

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68609; File No. SR-NASDAQ-2013-001)

January 9, 2013

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-4 thereunder,<sup>2</sup> notice is hereby given that on January 2, 2013, 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

NASDAQ proposes to modify Chapter XV, Section 2, entitled “NASDAQ Options Market – Fees and Rebates,” which govern pricing for NASDAQ members using the NASDAQ Options Market (“NOM”), NASDAQ’s facility for executing and routing standardized equity and index options, to amend Routing Fees.

The text of the proposed rule change is provided in Exhibit 5. The text of the proposed rule change is also 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 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 options to away markets. The Exchange proposes to amend Routing Fees for the following away markets: BATS Exchange, Inc. ("BATS"), BOX Options Exchange LLC ("BOX"), NASDAQ OMX BX, Inc. ("BX Options"), the Chicago Board Exchange Incorporated ("CBOE"), the International Securities Exchange LLC ("ISE"), NYSE ARCA, Inc. ("NYSE Arca") and NASDAQ OMX PHLX LLC ("Phlx"). These away markets amended their transaction fees and the Exchange desires to amend its Routing Fees to reflect the amended transaction cost for routing to these away markets. In addition, the Exchange proposes to adopt Routing Fees when routing orders to Miami International Securities Exchange, LLC ("MIAX").

Today, the Exchange's Rules at Chapter XV, Section 2(4) include the following fees for routing Customer, Firm, Market Maker and Professional orders:

<b>Exchange</b>	<b>Customer Firm MM 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	\$0.35	\$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

NASDAQ 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 the order router, membership fees at away markets, and technical costs associated with routing.<sup>3</sup> For example, the Exchange incurs costs related to the Nasdaq Options Services LLC (“NOS”), a member of the Exchange and the Exchange’s exclusive order router.<sup>4</sup> Each time NOS routes an order to an away market, 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 proposes to recoup a portion of the above costs along with the away market’s routing fee when routing to an away market.

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<sup>3</sup> In addition to membership fees and transaction fees, the Exchange also incurs an Options Regulatory Fee (“ORF”) when it routes to an away market that assesses an ORF.

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

<sup>5</sup> The Options Clearing Corporation (“OCC”) assesses \$0.01 per contract side.

The Exchange is proposing to amend various away market fees to account for amendments to fees to remove liquidity at those markets. The Exchange currently assesses an \$0.11 per contract fixed routing fee in addition to the away market's transaction fee.

BATS assesses the following fees for removing liquidity from the BATS Options order book in all other securities, or Non-Penny Pilot Securities, as follows: \$0.84 per contract for a Professional, Firm or Market Maker order and \$0.75 per contract for a Customer order.<sup>6</sup> The Exchange is proposing to amend the BATS Non-Penny Pilot Routing Fees by increasing the Firm, Market Maker and Professional Routing Fees from \$0.91 to \$0.94 per contract.<sup>7</sup> The Exchange proposes to make a technical amendment for consistency to the "BATS non-Penny" category to rename it "BATS Non-Penny Pilot." The Exchange also proposes to rename the "BATS Penny" Routing Fees as the "BATS Penny Pilot" Routing Fees for consistency in the Routing Fees.

BOX amended its Professional fees to assess a Professional non-auction transaction fee of \$0.20 per contact.<sup>8</sup> The Exchange is proposing to increase the BOX Professional Routing Fee from \$0.11 to \$0.31 per contract.<sup>9</sup>

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<sup>6</sup> See BATS BZX Exchange Fee Schedule.

<sup>7</sup> The Exchange computed the BATS Non-Penny Pilot Routing Fees by adding an \$0.11 per contract fixed fee to the away market's transaction fee. The Exchange proposes to cap the Firm, Market Maker and Professional BATS Non-Penny Pilot Routing Fees at \$0.94 per contract similar to NYSE Arca and BX Options Routing Fees. The Exchange is not proposing to amend the Customer Routing Fee in BATS Non-Penny Pilot Options.

<sup>8</sup> See BOX Options Exchange Fee Schedule.

<sup>9</sup> The Exchange computed the BOX Professional Routing Fee by adding an \$0.11 per contract fixed fee to the away market's transaction fee.

