

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-2012-94 and should be submitted on or before August 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67398; File No. SR-Phlx-2012-88]

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

July 11, 2012.

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 June 28, 2012, NASDAQ OMX PHLX LLC ("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 adopt certain Routing Fees to recoup costs incurred by the Exchange when routing to NASDAQ OMX BX, Inc. ("BX Options").

While the changes proposed herein are effective upon filing, the Exchange has designated these changes to be operative on July 2, 2012.

The text of the proposed rule change is available on the Exchange's Web site

at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXfilings>, 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 this filing is to recoup costs that the Exchange incurs for routing and executing certain orders in equity options to BX Options.

The Exchange's Pricing Schedule at Section V currently includes the following Routing Fees for routing Customer, Professional, Firm, Broker-Dealer and Market Maker<sup>3</sup> orders to away markets.

Exchange	Customer	Professional	Firm/ broker-dealer/ specialist/ market maker
NYSE AMEX .....	\$0.11	\$0.31	\$0.55
BATS Penny .....	0.55	0.55	0.55
BATS non-Penny .....	0.86	0.91	0.91
BOX .....	0.11	0.11	0.55
CBOE .....	0.11	0.31	0.55
CBOE orders greater than 99 contracts in RUT, RMN, NDX, MNX, ETFs, ETNs and HOLDRs ....	0.29	0.31	0.55
C2 .....	0.55	0.56	0.55
ISE .....	0.11	0.29	0.55
ISE Select Symbols <sup>13</sup> .....	0.31	0.39	0.55
NYSE ARCA (Penny Pilot) .....	0.55	0.55	0.55
NYSE ARCA (Standard) .....	0.11	0.11	0.55
NOM .....	0.54	0.54	0.55
NOM-MNX .....	0.56	0.56	0.55
NOM-NDX .....	0.11	0.81	0.81

<sup>13</sup> 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.

The Exchange is proposing to adopt the following Routing Fees when routing to the BX Options:

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>16</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> For the purposes of Routing Fees, a Market Maker includes Specialists (see Rule 1020) and

ROT's (Rule 1014(b)(i) and (ii), which includes SQTs (see Rule 1014(b)(ii)(A)) and RSQTs (see Rule 1014(b)(ii)(B)).

Exchange	Customer	Professional	Firm/ broker-dealer/ specialist/ market maker
BX Options Market .....	\$0.11	\$0.54	\$0.54

BX Options received approval to operate a new options market<sup>4</sup> and filed to adopt various fees and rebates which would become operative on July 2, 2012. Specifically, BX Options will assess a Fee to Remove Liquidity of \$0.43 per contract to BX Options Market Makers and Non-Customers which includes Professionals, Firms, Broker-Dealers and Non-BX Options Market Makers.<sup>5</sup> Customers would not be assessed a Fee to Remove Liquidity on BX Options. The Exchange is seeking to adopt new Routing Fees to account for these new fees and other routing costs incurred by the Exchange when routing to BX Options as of July 2, 2012.

Nasdaq Options Services LLC ("NOS"), a member of the Exchange, is the Exchange's exclusive order router.<sup>6</sup> NOS serves as the Routing Facility of BX Options. 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 fees are passed through to the Exchange. The Exchange currently recoups clearing and transaction charges incurred by the Exchange as well as certain other costs incurred by the Exchange when routing to away markets, such as administrative and technical costs associated with operating NOS, membership fees at away markets, and technical costs associated with routing.<sup>7</sup> The Exchange would therefore assess Customers \$0.11 per contract, Firms would be assessed \$0.54 per contract, Market Makers would be assessed \$0.54 per contract and Professionals would be assessed \$0.54 per contract.<sup>8</sup> The Exchange

proposes to title the new fees "BX Options."

