SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69401; File No. SR-Phlx-2013-38)

April 18, 2013

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b-4[2] thereunder, notice is hereby given that on April 8, 2013, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("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 Section V of the Pricing Schedule entitled "Routing Fees."

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated the proposed amendment to be operative on May 1, 2013.

The text of the proposed rule change is available on the Exchange's Website at http://nasdaqomxphlx.cchwallstreet.com/, 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

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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 amend Routing Fees in Section V of the Pricing Schedule in order to recoup costs that the Exchange incurs for routing and executing orders in equity options to various away markets.

Today, the Exchange assesses Non-Customers a flat rate of $0.95 per contract on all Non-Customer orders routed to any away market and the Exchange assesses Customer orders a fixed fee plus the actual transaction fee dependent on the away market. Specifically, the Exchange assesses Customer orders routed to NASDAQ Options Market LLC ("NOM") a fixed fee of $0.05 per contract in addition to the actual transaction fee assessed by the away market. With respect to Customer orders that are routed to NASDAQ OMX BX, Inc. ("BX Options"), the Exchange does not assess a Routing Fee and does not pass rebates paid by the away market.[3] The Exchange does not assess a Routing Fee when routing orders to BX Options because that exchange pays a rebate. Instead of netting the customer rebate paid by BX Options against the fixed fee,[4] the Exchange simply does not assess a fee. The Exchange assesses Customer orders routed to all other away markets, except NOM and BX Options, a fixed fee of $0.11 per contract

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3 BX Options pays a Customer Rebate to Remove Liquidity as follows: Customers are paid $0.12 per contract in IWM, SPY and QQQ, $0.32 per contract in All Other Penny Pilot Options and $0.70 per contract in Non-Penny Pilot Options. See BX Options Rules at Chapter XV, Section 2(1).

4 BX Options does not assess a Customer a Fee to Remove Liquidity in any symbols today. See Chapter V, Section 2(1) of the BX Options Rules.

in addition to the actual transaction fee assessed by the away market, unless the away market pays a rebate, then the Routing Fee is $0.00.

The fixed fees are based on costs that are incurred by the Exchange when routing to an away market in addition to the away market's transaction fee. For example, the Exchange incurs a fee when it utilizes Nasdaq Options Services LLC ("NOS"), a member of the Exchange and the Exchange's exclusive order router,[5] 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 incurs a clearing-related cost[6] 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 also incurs administrative and technical costs associated with operating NOS, membership fees at away markets, Options Regulatory Fees ("ORFs") and technical costs associated with routing options. For Customer orders, the transaction fee assessed by the Exchange is based on the away market's actual transaction fee or rebate for a particular market participant at the time that the order was entered into the Exchange's trading system. This transaction fee is calculated on an order-by-order basis for Customer orders, since different away markets charge different amounts. In the event that there is no transaction fee or rebate assessed by the away market, the only fee assessed is the fixed Routing Fee.

5 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. See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32). NOS is utilized by the Exchange's fully automated options trading system, PHLX XL®.

6 The Options Clearing Corporation ("OCC") assesses a clearing fee of $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).

The Exchange is proposing to amend the Routing Fees to all other options exchanges, except NOM and BX Options, to increase the fixed fee of $0.11 to $0.15 per contract.[7] The Exchange currently does not recoup all of its costs to route to away markets other than NOM and BX Options. As mentioned herein, the Exchange incurs costs when routing to away markets including away market transaction fees, ORFs, clearing fees, Section 31 related fees, connectivity and membership fees. The Exchange is not recouping its costs currently with the $0.11 per contract fixed fee and proposes to increase the fixed fee to $0.15 per contract.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(4) of the Act,[9] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that amending the Customer Routing Fee to other away markets, other than NOM and BX Options, from a fixed fee of $0.11 to $0.15 per contract, in addition to the actual transaction fee, is reasonable because the proposed fixed fee for Customer orders is an approximation of the costs the Exchange will be charged for routing orders to away markets. For example, today, NYSE MKT LLC ("Amex") does not assess a Customer transaction fee.[10] Today, the Exchange would therefore assess a Customer order that was routed to Amex an $0.11 per contract Routing Fee. The Exchange's effective per contract expenses to route to Amex include the ORF, OCC clearing charges, Section 31 related fees, connectivity and membership

7 The Exchange is not proposing to amend Non-Customer Routing Fees or Routing Fees for Customer orders routed to NOM or BX Options.