BX Options recently adopted Non-Penny Pilot Pricing.<sup>10</sup> The Exchange is proposing to amend the title of the current BX Options Routing Fees from “BX Options” to “BX Options Penny Pilot” and create a new category of Routing Fees entitled “BX Options Non-Penny Pilot.” The Exchange is proposing to adopt the following BX Options Non-Penny Pilot Routing Fees: \$0.11 per contract for a Customer and \$0.94 per contract for a Firm, Market Maker and Professional.<sup>11</sup>

CBOE amended its fees in Select Symbols to assess a Professional transaction fee of \$0.30 per contract.<sup>12</sup> The Exchange is proposing to increase the CBOE Professional Routing Fee from \$0.31 to \$0.41 per contract.<sup>13</sup> In addition, the Exchange is proposing to amend the Professional Routing Fee for CBOE orders greater than 99 contracts in ETFs, ETNs and HOLDRs of \$0.31 per contract to “N/A.” The Exchange noted a \$0.31 per contract fee, which is the same fee for the Professional CBOE Routing Fee, at the time that the Exchange created the CBOE orders greater than 99 contracts Routing Fee category. This was an error because the Routing Fees for CBOE orders greater than 99 contracts only apply to Customer orders and not Professional orders. The Exchange has

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<sup>10</sup> See SR-BX-2012-074 (not yet published). BX Options Non-Penny Pilot Fees to Remove Liquidity are as follows: Customer is not assessed a fee, a BX Options Market Maker and Non-Customer are assessed an \$0.88 per contract fee. A Non-Customer includes a Professional, Firm, Broker-Dealer and Non-BX Options Market Maker.

<sup>11</sup> The Exchange computed the BX Options Customer Non-Penny Pilot Routing Fee by assessing only the \$0.11 per contract fixed fee. The Exchange computed the Firm, Market Maker and Professional Routing Fees by adding \$0.11 per contract to the away market’s transaction fee. The Exchange determined to cap the Firm, Market Maker and Professional Routing Fees at \$0.94 per contract similar to BATS and NYSE Arca Routing Fees.

<sup>12</sup> See CBOE’s Fees Schedule.

<sup>13</sup> The Exchange computed the CBOE Professional Routing Fee by adding an \$0.11 per contract fixed fee to the away market’s transaction fee.

never assessed the Professional Routing Fee for CBOE orders greater than 99 contracts on a Professional because it was only able to route Customer orders over 99 contracts to CBOE in this category. The Exchange proposes to amend the fee rate to display “N/A” because a Professional would not qualify for this category. Additionally, the Exchange proposes to update the title of the Routing Fee to “CBOE orders greater than 99 contracts in ETFs and ETNs” to remove the HOLDRs product, which is no longer listed on CBOE.

The Exchange is proposing to rename the “ISE” Routing Fees as the “ISE (Standard)” Routing Fees to further distinguish this fee from the ISE Select Symbols Routing Fees. ISE amended its Professional Customer Non-Select Symbols or “Standard” fee to \$0.20 per contract.<sup>14</sup> The Exchange is proposing to increase the newly named ISE (Standard) Professional Routing Fee from \$0.29 to \$0.31 per contract.<sup>15</sup> Additionally, ISE amended its Professional Customer taker fee in Select Symbols to \$0.33 per contract.<sup>16</sup> The Exchange is proposing to increase the ISE (Select Symbols) Professional Routing Fee from \$0.39 to \$0.44 per contract.<sup>17</sup>

NYSE Arca assesses the following take liquidity fees: \$0.79 per contract for a Customer and \$0.85 per contract for a Firm and Broker-Dealer.<sup>18</sup> The Exchange is proposing to amend the NYSE Arca Non-Penny Pilot Routing Fees as follows: the Customer and Professional Routing Fees will increase from \$0.11 to \$0.90 per contract,

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<sup>14</sup> See ISE’s Fee Schedule.

<sup>15</sup> The Exchange computed the ISE (Standard) Professional Routing Fee by adding an \$0.11 per contract fixed fee to the away market’s transaction fee.

<sup>16</sup> See ISE’s Fee Schedule.

<sup>17</sup> The Exchange computed the ISE (Select Symbols) Professional Routing Fee by adding an \$0.11 per contract fixed fee to the away market’s transaction fee.