As with all fees, the Exchange may adjust these Routing Fees in response to competitive conditions by filing a new proposed rule change.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>10</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the proposed BX Options Routing Fees are reasonable because they seek to recoup costs that are incurred by the Exchange when routing Customer, Professional, Firm, Broker-Dealer, Specialist and Market Maker orders to BX Options on behalf of members, respectively. Each destination market's transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange along with other administrative and technical costs that are incurred by the Exchange. The Exchange believes that the proposed Routing Fees would enable the Exchange to recover the remove fees assessed to market participants by BX Options, plus clearing and other administrative and technical fees for the execution of Customer, Professional, Firm, Broker-Dealer, Specialist and Market Maker orders when routed to BX Options. The Exchange also believes that the proposed BX Options Routing Fees are equitable and not unfairly discriminatory because they would be uniformly applied to all Customer, Professional, Firm, Broker-Dealer, Specialist and Market Maker orders that are routed to BX Options.

## 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. To the contrary, Phlx Routing Fees seek to recoup costs for Routing Orders to other exchanges on behalf of its members.

Options Participants may choose to mark the order as ineligible for routing to avoid incurring these fees. In addition, a member may designate an order as not available for routing to avoid routing fees.<sup>11</sup>

## 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>12</sup> 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
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2012-88 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission,

<sup>4</sup> See Securities Exchange Act Release No. 67256 (June 26, 2012) (SR-BX-2012-030).

<sup>5</sup> See Securities Exchange Act Release No. 67339 (SR-BX-2012-043). This filing will become operative on July 2, 2012.

<sup>6</sup> See Chapter VI, Section 11(e) (Order Routing).

<sup>7</sup> In addition to membership fees and transaction fees, the Exchange also incurs an Options Regulatory Fee when routing to an away market that assesses that fee.

<sup>8</sup> The Exchange's proposed Routing Fees for BX would include the Fees for Removing Liquidity of \$0.43 per contract, a \$0.06 clearing cost and another \$0.05 per contract associated with administrative and technical costs associated with operating NOS, a total of \$0.54 per contract. The Exchange would only assess a Customer the \$0.06 clearing cost and another \$0.05 per contract associated with administrative and technical costs associated with operating NOS (a total of \$0.11 per contract) because a Customer is not assessed a Fee for Removing Liquidity on BX.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> See Rules 1066(h) (Certain Types of Orders Defined) and 1080(b)(i)(A) (PHLX XL and PHLX XL II).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–88. This file number should be included on the subject line if email 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 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–Phlx–2012–88 and should be submitted on or before August 7, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67411; File Nos. SR–NASDAQ–2012–043; SR–NYSEArca–2012–37]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Changes Relating to Market Maker Incentive Programs for Certain Exchange-Traded Products

July 11, 2012.

#### I. Introduction

On March 23, 2012, The NASDAQ Stock Market LLC (“NASDAQ”) filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”) <sup>1</sup> and Rule 19b–4 thereunder, <sup>2</sup> a proposed rule change (“NASDAQ Proposal”) to establish the Market Quality Program (“MQP”). On March 29, 2012, NASDAQ submitted Amendment No. 1 to the proposed rule change. <sup>3</sup> The proposed rule change, as modified by Amendment No. 1 thereto, was published for comment in the **Federal Register** on April 12, 2012. <sup>4</sup> The Commission initially received fifteen comment letters on the NASDAQ Proposal. <sup>5</sup> On May 18, 2012, pursuant to

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> In Amendment No. 1, NASDAQ made a technical amendment to Item I of Exhibit 1 to delete an erroneous reference to the NASDAQ Options Market and replace it with a reference to NASDAQ.

<sup>4</sup> Securities Exchange Act Release No. 66765 (April 6, 2012), 77 FR 22042 (“NASDAQ Notice”).

