SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68718; File No. SR–NASDAQ–2013–010]

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

January 24, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on January 18, 2013, 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, 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 Chapter XV, Section 2, entitled ''NASDAQ Options Market—Fees and Rebates,'' which governs pricing for NASDAQ members using the NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options, to amend Routing Fees.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on February 1, 2013.

The text of the proposed rule change is provided in *Exhibit 5.* The text of the proposed rule change is also available on the Exchange's Web site at *http://www.nasdaq.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. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Routing Fees in Section 2(4) of Chapter XV in order to recoup costs the Exchange incurs for routing and executing certain orders in equity options to away markets.

Currently, the fees for routing Customer, Firm, Market Maker and Professional orders are as follows:

Exchange	Customer	Firm	MM	Professional
BATS Penny Pilot	$0.55	$0.55	$0.55	$0.55
BATS Non-Penny Pilot	0.86	0.94	0.94	0.94
BOX	0.11	0.55	0.55	0.31
BX Options Penny Pilot	0.11	0.54	0.54	0.54
BX Options Non-Penny Pilot	0.11	0.94	0.94	0.94
CBOE	0.11	0.55	0.55	0.41
CBOE orders greater than 99 contracts in NDX, MNX ETFs and ETNs	0.29	0.55	0.55	N/A
C2	0.55	0.55	0.55	0.55
ISE (Standard)	0.11	0.55	0.55	0.31
ISE Select Symbols *	0.35	0.55	0.55	0.44
MIAX	0.11	0.55	0.55	0.36
NYSE Arca Penny Pilot	0.55	0.55	0.55	0.55
NYSE Arca Non-Penny Pilot	0.90	0.94	0.94	0.90
NYSE AMEX	0.11	0.55	0.55	0.31
PHLX (for all options other than PHLX Select Symbols)	0.11	0.55	0.55	0.31
PHLX Select Symbols **	0.11	0.55	0.55	0.55

The Exchange proposes to adopt new Routing Fees when routing and executing orders in equity options to BATS Exchange, Inc. (''BATS''), BOX Options Exchange LLC (''BOX''), the Chicago Board Options Exchange, Incorporated (''CBOE''), C2 Options Exchange, Incorporated (''C2''), International Securities Exchange, LLC (''ISE''), the Miami International Securities Exchange, LLC (''MIAX''), NASDAQ Options Market (''NOM''), NYSE Arca, Inc. (''NYSE Arca''), NYSE MKT LLC (''NYSE Amex'') and NASDAQ OMX PHLX LLC (''Phlx''). The Exchange is proposing to eliminate the current Routing Fees located in Section 2(4) of Chapter XV and instead assess NOM Participants a fixed fee plus the away market transaction fee as noted below.

Today, the Exchange calculates Routing Fees by assessing a fixed Routing Fee of $0.11 per contract, which is comprised of certain Exchange costs related to routing orders to away markets plus the away market's transaction fee. With respect to the fixed costs, the Exchange incurs a fee when it utilizes Nasdaq Options Services LLC (''NOS''), a member of the Exchange and the Exchange's exclusive order router.[3] Each time NOS routes an order to an away market, NOS is charged a clearing fee [4] 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, Options Regulatory Fees (''ORFs'') and technical costs associated with routing options. With respect to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* NASDAQ Rules at Chapter VI, Section 11(e) (Order Routing).

[4] The Options Clearing Corporation (''OCC'') assesses $0.01 per contract side.

away market transaction fees, the Exchange does not assess actual transaction fees in all cases today, but rather has limited fees in certain circumstances. In those cases the Exchange does not recover all of its costs for routing to the away market.[5]

Today, the Exchange amends its Routing Fees to reflect amendments to away market transaction fees by filing proposed rule changes. The Exchange proposes to eliminate the current Routing Fees and instead assess the actual away market fee assessed by the away exchange at the time that the order was entered into the Exchange's trading system. This transaction fee would be calculated on an order-by-order basis since different away markets charge different amounts.[6] The Exchange analyzed its clearing costs,[7] administrative and technical costs associated with operating NOS, membership fees at away markets and regulatory costs in determining the fixed fee for routing. With respect to BATS, BOX, C2, CBOE, ISE, MIAX, NYSE Amex and NYSE Arca the Exchange proposes to continue to assess $0.11 per contract in addition to the away market's transaction fee.[8] While this proposal does not change the fixed cost assessed to away markets other than Phlx and BX Options, the Exchange would assess the actual transaction fees that are in place at the various away markets and will no longer limit those transaction fees as it does today in certain circumstances.[9] While clearing costs have recently decreased,[10] the Exchange would continue to assess $0.11 per contract because of other increased costs. Specifically, several exchanges have increased ORFs or adopted ORFs and the Exchange proposes to assess the same fixed cost Routing Fee for non-NASDAQ OMX exchanges despite the lower clearing fee.[11]