<sup>18</sup> See NYSE ARCA General Options and Trading Permit (OTP) Fees.

and the Firm and Market Maker Routing Fees will increase from \$0.55 to \$0.94 per contract.<sup>19</sup>

Phlx recently amended its fees in Select Symbols to assess no Customer Fee to Remove Liquidity and to decrease the Professional Fee for Removing Liquidity in Select Symbols from \$0.45 to \$0.44 per contract.<sup>20</sup> The Exchange is proposing to decrease the Phlx Select Symbols Customer Routing Fee from \$0.50 to \$0.11 per contract and increase the Professional Routing Fee from \$0.51 to \$0.55 per contract.<sup>21</sup>

MIAX recently filed to adopt transaction fees, which included the following fees applicable to all classes of options: \$0.00 for a Priority Customer, \$0.45 for a Non-MIAX Market Maker, \$0.45 for a Broker-Dealer and \$0.25 per contract for a Public Customer other than a Priority Customer.<sup>22</sup> The Exchange is proposing to adopt MIAX Routing

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<sup>19</sup> The Exchange computed the NYSE Arca Non-Penny Pilot Customer and Routing Fees by adding an \$0.11 per contract fixed fee to the away market's transaction fee. Because NYSE Arca does not have a Professional category, Professional orders would be routed as Customer to NYSE Arca. In light of this, the Professional Routing Fee was computed the same as the Customer Routing Fee. With respect to the Firm and Market Maker Routing Fees, the Exchange added an \$0.11 per contract fixed fee to the away market's transaction fee and determined to cap the Routing Fees at \$0.94 per contract similar to BATS and BX Options.

<sup>20</sup> See SR-Phlx-2013-01 (not yet published). Phlx lists its Select Symbols in Section I of its Pricing Schedule.

<sup>21</sup> The Exchange is proposing to assess a Customer the \$0.11 per contract fixed fee as there is no transaction fee when routing a Customer order to Phlx in Select Symbols. The Exchange is also proposing to add the \$0.11 per contract fixed fee to the away market's transaction fee to compute the Professional Routing Fee in Select Symbols. The Exchange proposes to cap the fee at \$0.55 per contract similar to the Firm and Market Maker Routing Fee in PHLX Select Symbols.

<sup>22</sup> See MIAX's Fee Schedule.

Fees as follows: \$0.11 per contract for a Customer, \$0.36 per contract for a Professional and \$0.55 per contract for a Firm and Market Maker.<sup>23</sup>

The Exchange is not proposing to otherwise amend other Routing Fees not specifically mentioned. 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>24</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>25</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange's amendments to the BATS, BOX, BX Options, CBOE, ISE, NYSE Arca and Phlx Routing fees as well as the adoption of MIAX Routing Fees are reasonable because these fees are designed to recoup costs that are incurred by the Exchange when routing certain orders to these away markets 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<sup>26</sup> that are incurred by the Exchange. The Exchange believes that the

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<sup>23</sup> The Exchange computed the MIAX Routing Fees by adding an \$0.11 per contract fixed fee to the away market's transaction fee. With respect to the Firm and Market Maker Routing Fees, the Exchange determined to cap the fees at \$0.55 per contract similar to other Routing Fees.

<sup>24</sup> 15 U.S.C. 78f(b).

<sup>25</sup> 15 U.S.C. 78f(b)(4).

<sup>26</sup> The Exchange utilizes the NOS a member of the Exchange and the Exchange's exclusive order router to route orders in options listed and open for trading on NOM to destination markets.



proposed Routing Fees would enable the Exchange to recover the respective remove fee assessed to each market participant by the away market, plus clearing and other administrative and technical fees for the execution of orders routed to NOM and executed on these away markets.

The Exchange also believes that the amended Routing Fees are equitable and not unfairly discriminatory because these fees would be uniformly applied to all market participant orders that are routed to the respective away market to cover the cost to route the order. The Exchange applied a similar methodology in calculating the routing fees for each market participant by adding not more than a \$0.11 per contract fee to the away market's remove fee to determine the BX Options Routing Fees.<sup>27</sup>

The Exchange believes that the technical amendments to the titles of the Routing Fees are reasonable, equitable and not unfairly discriminatory as the amendments add clarity to the fee categories.

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. The Exchange believes that the rule change would allow the Exchange to recoup its costs when routing orders designated as available for routing by the market participant. Today, other options exchanges also assess similar fees to recoup costs incurred by the Exchange to route orders to away markets. Further, a NOM Participant may designate an order as

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<sup>27</sup> See BX Rules at Chapter XV, Section 2(4).

not available for routing to avoid Routing Fees.<sup>28</sup> For these reasons, the Exchange does not believe that that the proposed fees impose a burden on competition.

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>29</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>28</sup> See NOM Rules at Chapter VI, Section 11.

<sup>29</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-NASDAQ-2013-001 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-2013-001. 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 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-NASDAQ-2013-001, 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>30</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>30</sup> 17 CFR 200.30-3(a)(12).