Fees to rename those fees as “BATS Penny” and apply those fees to Penny options routed to BATS and adopt separate Routing Fees for non-Penny options routed to BATS is reasonable because the two separate categories take into account the different fees for removing liquidity assessed by BATS for non-Penny versus Penny options. The Exchange seeks to recoup costs incurred when routing orders to BATS on behalf of its members.

The Exchange believes that the proposed amendment to the current BATS Routing Fees

¹⁰ The Exchange recently filed a rule change to expand the routing capabilities of certain options orders that are eligible for electronic routing to other market centers by PHLX XL. See Securities and Exchange Act Release No. 66754 (April 6, 2012) (SR-Phlx-2012-41). Specifically, Exchange Rule 1080(m) was amended to permit Firm, Broker-Dealer and Market Maker orders to be eligible for routing to other market centers when the Exchange cannot execute such orders at the National Best Bid or Offer. SR-Phlx-2012- [sic]. The rule change is immediately effective and will be operative on April 27, 2012.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

to rename those fees as “BATS Penny” and apply those fees to Penny options routed to BATS and adopt separate Routing Fees for non-Penny options routed to BATS is equitable and not unfairly discriminatory because the Exchange will uniformly apply the BATS Penny as well as BATS non-Penny Routing Fees to its members based on the type of options orders routed to BATS.¹³

The proposed BATS non-Penny Routing Fees 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 BATS 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 by BATS for non-Penny options, plus clearing and other administrative and technical fees for the execution of such orders when routed to BATS. The Exchange also believes that the proposed BATS non-Penny Routing Fees are equitable and not unfairly discriminatory because they would be uniformly applied to all non-Penny orders that are routed to BATS.

With respect to the Firm/Broker-Dealer/Market Maker category, the Exchange recently adopted those fees and proposed to assess a fixed Routing Fee of \$0.55 per contract applicable to all away markets.¹⁴ The Exchange noted in that rule change that pricing on the various options exchanges varies significantly from exchange to exchange for non-Customer orders. Accordingly, the Exchange proposed a \$0.55 per contract side Routing Fee in order to capture the majority of the transaction and clearing fees for Firm, Broker-Dealer and Market Maker

¹³ See note 5.

¹⁴ See note 4.

orders, while making the Exchange's Routing Fees easier to calculate and predict for members whose proprietary orders are routed away. In addition, fixed Routing Fees are easier to comprehend by the members whose orders are routed away. Further, predicting, calculating and charging back "pass-through" fees is an unduly burdensome, expensive and complicated task for members whose orders are routed away. The Exchange noted that fixed Routing Fees for Firm, Broker-Dealer and Market Maker orders should ease the burden, expense and complexity of this task. Furthermore, fixed fees are easier to manage and maintain for the Exchange, ensuring accurate billing and accounting. The Exchange believes its proposal to increase the BATS non-Penny Customer Routing Fee from \$0.55 per contract to \$0.86 per contract and the Professional, Firm, Broker-Dealer and Market Maker Routing Fees from \$0.55 per contract to \$0.91 per contract is reasonable because the fees proposed by BATS are not within the range of fees assessed by other exchanges since the recent increase in the BATS fee to removing liquidity from \$0.44 per contract to \$0.75 per contract for customer non-Penny options and from \$0.44 per contract to \$0.80 for professionals, firms and market makers. The Exchange believes it is reasonable to recoup the BATS remove fees plus the clearing and other costs to recoup Routing Fees.¹⁵ The Exchange believes that the increase to the Firm/Broker-Dealer/Market Maker non-Penny BATS Routing Fees are equitable and not unfairly discriminatory because, as previously mentioned, those fees would be similarly calculated for Customers, Professionals, Firms, Broker-Dealers and Market Makers.¹⁶ Additionally, the non-Penny BATS Routing Fees would be uniformly assessed for all non-Penny orders routed to BATS.

¹⁵ See note 9.

¹⁶ The Exchange's proposed non-Penny BATS Routing Fees are calculated similarly for all participants by adding the fee to remove liquidity assessed by BATS for the particular market participant plus a fee of \$.11 per contract which represents clearing and other costs noted herein.

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.¹⁷ 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:

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 No. SR-Phlx-2012-50 on the subject line.

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

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 No. SR-Phlx-2012-50. 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 such 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 No. SR-Phlx-2012-50 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.¹⁸

Kevin M. O'Neill
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).