

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66729; File No. SR-NASDAQ-2012-037)

April 3, 2012

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees for Newly Listed Indexes

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 March 28, 2012, The NASDAQ Stock Market LLC (“NASDAQ” 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 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 pricing for NASDAQ members using the NASDAQ Options Market (“NOM”), NASDAQ’s facility for executing and routing standardized equity and index options. Specifically, NASDAQ proposes to adopt fees for newly listed indexes and make other minor amendments to Chapter XV at Section 2 entitled “NASDAQ Options Market – Fees.”

While changes proposed herein are effective upon filing, the Exchange has designated these changes to be operative on April 2, 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.

¹ 15 U.S.C. 78s(b)(1).

² 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

NASDAQ proposes to amend Chapter XV, Section 2 to adopt fees for the following newly listed index options: PHLX Semiconductor SectorSM (SOXSM), PHLX Housing SectorTM (HGXSM) and PHLX Oil Service SectorSM (OSXSM).³

Specifically, the Exchange proposes to assess the following Fees for Adding Liquidity and Fees for Removing Liquidity for transactions in SOX, HGX and OSX:

	Customer Professional Firm		Non-NOM Market Maker	NOM Market Maker
SOX, HGX and OSX:				
Fee for Adding Liquidity	\$0.35	\$0.45	\$0.45	\$0.35
Fee for Removing Liquidity	\$0.35	\$0.45	\$0.45	\$0.35

³ The Exchange plans on listing these index options on April 2, 2012.

Other Amendments

The Exchange also proposes to amend the title of Chapter XV, currently entitled “Options Fees,” to “Options Pricing” to more specifically describe this Rule. The Exchange also proposes to amend the title of “All Other Options” in Section 2(1) to “Non-Penny Pilot Options” to more specifically describe those fees. Finally, the Exchange proposes to reorder the Fees and Rebates in Section 2(1) to move the current “All Other Options” after the “Penny Pilot Options” fees and rebates.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,⁴ in general, and with Section 6(b)(4) of the Act,⁵ in particular, in that they provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls.

The Exchange believes that its proposal to adopt Fees for Adding Liquidity and Fees for Removing Liquidity for transactions in SOX, HGX and OSX is reasonable because the Exchange proposes to assess the same fees that are currently assessed by NASDAQ OMX PHLX LLC (“Phlx”) for these proprietary products.⁶ The Exchange has previously distinguished other index

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(4).

⁶ Despite the fact that SOX, HGX and OSX will be Multiply Listed, Phlx will continue to assess market participants the fees for Singly Listed Options to transact index options in SOX, HGX and OSX. See SR-Phlx-2012-35. See also Section III of Phlx’s Pricing Schedule. Accordingly, Phlx would continue to assess the following fees to transact index options in SOX, HGX and OSX as of April 2, 2012: Customers \$0.35 per contract, Professionals \$0.45 per contract, Firms \$0.45 per contract, Market Makers \$0.35 per contract, and Broker-Dealers \$0.45 per contract. Non-NOM Market Makers are registered market makers on another options market that append the market maker designation to orders routed to NOM. This is the equivalent of a Broker-Dealer on Phlx. While Phlx does not assess both a Fee for Adding Liquidity and Fee for Removing Liquidity, it assesses each side of the transaction the Options Transaction Charge.

products from the Non-Penny Pilot Options fees and rebates.⁷ The Exchange assesses lower Fees for Removing Liquidity in SOX, HGX and OSX as compared to the Fees for Removing Liquidity in Non-Penny Pilot Options, which should encourage NOM Participants to transact these newly listed index options. The Fees for Adding Liquidity for transactions in SOX, HGX and OSX are the same or higher than the Fees for Adding Liquidity in Non-Penny Pilot Options. The Exchange believes that these fees are reasonable because these fees correspond to comparable fees in place at Phlx for executions in SOX, HGX, and OSX.⁸

The Exchange believes that its proposal to adopt Fees for Removing Liquidity for transactions in SOX, HGX and OSX is equitable and not unfairly discriminatory in that Customers and NOM Market Makers are assessed lower Fees for Removing Liquidity, \$0.35 per contract, as compared to other market participants because Customer liquidity benefits all market participants and NOM Market Makers have certain obligations to the market and regulatory requirements, which normally do not apply to other market participants.⁹ The Exchange's proposal to assess all other market participants, Professionals, Firms and Non-NOM Market Makers, a \$0.45 per contract Fee for Removing Liquidity for transactions in SOX, HGX and OSX is equitable and not unfairly discriminatory because these participants are uniformly assessed the same fee.

The Exchange believes that its proposal to adopt Fees for Adding Liquidity for transactions in SOX, HGX and OSX is equitable and not unfairly discriminatory because the Customer Fee for Adding Liquidity for transacting SOX, HGX and OSX of \$0.35 per contract is

⁷ See Chapter XV, Section 2(1) fees.

⁸ See Phlx's Pricing Schedule at Section III.

⁹ See Exchange Rules Section VII, Market Participants, Sections 5, Obligations of Market Makers, and Section 6, Market Maker Quotations.

lower than fees assessed other market participants for transacting SOX, HGX and OSX, except NOM Market Makers. This is because, as previously stated, the Exchange desires to attract Customer order flow to the market, which liquidity benefits all market participants. The NOM Market Maker Fee for Adding Liquidity for transactions in SOX, HGX and OSX of \$0.35 per contract is also lower than other market participants, except Customers, because NOM Market Makers have certain obligations to the market and regulatory requirements which are not borne by Customers, Professionals, Non-NOM Market Makers and Firms. The Exchange uniformly assesses Professionals, Firms and Non-NOM Market Makers a Fee for Adding Liquidity for transactions in SOX, HGX and OSX of \$0.45 per contract.

The Exchange also believes its proposal to amend the title of Chapter XV to “Options Pricing” is reasonable, equitable and not unfairly discriminatory because the Exchange believes that the proposed title more specifically describes the fees, rebates and other charges reflected in the Chapter. The Exchange also believes that amending the title of Section 2(1) from “All Other Options” to “Non-Penny Pilot Options” conforms the description of these fees to that of other options exchanges.¹⁰ Finally, the Exchange believes that reordering the fees in Section 2(1) is reasonable, equitable and not unfairly discriminatory because the Exchange is grouping the fees for indexes for ease of reference.

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants can and do send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the proposed fee scheme is competitive and similar to other fees in place on other exchanges. The Exchange believes that this competitive marketplace materially

¹⁰ Phlx utilizes the term non-Penny Pilot in Section II of its Fee Schedule. See Phlx’s Pricing Schedule.

impacts the fees present on the Exchange today and substantially influences the proposal set forth above.

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.¹¹ 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

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2012-037 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-2012-037. 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-NASDAQ-2012-037 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.¹²

Elizabeth M. Murphy
Secretary

¹² 17 CFR 200.30-3(a)(12).