8 15 U.S.C. 78f(b).

9 15 U.S.C. 78f(b)(4).

10 See Amex's Fee Schedule.

fees are not covered by the $0.11 per contract and are slightly higher than the $0.15 per contract. As a general matter, the Exchange believes that the proposed fees will allow it to recoup and cover its costs of providing optional routing services for Customer orders because it better approximates the costs incurred by the Exchange for routing such orders. While, each destination market's transaction charge varies and there is a cost incurred by the Exchange when routing orders to away markets, including OCC clearing costs, administrative and technical costs associated with operating NOS, membership fees at away markets, ORFs and technical costs associated with routing options, the Exchange believes that the proposed Routing Fees will enable it to recover the costs it incurs to route Customer orders to away markets. Today, the Exchange is paying a higher average cost per contract than to route Customer orders to away markets, other than NOM and BX Options.

The Exchange believes that the proposed pricing for Customer Routing Fees to all other away markets, except NOM and BX Options, is equitable and not unfairly discriminatory because the Exchange would assess the same fixed fee when routing orders to an away market in addition to the away market transaction fee. The proposal would apply uniformly to all market participants when routing to an away market that pays a rebate. Market participants may submit orders to the Exchange as ineligible for routing or "DNR" to avoid Routing Fees.[11] It is important to note that when orders are routed to an away market they are routed based on price first.[12]

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11 See Rule 1066(h) (Certain Types of Orders Defined) and 1080(b)(i)(A) (PHLX XL and PHLX XL II).

12 PHLX XL will route orders to away markets where the Exchange's disseminated bid or offer is inferior to the national best bid (best offer) ("NBBO") price. See Rule 1080(m). The PHLX XL II system will contemporaneously route an order marked as an Intermarket Sweep Order ("ISO") to each away market disseminating prices better than the Exchange's price, for the lesser of: (a) the disseminated size of such away markets, or

Further, the Exchange believes that it is reasonable to continue to not assess a Customer Routing Fee when routing to all other options exchanges, except NOM and BX Options, if the away market pays a rebate. The Exchange will continue to assess a fixed fee, which fee is being increased with this proposal, plus the actual transaction charge assessed by the away market when routing to all other options exchanges, except NOM and BX Options, unless the away market pays a rebate. The Exchange would continue to not assess a Routing Fee if the away market pays a rebate because the Exchange believes it is reasonable to retain the rebate to offset the Routing Fee. The Exchange believes that market participants will have more certainty as to the Customer Routing Fee that will be assessed by the Exchange by simply not assessing a Routing Fee for Customer orders routed to away markets, other than NOM, that pay a rebate.[13] The Exchange believes that not assessing a fee for routing orders to BX Options, instead of netting the customer rebate paid by BX Options against the Fixed Fee[14] is reasonable because although market participants routing orders to BX Options will not receive a credit, the Routing Fee is transparent. Market participants will not pay a Customer Routing Fee when routing orders to BX Options with this proposal instead of the $0.05 per contract fee netted against the rebate, as is the case today. The Exchange believes that the proposed Customer Routing Fee to BX

(b) the order size and, if order size remains after such routing, trade at the Exchange's disseminated bid or offer up to its disseminated size. If contracts still remain unexecuted after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the PHLX XL II system will not route the order to the locking or crossing market center, with some exceptions noted in Rule 1080(m).

