

2010-015 and should be submitted on or before April 2, 2010.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61664; File No. SR-Phlx-2010-32]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees

March 5, 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 March 1, 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,<sup>3</sup> 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 March 1, 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 <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 certain better-priced 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.<sup>4</sup> 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 adding the following Routing Fees: (i) A \$0.06 per contract side fee for customer orders routed to NYSE Amex LLC (“NYSE Amex”) in all options; (ii) a \$0.36 per contract side fee for customer orders routed to BATS Exchange, Inc. (“BATS”) in all options; (iii) a \$.06 per contract side fee for customer orders routed to the Boston Options Exchange Group LLC (“BOX”) in all options; (iv) a \$0.06 per contract fee for customer orders route to the Chicago Board of Options Exchange, Inc. (“CBOE”) in all options; (v) a \$.06 per contract side fee for customer orders routed to International Securities Exchange, LLC (“ISE”) in all options; and (vi) a \$0.06 per customer side fee for customer orders routed to NYSE Arca, Inc. (“NYSEArca”) in non-penny options. The Exchange is proposing a \$.06 transaction fee on NYSE AMEX, BOX, CBOE, ISE and NYSEArca in order to recoup clearing charges which are incurred by the

Exchange when orders are routed to these away markets. The Exchange is proposing a \$.36 transaction fee on BATS in order to recoup most clearing charges which are incurred by the Exchange when orders are routed to these away markets as well as a transaction charge which is assessed by BATS.

Currently, the Exchange’s Fee Schedule includes a Routing Fee of \$0.50 per contract side for customer orders routed to NYSEArca in penny options for execution<sup>5</sup> and a Routing Fee of \$0.40 per contract side for customer orders routed to the NASDAQ Options Market (“NOM”) in penny options for execution. Also, the Exchange assesses a Routing Fee of \$.56 per contract side for customer orders routed to NOM in the NASDAQ 100 Index Option (“NDX”) and the mini NASDAQ 100 Index Option (“MNX”).<sup>6</sup> The Exchange is currently only assessing the Routing Fee in NDX and MNX for orders routed to NOM. There are currently no Routing Fees for orders routed to away markets other than NYSEArca and NOM in penny options. Also, currently, except for NDX and MNX, there are no transaction fees for executing customer orders at away markets in non-penny classes.

The Exchange is proposing these fees to recoup the majority of transaction and clearing costs associated with routing customer orders to each destination market. The Exchange believes that the routing fees proposed will enable the Exchange to recover the transaction fees assessed by away markets, where applicable, plus clearing fees for the execution of customer orders routed from the Phlx XL II system. As with all fees, the Exchange may adjust these Routing Fees in response to competitive conditions by filing a new proposed rule change.

The Exchange also proposes reformatting the Routing Fee table for purposes of clarity. The Exchange proposes eliminating the penny and non-penny columns and only specifying such a distinction, where applicable.

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

<sup>5</sup> See Securities Exchange Act Release No. 61374 (January 19, 2010), 75 FR 4123 (January 26, 2010) (SR-PHLX-2010-01).

<sup>6</sup> See SR-NASDAQ-2010-016. The NASDAQ Stock Market LLC (“NASDAQ”) recently established pricing for NDX and MNX. Specifically, NASDAQ established a fee of \$.50 per executed contract for Customers, Firms, and Non-NOM Market Makers to remove liquidity in NDX and MNX Options and a \$.40 per executed contract for NOM Market Makers to remove liquidity in NDX and MNX.

<sup>11</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> 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.

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

for trades settling on or after March 1, 2010.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>8</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among 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 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 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](mailto:rule-comments@sec.gov). Please include File

Number SR-Phlx-2010-32 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-2010-32. 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 Number SR-Phlx-2010-32 and should be submitted on or before April 2, 2010.

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

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61669; File No. SR-NASDAQ-2009-081]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change To Modify the Fees for Listing on the Nasdaq Stock Market and the Fee for Written Interpretations of Nasdaq Listing Rules

March 5, 2010.

## I. Introduction

On October 6, 2009, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change modifying the application, entry and annual fees currently charged to issuers listed on the Nasdaq Global and Nasdaq Global Select Markets, as well as the fee for written interpretations of Nasdaq listing rules. The proposed rule change was published for comment in the **Federal Register** on November 4, 2009.<sup>3</sup> The Commission received three comment letters from one commenter on the proposal.<sup>4</sup> Nasdaq submitted four letters in response to the comments.<sup>5</sup> This order approves the proposed rule change.

## II. Description of the Proposal

### A. Nasdaq Global and Global Select Application, Entry and Annual Fees

Nasdaq currently imposes a \$5,000 application fee on a company applying to list on the Nasdaq Global or Nasdaq Global Select Markets.<sup>6</sup> Nasdaq

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

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

<sup>3</sup> See Securities Exchange Act Release No. 60899 (October 28, 2009), 74 FR 57212 ("Notice").

<sup>4</sup> See Letters to Elizabeth M. Murphy, Secretary, Commission, from Jesse W. Markham, Jr., Roger Myers, and Stephen Ryerson, Holme Roberts & Owen LLP (writing on behalf of Business Wire, Inc.), dated November 24, 2009 ("Business Wire Letter 1"); January 8, 2010 (stating its intent to respond to Nasdaq's response to its initial letter); and January 14, 2010 ("Business Wire Letter 2").

<sup>5</sup> See Letter to Elizabeth M. Murphy, Secretary, Commission, from Arnold P. Golub, Vice President and Associate General Counsel, The NASDAQ Stock Market LLC, dated December 23, 2009 ("Nasdaq Letter 1"); from Michael N. Sohn and Donna E. Patterson, Arnold & Porter, LLP, dated December 23, 2009 (writing on behalf of Nasdaq) ("Nasdaq Letter 2"); from Arnold P. Golub, Vice President and Associate General Counsel, The NASDAQ Stock Market LLC, dated January 22, 2010 ("Nasdaq Letter 3"); and February 5, 2010 ("Nasdaq Letter 4").

<sup>6</sup> The application fee is non-refundable. The Global Select Market is a segment of The Nasdaq Global Market. See Nasdaq Rule 5005(a)(25) and (29).

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

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

<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).