

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68187; File No. SR-NASDAQ-2012-125)

November 8, 2012

Self-Regulatory Organizations; The NASDAQ Stock Market 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-4thereunder,<sup>2</sup> notice is hereby given that on October 31, 2012, The NASDAQ Stock Market LLC ("NASDAQ" 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 NASDAQ. 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 NASDAQ Stock Market LLC proposes to modify Chapter XV, Section 2, governing pricing for NASDAQ members using the NASDAQ Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options. While changes pursuant to this proposal are effective upon filing, the Exchange has designated the proposed amendment to be operative on November 1, 2012.

The text of the proposed rule change is available on the Exchange's website at <http://www.nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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. 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 options to the International Securities Exchange, LLC (“ISE”).

The Exchange’s Pricing Schedule at Chapter XV, Section 2(4) currently includes the following fees for routing Customer, Firm, Market Maker and Professional orders to away markets:

<b>Exchange</b>	<b>Customer</b>	<b>Firm</b>	<b>MM</b>	<b>Professional</b>
BATS Penny	\$0.55	\$0.55	\$0.55	\$0.55
BATS non-Penny	\$0.86	\$0.91	\$0.91	\$0.91
BOX	\$0.11	\$0.55	\$0.55	\$0.11
BX Options	\$0.11	\$0.54	\$0.54	\$0.54
CBOE	\$0.11	\$0.55	\$0.55	\$0.31
CBOE orders greater than 99 contracts in NDX, MNX ETFs, ETNs & HOLDRs	\$0.29	\$0.55	\$0.55	\$0.31
C2	\$0.55	\$0.55	\$0.55	\$0.55
ISE	\$0.11	\$0.55	\$0.55	\$0.29
ISE Select Symbols *	\$0.31	\$0.55	\$0.55	\$0.39
NYSE Arca Penny Pilot	\$0.55	\$0.55	\$0.55	\$0.55
NYSE Arca Non Penny Pilot	\$0.11	\$0.55	\$0.55	\$0.11

NYSE AMEX	\$0.11	\$0.55	\$0.55	\$0.31
PHLX (for all options other than PHLX Select Symbols)	\$0.11	\$0.55	\$0.55	\$0.31
PHLX Select Symbols **	\$0.50	\$0.55	\$0.55	\$0.51

\* 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.

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

The Exchange is proposing to amend the ISE Select Symbol Customer Routing Fee from \$0.31 to \$0.35 per contract when routing Select Symbols to ISE. ISE amended its fee for removing liquidity for Priority Customer orders from \$0.20 to \$0.25 per contract.<sup>3</sup> The Exchange is seeking to amend the Customer Routing Fee for ISE Select Symbols to recoup the fee increase when routing to ISE.

Nasdaq Options Services LLC (“NOS”), a member of the Exchange, is the Exchange’s exclusive order router.<sup>4</sup> NOS is the Routing Facility for NOM. Each time NOS routes to away markets NOS is charged a clearing fee<sup>5</sup> 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

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<sup>3</sup> See Securities Exchange Act Release No. 67628 (August 9, 2012), 77 FR 49049 (August 15, 2012) (SR-ISE-2012-71).

<sup>4</sup> See NASDAQ Rules at Chapter VI, Section 11(e) (Order Routing).

<sup>5</sup> The Options Clearing Corporation (“OCC”) recently amended its clearing fee to \$0.01 per contract side. See Securities Exchange Act Release No. 68025 (October 10, 2012), 77 FR 63398 (October 16, 2012) (SR-OCC-2012-18).

operating NOS, membership fees at away markets, and technical costs associated with routing.<sup>6</sup> The Exchange is proposing to assess a fixed fee of \$0.10 per contract in addition to the actual transaction fee of \$0.25 per contract which is assessed by ISE when routing a Customer order in a Select Symbol for a total of \$0.35 per contract.

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

NASDAQ believes that its proposal to amend its rules is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>8</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 Customer ISE Select Symbols Routing Fee is reasonable because the Exchange seeks to recoup costs incurred by the Exchange when routing Customer orders to ISE in Select Symbols on behalf of NOM Options Participants. 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 Customer Routing Fee would enable the Exchange to recover the remove fee assessed to NOM Options Participants by ISE in Select Symbols, plus

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<sup>6</sup> The Exchange incurs costly connectivity charges related to telecommunication lines and other related costs when routing orders. Also, 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.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

clearing and other administrative and technical fees for the execution of certain Customer orders routed to ISE. The Exchange also believes that the proposed Customer Routing Fee is equitable and not unfairly discriminatory because the Exchange would assess the ISE Select Symbol Customer Routing Fee uniformly to all Customer orders that are routed to ISE.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ 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. In addition, a NOM Options Participant may designate an order as not available for routing to avoid routing fees.<sup>9</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>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.

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<sup>9</sup> See NOM Rules at Chapter VI, Section 11.

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

#### 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-NASDAQ-2012-125 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-NASDAQ-2012-125. 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, D.C. 20549-1090, 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 NASDAQ's principal office and on its Internet website. 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-NASDAQ-2012-125, 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

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