<sup>5</sup> See Letter from Frank Choi, dated April 13, 2012 (“Choi Letter”); Letter from Christopher J. Csicsko, dated April 14, 2012 (“Csicsko Letter”); Letter from Jeremiah O'Connor III, dated April 14, 2012 (“O'Connor Letter”); Letter from Dezso J. Szalay, dated April 15, 2012 (“Szalay Letter”); Letter from Kathryn Keita, dated April 18, 2012; Letter (“Keita Letter”); Letter from Anonymous, dated April 18, 2012 (“Anonymous Letter”); Letter from Mark Connell, dated April 19, 2012 (“Connell Letter”); Letter from Timothy Quast, Managing Director, Modern Networks IR LLC, dated April 26, 2012 (“IR Letter”); Letter from Daniel G. Weaver, Ph.D., Professor of Finance, Rutgers Business School, dated April 26, 2012 (“Weaver Letter”); Letter from Amber Anand, Associate Professor of Finance, Syracuse University, dated April 29, 2012 (“Anand Letter”); Letter from Albert J. Menkveld, Associate Professor of Finance, VU University Amsterdam, dated May 2, 2012 (“Menkveld Letter”); Letter from James J. Angel, Associate Professor of Finance, Georgetown University, dated May 2, 2012 (“Angel Letter”); Letter from Ari Burstein, Senior Counsel, Investment Company Institute, dated May 3, 2012 (“NASDAQ ICI Letter”); Letter from Gus Sauter, Managing Director and Chief Investment Officer, Vanguard, dated May 3, 2012 (“NASDAQ Vanguard Letter”); and Letter from Leonard J. Amoroso, General Counsel, Knight Capital Group, Inc., dated May 4, 2012 (“Knight Letter”).

Section 19(b)(2) of the Act, <sup>6</sup> the Commission designated a longer period within which to either approve the NASDAQ Proposal, disapprove the NASDAQ Proposal, or institute proceedings to determine whether to disapprove the NASDAQ Proposal. <sup>7</sup> The Commission received three additional comment letters on the NASDAQ Proposal. <sup>8</sup> On July 6, 2012, the Commission received NASDAQ's response to the comment letters. <sup>9</sup>

On April 27, 2012, NYSE Arca, Inc. (“NYSE Arca” and together with NASDAQ, the “Exchanges”) filed with the Commission, pursuant to Section 19(b)(1) of the Act <sup>10</sup> and Rule 19b–4 thereunder, <sup>11</sup> a proposed rule change (“NYSE Arca Proposal,” and together with the NASDAQ Proposal, the “SRO Proposals”) to create and implement, on a pilot basis, a Lead Market Maker (“LMM”) Issuer Incentive Program (“Fixed Incentive Program,” and together with the MQP, the “Programs”) for issuers of certain exchange-traded products listed on NYSE Arca. The NYSE Arca Proposal was published for comment in the **Federal Register** on May 17, 2012. <sup>12</sup> The Commission received two comment letters on the NYSE Arca Proposal. <sup>13</sup> On June 20, 2012, pursuant to Section 19(b)(2) of the Act, <sup>14</sup> the Commission designated a longer period within which to either approve the NYSE Arca Proposal, disapprove the NYSE Arca Proposal, or institute proceedings to determine whether to disapprove the NYSE Arca

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> Securities Exchange Act Release No. 67022 (May 18, 2012), 77 FR 31050 (May 24, 2012). The Commission determined that it was appropriate to designate a longer period within which to take action on the NASDAQ Proposal so that it has sufficient time to consider the NASDAQ Proposal, the comments received, and any response to the comments submitted by NASDAQ. Accordingly, the Commission designated July 11, 2012 as the date by which it should either approve, disapprove, or institute proceedings to determine whether to disapprove the NASDAQ Proposal.

<sup>8</sup> See Letter from Gary L. Gastineau, Managing Member, ETF Consultants LLC, dated June 11, 2012 (“ETF Consultants Letter”); Letter from Rey Ramsey, President & CEO, TechNet, dated June 20, 2012 (“TechNet Letter”); and Letter from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, Managed Funds Association, dated July 3, 2012 (“MFA Letter”).

<sup>9</sup> See Letter from Joan C. Conley, Senior Vice President & Corporate Secretary, NASDAQ, dated July 6, 2012 (“NASDAQ Response Letter”).

<sup>10</sup> 15 U.S.C. 78s(b)(1).

<sup>11</sup> 17 CFR 240.19b–4.

<sup>12</sup> Securities Exchange Act Release No. 66966 (May 11, 2012), 77 FR 29419 (“NYSE Arca Notice”).

<sup>13</sup> See Letter from Gus Sauter, Managing Director and Chief Investment Officer, Vanguard, dated June 7, 2012 (“NYSE Arca Vanguard Letter”); and Letter from Ari Burstein, Senior Counsel, Investment Company Institute, dated June 7, 2012 (“NYSE Arca ICI Letter”).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30–3(a)(12).