

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.

**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-FINRA-2010-038 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-FINRA-2010-038. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at FINRA’s principal office. 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-FINRA-2010-038 and should be submitted on or before August 27, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary*

[FR Doc. 2010-19331 Filed 8-5-10; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-62618; File No. SR-NASDAQ-2010-088]

**Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees for Routing to Away Markets**

July 30, 2010.

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 July 22, 2010, 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 and II 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 modify Rule 7050 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 to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on August 2, 2010.

The text of the proposed rule change is set forth below. Proposed new text is in italics and deleted text is in brackets.<sup>3</sup>

\* \* \* \* \*

**7050. NASDAQ Options Market**

The following charges shall apply to the use of the order execution and routing services of the NASDAQ Options Market for all securities.

- (1)–(3) No Change.
- (4) Fees for routing contracts to markets other than the NASDAQ Options Market shall be assessed as provided below. The current fees and a historical record of applicable fees shall be posted on the NasdaqTrader.com website.

Exchange	Customer Firm MM		
BATS .....	\$0.36	\$0.55	\$0.55
BOX .....	\$0.06	\$0.55	\$0.55
CBOE .....	\$0.06	\$0.55	\$0.55
ISE .....	\$0.06	\$0.55	\$0.55
ISE Select Symbols* of 100 or more contracts .....	\$0.26	\$0.55	\$0.55
NYSE Arca Penny Pilot .....	\$0.50	\$0.55	\$0.55
NYSE Arca Non Penny Pilot .....	\$0.06	\$0.55	\$0.55
NYSE AMEX .....	\$0.06	\$0.55	\$0.55
PHLX (for all options other than <i>PHLX Select Symbols</i> [the below listed options]) .....	\$0.06	\$0.55	\$0.55

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> The proposed text reflects recent amendments to Rule 7050, specifically proposed rule change SR-NASDAQ-2010-090.

PHLX <i>Select Symbols</i> ** [(for the following options only): AA, AAPL, ABK, ABX, AIG, ALL, AMD, AMR, AMZN, ARIA, AXP, BAC, BRCD, C, CAT, CIEN, CIGX, CSCO, DELL, DIA, DNDN, DRYs, EBAY, EK, F, FAS, FAZ, GDx, GE, GLD, GLW, GS, HAL, IBM, INTC, IWM, IYR, JPM, LVS, MGM, MOT, MSFT, MU, NEM, NOK, NVDA, ONNN, ORCL, PALM, PFE, POT, QCOM, QID, QQQQ, RIG, RIMM, RMBS, SBUX, SDS, SIRI, SKF, SLV, SMH, SNDK, SPY, T, TBT, TZA, UAU, UNG, USO, UYG, V, VALE, VZ, WYNN, X, XHB, XLF, XRX and YHOO] .....	\$0.30	\$0.55	\$0.55
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\* 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 Fee Schedule for the complete list of symbols that are subject to these fees.

\* \* \* \* \*

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqomx.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 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 is proposing to modify Rule 7050 governing the fees assessed for options orders entered into NOM but routed to and executed on away markets ("routing fees"). NASDAQ Options Services LLC ("NOS"), a member of the Exchange, is the Exchange's exclusive order router. Each time NOS routes to away markets NOS is charged a \$0.06 clearing fee and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which are passed through to the Exchange. NOM currently assesses customers a fee of \$0.30 and Firms and Market Makers a fee of \$0.55 for routing options orders to NASDAQ OMX PHLX, Inc. ("PHLX") in certain select symbols that are subject to PHLX's Rebates and Fees for Adding and Removing Liquidity in Select Symbols.<sup>4</sup> The Exchange proposes to

<sup>4</sup> NOM currently assesses the aforementioned rates in the following symbols: AA, AAPL, ABK, ABX, AIG, ALL, AMD, AMR, AMZN, ARIA, AXP, BAC, BRCD, C, CAT, CIEN, CIGX, CSCO, DELL, DIA, DNDN, DRYs, EBAY, EK, F, FAS, FAZ, GDx,

modify Rule 7050 by titling those fees "PHLX Select Symbols" and adding clarifying language to indicate those fees would be subject to PHLX's Rebates and Fees for Adding and Removing Liquidity in Select Symbols, rather than listing all of the option symbols that are subject to those fees. The Exchange is proposing to amend the title in Rule 7050 so that the PHLX select symbols fees would apply to all of the symbols in PHLX's list of symbols which are subject to the Rebates and Fees for Adding and Removing Liquidity in Select Symbols.<sup>5</sup>

The Exchange also proposes to amend text in Rule 7050 to clarify that orders which are currently subject to "PHLX (for all options other than the below listed options)" routing fees would be renamed to state "PHLX (for all options other than PHLX Select Symbols)" to clarify that these fees would continue to apply to all orders routed to PHLX and not subject to PHLX's Rebates and Fees for Adding and Removing Liquidity in Select Symbols.<sup>6</sup>

NASDAQ Options Services LLC ("NOS"), a member of the Exchange, is the Exchange's exclusive order router. Each time NOS routes to away markets, NOS is charged a \$0.06 clearing fee and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which are passed through to the Exchange. The Exchange collects

GE, GLD, GLW, GS, HAL, IBM, INTC, IWM, IYR, JPM, LVS, MGM, MOT, MSFT, MU, NEM, NOK, NVDA, ONNN, ORCL, PALM, PFE, POT, QCOM, QID, QQQQ, RIG, RIMM, RMBS, SBUX, SDS, SIRI, SKF, SLV, SMH, SNDK, SPY, T, TBT, TZA, UAU, UNG, USO, UYG, V, VALE, VZ, WYNN, X, XHB, XLF, XRX and YHOO.

