

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61971; File No. SR-Phlx-2010-62)

April 23, 2010

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; 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")¹, and Rule 19b-4 thereunder,² notice is hereby given that on April 16, 2010, NASDAQ OMX PHLX, Inc. ("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 amend its fees governing pricing for Exchange members using the Phlx XL II system,³ for routing standardized equity and index option customer orders to away markets for execution.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be operative for trades settling on or after April 19, 2010.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, on the Commission's Web site at

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ For a complete description of Phlx XL II, see Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32). The instant proposed fees will apply only to option orders entered into, and routed by, the Phlx XL II system.

<http://www.sec.gov>, 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 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 the proposed rule change is to recoup costs that the Exchange incurs for routing and executing customer orders in equity and index options to away markets.

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.⁴ NOS is utilized by the Phlx XL II system solely to route orders in options listed and open for trading on the Phlx XL II system to destination markets.

The Exchange proposes to add a "professional" fee category to its Routing Fees. The Exchange defines a "professional" as any person or entity that (i) is not a broker or dealer in

⁴ See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32).

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)⁵ (hereinafter “Professional”).

The Exchange proposes to charge the following Professional Routing Fees: (i) a \$0.26 per contract side fee for Professional orders routed to NYSE Amex LLC (“NYSE Amex”) in all options; (ii) a \$0.36 per contract side fee for Professional orders routed to BATS Exchange, Inc. (“BATS”) in all options; (iii) a \$.06 per contract side fee for Professional orders routed to the Boston Options Exchange Group LLC (“BOX”) in all options; (iv) a \$0.26 per contract fee for Professional orders routed to the Chicago Board of Options Exchange, Inc. (“CBOE”) in all options; (v) a \$.06 per contract side fee for Professional orders routed to the International Securities Exchange, LLC (“ISE”) in all options; (vi) a \$0.50 per contract side fee for Professional orders routed to NYSE Arca, Inc. (“NYSEArca”) in penny options; (vii) a \$.06 per contract side fee for Professional orders routed to NYSEArca in all other options (excluding penny options); (viii) a \$.40 per contract side fee for Professional orders routed to NASDAQ Options Market (“NOM”) in penny options; and (ix) a \$.56 per contract side fee for Professional orders routed to NOM in the NASDAQ 100 Index Option (“NDX”) and the mini NASDAQ 100 Index Option (“MNX”). The proposed Professional Routing Fees for NYSE Amex and CBOE are higher for a Professional as opposed to a customer (\$0.26 versus \$0.06) because of the \$.20 transaction fees that both NYSE Amex and CBOE assess for Professional orders.⁶ Since these

⁵ A Professional will be treated in the same manner as an off-floor broker-dealer for purposes of Rules 1014(g)(except with respect to all-or-none orders, which will be treated like customer orders), 1033(e), 1064.02 (except professional orders will be considered customer orders subject to facilitation), and 1080.08 as well as Options Floor Procedure Advises B-6, B-11 and F-5. Member organizations must indicate whether orders are for professionals.

⁶ See NYSE Amex Options Fee Schedule and CBOE Fees Schedule.

transaction charges do not exist for customer orders, the customer Routing Fees are lower for these away markets as compared to the Professional Routing Fees.⁷

Currently, the Exchange's Fee Schedule includes Routing Fees to the aforementioned exchanges for customer orders. Professional orders are currently assessed these customer Routing Fees.⁸ The existing customer routing fees will be unchanged.

The Exchange is proposing these charges in order to recoup clearing and transaction charges which are incurred by the Exchange when orders are routed to these away markets.⁹ As with all fees, the Exchange may adjust these Routing Fees in response to competitive conditions by filing a new proposed rule change.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be operative for trades settling on or after April 19, 2010.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act¹¹ in particular, in that it is an equitable allocation of reasonable fees and other charges among

⁷ See Email from Angela S. Dunn, Assistant General Counsel, Phlx, to Richard R. Holley, Senior Special Counsel, Johnna B. Dumler, Special Counsel, and Daniel T. Gien, Staff Attorney, Division of Trading and Markets, Commission, dated April 22, 2010 (making clarifying changes to this paragraph).

⁸ See Securities Exchange Act Release No. 61876 [sic] (April 14, 2010) _____, FR _____ (_____) (SR-Phlx-2010-55).

⁹ Each destination market's transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange. The Exchange basis [sic] the above fees on the total of these costs for each destination market in assessing fees.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

Exchange members because Exchange members would equally be assessed the costs incurred by the Exchange to route customer orders to away markets on behalf of its members.

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 Act¹² and paragraph (f)(2) of Rule 19b-4¹³ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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.

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-2010-62 on the subject line.

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(2).

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-2010-62. 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 Web site (<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 Web site 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-2010-62 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.¹⁴

Florence E. Harmon
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).