The Exchange also analyzed costs related to routing to Phlx and BX Options and determined to assess a lower fee of $0.05 per contract as compared to other away markets because NOS is utilized by all three exchanges to route orders.[12] Phlx, BX Options and NOM all utilize NOS which lowers the cost of routing to those markets as compared to other away markets. In addition the fixed costs are reduced because NOS is owned and operated by NASDAQ OMX and the three exchanges and NOS share common technology and related operational functions. The Exchange proposes to assess a $0.05 per contract fixed fee in addition to the away market's transaction fee to route to Phlx and BX Options. This proposal would reduce the fixed fees assessed today on average to route to Phlx and BX Options from $0.11 to $0.05 per contract.

For all Routing Fees, the transaction fee is based on the away market's transaction fee or rebate for particular market participants and in the case that there is no transaction fee or rebate assessed by the away market, the only fee assessed would be the $0.05 or $0.11 per contract fixed fee assessed by the Exchange to recoup its costs. The Exchange proposes to pass along any rebate paid by the away market where there is such a rebate. Today, the Exchange does not pass along rebates. Any rebate available would be netted against a fee assessed by the Exchange. For example, if a Customer order is routed to BOX, and BOX offers a customer rebate of $0.20 per contract, the Exchange would assess a $0.11 per contract fixed fee which would net against the rebate ($0.20 per contract in this example). The market participant for whom the Customer contract was routed would receive a $0.09 per contract rebate. Today the market participant does not receive a rebate and only pays the current Routing Fees.

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

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[13] in general, and with Section 6(b)(4) of the Act,[14] 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 NOM operates or controls.

The Exchange believes that the proposed Routing Fees are reasonable because they seek to recoup costs that are incurred by the Exchange when routing Customer, Firm, Market Maker and Professional orders to away markets on behalf of members. Each destination market's transaction charge varies and there is a cost incurred by the Exchange when routing orders to away markets. The costs to the Exchange include clearing costs, administrative and technical costs associated with operating NOS, membership fees at away markets, ORFs and technical costs associated with routing options. The Exchange believes that the proposed Routing Fees would enable the Exchange to recover the costs it incurs to route orders to away markets in addition to transaction fees assessed to market participants for the execution of Customer, Firm, Market Maker and Professional orders by the away market. Specifically, other options exchanges have increased ORFs that are assessed per transaction.[15] The Exchange believes that it is reasonable to recoup these costs borne by the Exchange on each transaction.

[5] In some cases the Exchange filed a rule change which noted that the Exchange would not assess the actual transaction charge, but a lower amount where the transaction fees at an away market were higher than other markets.

[6] This is similar to the methodology utilized by ISE in assessing Routing Fees. *See* ISE's Fee Schedule.

[7] OCC recently amended its clearing fee from $0.03 per contract side to $0.01 per contract side. *See* Securities Exchange Act Release No. 68025 (October 10, 2012), 77 FR 63398 (October 16, 2012) (SR–OCC–2012–18).

[8] The $0.11 per contract fixed fee would apply to all options exchanges other than Phlx and BX. The Exchange anticipates that if other options exchanges are approved by the Commission after the filing of this proposal, those exchanges would be assessed the $0.11 per contract fee applicable to ''all other options exchanges.'' The Exchange currently assesses $0.11 per contract for costs incurred by the Exchange.

[9] Today, the Exchange caps certain Routing Fees at certain levels. For example, the Exchange caps BATS, NYSE Arca and BX Options Routing Fees at $0.94 per contract.

[10] *See* note 7.

[11] CBOE recently increased its ORF from $.0065 to $.0085 per contract. *See* Securities Exchange Act Release No. 68480 (December 19, 2012), 77 FR 76119 (December 26, 2012) (SR–CBOE–2012–118). C2 recently increased its ORF from $.0015 to $.002 per contract. *See* Securities Exchange Act Release No. 68479 (December 19, 2012), 77 FR 76131 (December 26, 2012) (SR–C2–2012–040). NYSE MKT LLC (''NYSE Amex'') recently increased its ORF from $0.004 to $0.005 per contract. *See* Securities Exchange Act Release No. 68183 (November 8, 2012), 77 FR 68186 (November 15, 2012) (SR–NYSEMKT–2012–54). NYSE Arca recently increased its ORF from $0.004 to $0.005 per contract. *See* Securities Exchange Act Release No. 68174 (November 7, 2012), 77 FR 67845 (November 14, 2012) (SR–NYSEArca–2012–118). MIAX recently adopted an ORF of $0.0040 per contract side. *See* SR–MIAX–2012–06 (not yet published).