<sup>5</sup> PHLX recently filed a proposed rule change to add the following four options to the Phlx's list of symbols subject to the Rebates and Fees for Adding and Removing Liquidity in Select Symbols: BP p.l.c. Common Stock ("BP"), Baidu, Inc. ("BIDU"), iShares FTSE/Xinhua China 25 Index ("FXI") and Exxon Mobil Corp. ("XOM") and also remove the following three options: ARIAD Pharmaceuticals, Inc. ("ARIA"), Star Scientific, Inc. ("CIGX") and Palm, Inc. ("PALM") from its list of Select Symbols. See SR-Phlx-2010-98. All symbols subject to PHLX's Rebates and Fees for Adding and Removing Liquidity in Select Symbols will be referred to as "PHLX Select Symbols."

<sup>6</sup> Currently NOM assesses \$0.06 for Customers and \$0.55 for Firms and Market Makers for routing orders to PHLX which are not subject to PHLX's Rebates and Fees for Adding and Removing Liquidity in Select Symbols.

fees for routing to away markets in order to recoup clearing and transaction charges incurred by the Exchange when such orders are routed to various destination markets. Each destination market's transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on August 2, 2010.

#### 2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general, and with Section 6(b)(4) of the Act,<sup>8</sup> in particular, in that it provides 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 the proposed fee changes are reasonable because the Exchange is seeking to recoup the costs incurred for options orders entered into NOM but routed to and executed on PHLX in any symbol subject to PHLX's Rebates and Fees for Adding and Removing Liquidity in Select Symbols. This proposal would continue to apply to all of the PHLX Select Symbols, as defined on PHLX's Fee Schedule, going forward rather than listing each symbol in Rule 7050. The Exchange believes this amendment to Rule 7050 is reasonable because it continues to assess the same fees for routing orders to PHLX which are subject to PHLX's Rebates and Fees for Adding and Removing Liquidity in Select Symbols. This proposal is simply renaming those routing fees without changing the fees. Also, the proposal is equitable because the fees assessed to Customers, Firms and Market Makers will continue to apply to those market participants and the modifications to the title of the PHLX Select Symbols routing fees will

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

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

be uniformly applied to each of these participants.

NASDAQ is one of eight options market in the national market system for standardized options. Joining NASDAQ and electing to trade options is entirely voluntary. Under these circumstances, NASDAQ's fees must be competitive and low in order for NASDAQ to attract order flow, execute orders, and grow as a market. NASDAQ thus believes that its fees are fair and reasonable and consistent with the Exchange Act.

#### *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<sup>9</sup> and paragraph (f)(2) of Rule 19b-4<sup>10</sup> thereunder. At any time within 60 days of the filing of such 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.

### **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-2010-088 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-2010-088. 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 a.m. and 3 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 No. SR-NASDAQ-2010-088 and should be submitted on or before August 27, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. 2010-19370 Filed 8-5-10; 8:45 am]

**BILLING CODE 8010-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-62616; File No. SR-Phlx-2010-103]**

#### **Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add Seventy-Five Options Classes to the Penny Pilot Program**

July 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(“Act”),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on July 22, 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 and II 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 is filing with the Commission a proposal to designate seventy-five options classes to be added to the Penny Pilot Program (“Penny Pilot” or “Pilot”) on August 2, 2010.<sup>3</sup> The Exchange is not proposing to amend any rule text, but simply administering or enforcing an existing rule.<sup>4</sup>

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, 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

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

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

<sup>3</sup> The Penny Pilot was established in January 2007 and in October 2009 was expanded and extended through December 31, 2010. See Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR-Phlx-2006-74) (notice of filing and approval order establishing Penny Pilot); 60873 (October 23, 2009), 74 FR 56675 (November 2, 2009) (SR-Phlx-2009-91) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60966 (November 9, 2009), 74 FR 59331 (November 17, 2009) (SR-Phlx-2009-94) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 60966 (November 9, 2009), 75 FR 61454 (February 1, 2010), 75 FR 6233 (February 8, 2010) (SR-Phlx-2010-12) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); and 62028 (May 4, 2010), 75 FR 25890 (May 10, 2010) (SR-Phlx-2010-65) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot).

<sup>4</sup> See Rule 1034 regarding the Penny Pilot.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

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