

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68008; File No. SR-Phlx-2012-120)

October 9, 2012

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

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 October 1, 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 adopt certain Routing Fees to recoup costs incurred by the Exchange when routing to the NASDAQ Options Market LLC (“NOM”).

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 proposed rule change. The text of these statements may be examined at the places specified in

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

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

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 options to NOM in Non-Penny Pilot Options.

The Exchange’s Pricing Schedule at Section V currently includes the following Routing Fees for routing Customer, Professional,<sup>3</sup> Firm, Broker-Dealer, Market Maker<sup>4</sup> and Specialist<sup>5</sup> orders to away markets.

<b>Exchange</b>	<b>Customer</b>	<b>Professional</b>	<b>Firm/Broker-Dealer/Specialist/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
BX Options	\$0.11	\$0.54	\$0.54
CBOE	\$0.11	\$0.31	\$0.55

<sup>3</sup> The term “professional” means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Rule 1000(b)(14).

<sup>4</sup> A “Market Maker” includes Registered Options Traders (“ROTs”) (Rule 1014(b)(i) and (ii), which include Streaming Quote Traders (“SQTs”) (See Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (“RSQTs”) (See Rule 1014(b)(ii)(B)).

<sup>5</sup> A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

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 <sup>13</sup>	\$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 - MNX	\$0.56	\$0.56	\$0.55
NOM - NDX	\$0.11	\$0.81	\$0.81
NOM - FB, GOOG and GRPN	\$0.86	\$0.91	\$0.91

<sup>13</sup> 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 proposes to adopt NOM Routing Fees for Non-Penny Pilot Options. NOM recently filed an immediately effective rule change that amended its Non-Penny Pilot Options transaction fees in Section 2 of Chapter XV to mirror the Fees for Removing Liquidity for options overlying Facebook, Inc. ("FB"), Google Inc. ("GOOG") and Groupon, Inc.

(“GRPN”).<sup>6</sup> NOM eliminated pricing for options overlying the Nasdaq 100 Index traded under the symbol NDX (“NDX”) and amended its pricing for Non-Penny Pilot Options, which includes NDX.<sup>7</sup> NOM also eliminated the FB, GOOG, GRPN and MNX pricing in that filing.<sup>8</sup> The Exchange proposes to rename the current “NOM” Routing Fees as “NOM Penny Pilot Options” to distinguish those Routing Fees from the new Routing Fees the Exchange is proposing to adopt for Non-Penny Pilot Options. The Exchange proposes to rename the current “NOM – FB, GOOG and GRPN” Routing Fees as “NOM Non-Penny Pilot Options” and not otherwise amend those Routing Fees as they represent the amended pricing for Non-Penny Pilot Options as described below. This new category of Routing Fees would apply to all Non-Penny Pilot Options which would include NDX, FB, GOOG and GRPN. Finally, NOM proposes to eliminate the “NOM – NDX,” and “NOM – MNX” Routing Fees as the NOM - NDX Routing Fees will be replaced by the NOM Non-Penny Pilot Options Routing Fees and the NOM – MNX Routing Fees are no longer necessary as NOM delisted those options.<sup>9</sup> The NOM Routing Fees would therefore be as follows:

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

<sup>6</sup> See SR-NASDAQ-2012-114 (not yet published). This immediately effective rule filing amended the NOM Non-Penny Pilot Fees for Removing Liquidity to assess Customers and NOM Marker Makers a \$0.79 per contract fee and Professionals, Firms and Non-NOM Marker Makers a \$0.85 per contract fee. NDX, FB, GOOG and GRPN no longer have separate pricing, but rather are assessed the fees for Non-Penny Pilot Options. MNX pricing was also removed from the NOM’s pricing in this rule change because MNX was delisted on September 13, 2012.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> NOM delisted MNX on September 13, 2012.

BATS Penny	\$0.55	\$0.55	\$0.55
BATS non-Penny	\$0.86	\$0.91	\$0.91
BOX	\$0.11	\$0.11	\$0.55
BX Options	\$0.11	\$0.54	\$0.54
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 <sup>13</sup>	\$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 Penny Pilot Options	\$0.54	\$0.54	\$0.55
NOM Non-Penny Pilot Options	\$0.86	\$0.91	\$0.91

<sup>13</sup> 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.

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>10</sup> NOS is utilized by the Exchange’s fully automated options trading system, PHLX XL<sup>®</sup>,<sup>11</sup> 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 options.<sup>12</sup>

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

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<sup>10</sup> See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32).

<sup>11</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 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>12</sup> In addition to membership fees and transaction fees, the Exchange also incurs an Options Regulatory Fee when routing to an away market that assesses that fee. The Exchange’s proposed Routing Fees for NOM Non-Penny Pilot Options include NOM’s Fees for Removing Liquidity of \$0.79 per contract fee for Customers and NOM Market Makers and \$0.85 per contract fee for Professionals, Firms and Non-NOM Market Makers (which Fees for Removing Liquidity were the same fees assessed for FB, GOOG and GRPN), as well as a \$0.06 clearing cost and another \$0.05 per contract fee associated with administrative and technical costs for operating NOS. At this time, the Exchange has determined to assess a maximum fee of \$0.91 per contract for routing Non-Penny Pilot Options to NOM. While this does not recover all of the Exchange’s costs, the Exchange has determined at this time to not assess more than a \$0.91 per contract Routing Fee.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>14</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the proposed NOM Non-Penny Pilot Options Routing Fees are reasonable because they seek to recoup costs that are incurred by the Exchange when routing Customer, Professional, Firm, Broker-Dealer, Specialist and Market Maker orders to NOM on behalf of members, respectively. 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 market participants by NOM when routing Non-Penny Pilot Options (including NDX, FB, GOOG and GRPN), plus clearing and other administrative and technical fees for the execution of Customer, Professional, Firm, Broker-Dealer, Specialist and Market Maker orders when routed to NOM. The Exchange also believes that the proposed NOM Non-Penny Pilot Options Routing Fees are equitable and not unfairly discriminatory because they would be uniformly applied to all Customer, Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are routed to NOM.

### 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. To the

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<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4).

contrary, Phlx Routing Fees seek to recoup costs for Routing Orders to other exchanges on behalf of its members. Options Participants may choose to mark the order as ineligible for routing to avoid incurring these fees.<sup>15</sup>

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>16</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:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
- or

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<sup>15</sup> See Rule 1066(h) (Certain Types of Orders Defined) and 1080(b)(i)(A) (PHLX XL and PHLX XL II).

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(ii).



- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2012-120 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-2012-120. 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-2012-120 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>17</sup>

Kevin M. O'Neill  
Deputy Secretary

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