[12] *See* Chapter VI, Section 11 of the NASDAQ and BX Options Rules and Phlx Rule 1080(m)(iii)(A).

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4).

[15] CBOE recently increased its ORF from $.0065 to $.0085 per contract. *See* Securities Exchange Act Release No. 68480 (December 19, 2012), 77 FR 76119 (December 26, 2012) (SR–CBOE–2012–118). C2 recently increased its ORF from $.0015 to $.002 per contract. *See* Securities Exchange Act Release No. 68479 (December 19, 2012), 77 FR 76131 (December 26, 2012) (SR–C2–2012–040). NYSE Amex recently increased its ORF from $0.004 to $0.005 per contract. *See* Securities Exchange Act Release No. 68183 (November 8, 2012), 77 FR 68186 (November 15, 2012) (SR–NYSEMKT–2012–54). NYSE Arca recently increased its ORF from $0.004 to $0.005 per contract. *See* Securities Exchange Act Release No. 68174 (November 7, 2012), 77 FR 67845 (November 14, 2012) (SR–NYSEArca–2012–118). MIAX recently adopted an ORF of $0.0040 per contract side. *See* SR–MIAX–2012–06 (not yet published).

In addition, the Exchange notes that it would assess a fixed fee of $0.11 per contract, as it does today, for costs incurred by the Exchange with respect to non-NASDAQ OMX exchanges. The Exchange believes that the proposed fee is reasonable because while the clearing fee itself was lowered by OCC (from $0.03 to $0.01 per contract side), other fees, such as ORFs, have increased in recent months. The Exchange, in analyzing its actual costs, has determined to continue to assess a $0.11 per contract fee to represent the overall cost to the Exchange for technical, administrative, clearing, regulatory, compliance and other costs, in addition to the transaction fee assessed by the away market. Also, the Exchange will assess the actual transaction fees that are in place at the various away markets and will no longer limit those transaction fees as it does today in certain circumstances. The Exchange believes that it is reasonable for it to recoup its actual costs associated with routing orders to away markets. NOM Participants would be entitled to receive rebates offered by away markets with this proposal, which rebates would net against fees assessed by the Exchange for routing orders. The Exchange believes that the opportunity to collect a rebate will reduce Routing Fees.

In addition, the Exchange believes that it is equitable and not unfairly discriminatory to assess a fixed cost of $0.11 per contract, which is mostly comprised of technology, infrastructure and away market non-transaction fee costs, to route orders to non-NASDAQ OMX away markets because the Exchange would be assessing an overall lower fixed fee. While the clearing cost was reduced, other fees have increased and therefore the Exchange believes that a $0.11 per contract fee continues to be reasonable because it represents the cost to route to non-NASDAQ OMX away markets. The proposed $0.11 per contract fixed fee would be assessed uniformly on all market participants in addition to the actual transaction fees on all orders routed to non-NASDAQ OMX markets.

The Exchange believes that it is equitable and not unfairly discriminatory to assess a fixed cost of $0.05 per contract to route orders to NASDAQ OMX away markets (Phlx and BX Options) because the cost, in terms of actual cash outlays, to the Exchange to route to those markets is lower. For example, costs related to routing to Phlx and BX Options are lower as compared to other away markets because NOS is utilized by all three exchanges to route orders.[16] NOS and the three NASDAQ OMX options markets have a common data center and staff that are responsible for the day-to-day operations of NOS. Because the three exchanges are in a common data center, Routing Fees are reduced because costly expenses related to, for example, telecommunication lines to obtain connectivity are avoided when routing orders in this instance. The costs related to connectivity to route orders to other NASDAQ OMX exchanges are de minimis. When routing orders to non-NASDAQ OMX exchanges, the Exchange incurs costly connectivity charges related to telecommunication lines and other related costs. The proposed fixed fee for routing orders to non-NASDAQ OMX exchanges is therefore increased as compared to the fees for routing orders to NASDAQ OMX exchanges (Phlx and BX Options), $0.11 per contract versus $0.05 per contract, respectively. The proposed $0.05 per contract fixed fee would be assessed uniformly on all orders routed to NASDAQ OMX markets in addition to the actual away market transaction fee assessed by the destination market. The Exchange also believes that it is equitable and not unfairly discriminatory for market participants to receive rebates on orders routed to away markets that pay rebates. Today, the Exchange does not pay such rebates when routing orders. The Exchange would pay rebates offered by away markets uniformly to market participants when their orders are routed to a destination market that offers a rebate.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to pass along savings realized by leveraging NASDAQ OMX's infrastructure and scale to market participants when those orders are routed to Phlx and BX Options.[17] Orders are routed to away markets in accordance with Exchange rules based on price.[18] Market participants may submit orders to the Exchange as ineligible for routing or ''DNR'' to avoid incurring the Routing Fees proposed herein.[19]

[16] *See* Chapter VI, Section 11 of the NASDAQ and BX Options Rules and Phlx Rule 1080(m)(iii)(A).