13 BX Options pays a Customer Rebate to Remove Liquidity as follows: Customers are paid $0.12 per contract in IWM, SPY and QQQ, $0.32 per contract in All Other Penny Pilot Options and $0.70 per contract in Non-Penny Pilot Options. See BX Options Rules at Chapter XV, Section 2(1).

14 BX Options does not assess a Customer a Fee to Remove Liquidity in any symbols today. See Chapter V, Section 2(1) of the BX Options Rules.

Options is equitable and not unfairly discriminatory because the proposal would apply uniformly to all market participants.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to continue to assess Customer orders that are routed to NOM a fixed fee of $0.05 per contract and orders that are routed to other away markets, other than NOM and BX Options, a fixed fee of $0.15 per contract because the cost, in terms of actual cash outlays, to the Exchange to route to NOM (and BX Options)[15] is lower. For example, costs related to routing to NOM are materially lower as compared to other away markets because NOS is utilized by all three exchanges to route orders.[16] NOS and the three NASDAQ OMX options markets have a common data center and staff that are responsible for the day-to-day operations of NOS. Because the three exchanges are in a common data center, Routing Fees are reduced because costly expenses related to, for example, telecommunication lines to obtain connectivity are avoided when routing orders in this instance. The costs related to connectivity to route orders to other NASDAQ OMX exchanges are de minimis. When routing orders to non-NASDAQ OMX exchanges, the Exchange incurs costly connectivity charges related to telecommunication lines and other related costs. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to pass along savings realized by leveraging NASDAQ OMX's infrastructure and scale to market participants when those orders are routed to NOM.

Finally, the Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess different fees for Customers orders as compared to non-Customer orders

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15 The Exchange does not assess the $0.05 per contract Fixed Fee for routing orders to BX Options because that exchange pays Customer rebates, which the Exchange would retain to offset its cost.

16 See Chapter VI, Section 11 of the NASDAQ and BX Options Rules and Phlx Rule 1080(m)(iii)(A).

because the Exchange has traditionally assessed lower fees to Customers as compared to non-Customers. Customers will continue to receive the lowest fees or no fees when routing orders, as is the case today. Other options exchanges also assess lower Routing Fees for customer orders as compared to non-customer orders.[17]

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. The Exchange does not believe that the proposal creates intra-market competition because the Exchange is applying the same Routing Fees and credits to all market participants in the same manner dependent on the routing venue, with the exception of Customers. The Exchange will continue to assess separate Customer Routing Fees. Customers will continue to receive the lowest fees or no fees when routing orders, as is the case today. Other options exchanges also assess lower Routing Fees for customer orders as compared to non-customer orders.[18]

The Exchange's proposal would allow the Exchange to continue to recoup its costs when routing orders to away markets when such orders are designated as available for routing by the market participant. The Exchange continues to pass along savings realized by leveraging NASDAQ OMX's infrastructure and scale to market participants when those orders are routed to NOM and is providing those savings to all market participants. Members and member organizations may choose to mark the order as ineligible for routing to avoid incurring these

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[17] BATS assesses lower customer routing fees as compared to non-customer routing fees per the away market. For example BATS assesses ISE customer routing fees of $0.30 per contract and an ISE non-customer routing fee of $0.57 per contract. See BATS BZX Exchange Fee Schedule.

[18] Id.

fees.[19] Today, other options exchanges also assess fixed routing fees to recoup costs incurred by the Exchange to route orders to away markets.[20]

The Exchange operates in a highly competitive market, comprised of eleven exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Accordingly, the fees that are assessed by the Exchange must remain competitive with fees charged by other venues and therefore must continue to be reasonable and equitably allocated to those members organizations that opt to direct orders to the Exchange rather than competing venues.

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.[21] 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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[19] See supra note 11.

[20] See CBOE's Fees Schedule and ISE's Fee Schedule.

[21] 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. Please include File Number SR-Phlx-2013-38 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-2013-38. 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 Number SR-Phlx-2013-38 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.[22]

Kevin M. O'Neill
Deputy Secretary

[22] 17 CFR 200.30–3(a)(12).