[17] Today, the Exchange assesses a $0.11 per contract fixed fee for routing orders to Phlx and BX Options. That fee is proposed to be reduced to a $0.05 per contract fixed fee, which would be in addition to the actual transaction fee assessed by the away market.

[18] *See* NASDAQ Rules at Chapter XII (Options Order Protection and Locked and Crossed Market Rules).

[19] *See* NASDAQ Rules at Chapter VI, Section 11(e) (Order Routing).

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ 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. The Exchange believes that the rule change would allow the Exchange to recoup its costs when routing orders designated as available for routing by the market participant. NOM Participants may choose to mark the order as ineligible for routing to avoid incurring these fees.[20] Today, other options exchanges also assess similar fees to recoup costs incurred when routing orders to away markets. With respect to routing to Phlx and BX Options at a lower cost as compared to other away markets, the Exchange does not believe that the proposed amendments to increase those fees, while maintaining the same fee differential imposes a burden because all market participants would be assessed the same fees depending on the away market. Also, the Exchange is proposing to recoup costs incurred only when members request the Exchange route their orders to an away market. The Exchange is passing along savings realized by leveraging NASDAQ OMX's infrastructure and scale to market participants when those orders are routed to Phlx and BX Options and is providing those saving to all market participants. Finally, the Exchange routes orders to away markets where the Exchange's disseminated bid or offer is inferior to the national best bid (best offer) price and based on price first.[21]

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.[22] 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,

[20] *See* NASDAQ Rules at Chapter VI, Section 11(e) (Order Routing).

[21] *See* NASDAQ Rules at Chapter XII (Options Order Protection and Locked and Crossed Market Rules).

[22] 15 U.S.C. 78s(b)(3)(A)(ii).

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.* Please include File Number SR–NASDAQ–2013–010 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–2013–010. 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 such filing also will be available for inspection and copying at NASDAQ'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–NASDAQ–2013–010, and should be submitted on or before February 20, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–01984 Filed 1–29–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68724; File No. SR–NYSE–2013–03]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 440B To Provide How the Trigger Price Will Be Calculated if Trading Is Interrupted Because of a Systems or Technical Issue and Is Not Restored During the Trading Day

January 24, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on January 10, 2013, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 Rule 440B to provide how the Trigger Price will be calculated if trading is interrupted because of a systems or technical issue and is not restored during the trading day. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.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 self-regulatory organization 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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 440B to provide how the Trigger Price[4] will be calculated if trading is interrupted because of a systems or technical issue and is not restored during the trading day. Specifically, the Exchange proposes to provide that if trading in a covered security is interrupted because of a systems or technical issue and is not restored during that trading day, the Exchange's determination of the Trigger Price shall be based on the consolidated last sale price for that security on the most recent day on which the security traded.

The Exchange recently filed an interim proposed rule change for Rule 440B(b) to provide that on November 12, 2012, the closing price for 216 Exchange-listed securities that did not have a closing transaction on the Exchange was the consolidated last sale price available as of the end of regular trading hours on November 12, 2012, and that such closing price shall be the Trigger Price for purposes of determining whether a Short Sale Price Test has been triggered pursuant to Rule 440B(c) on November 13, 2012.[5] The interim rule is in effect until the Exchange has an opportunity to amend its rules on a permanent basis. The Exchange now proposes to establish a rule provision that provides for how the Trigger Price is determined when a systems or technical issue prevents the closing of the security at the end of regular trading hours.

Rule 440B sets forth how the Exchange implements the provisions of Rule 201 of Regulation SHO (''Rule 201'')[6] under the Act which, if triggered, imposes a restriction on the prices at which securities may be sold short (''Short Sale Price Test''). Among

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[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Trigger Price is defined in Rule 440B(b). *See* Rule 440B(b). Determination of Trigger Price is set forth in Rule 440(c). *See* Rule 440B(c).

[5] *See* Securities Exchange Act Release No. 68220 (November 13, 2012), 77 FR 69528 (November 19, 2012) (SR–NYSE–2012–66).

[6] 17 CFR 242.201.