

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. Impose any significant burden on competition; and

C. Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6)¹⁴ thereunder.

At any time within 60 days of the filing of this 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 email to rule-comments@sec.gov. Please include File Number SR-CBOE-2013-005 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-CBOE-2013-005. 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 the principal offices 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-CBOE-2013-005, and should be submitted on or before February 15, 2013.

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

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68694; File No. SR-NASDAQ-2012-129]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Establish the Retail Price Improvement Program on a Pilot Basis Until 12 Months From the Date of Implementation

January 18, 2013.

On November 19, 2012, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to establish a Retail Price Improvement Program to attract additional retail order flow to the Exchange while also providing the potential for price improvement to such order flow. The proposed rule change was published for comment in the **Federal Register** on

December 7, 2012.³ The Commission did not receive any comments on the proposed rule change.

In connection with the proposal, the Exchange requested exemptive relief from Rule 612 of Regulation NMS,⁴ which, among other things, prohibits a national securities exchange from accepting or ranking orders priced greater than \$1.00 per share in an increment smaller than \$0.01.⁵ On January 14, 2013, the Exchange submitted a letter requesting that the staff of the Division of Trading and Markets not recommend any enforcement action under Rule 602 of Regulation NMS (the "Quote Rule") based on the Exchange's and its Members' participation in the Program.⁶

Section 19(b)(2) of the Act⁷ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is January 21, 2013.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period to take action on the proposed rule change so that it has sufficient time to consider the Exchange's proposal, which would allow the Exchange to utilize non-displayed orders that offer price improvement to retail order flow potentially in sub-penny increments, as well as the Exchange's attendant requests for exemptive and no-action relief.

Accordingly, pursuant to Section 19(b)(2) of the Act,⁸ the Commission designates March 7, 2013 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to

³ See Securities Exchange Act Release No. 68336 (December 3, 2012), 77 FR 73097 (SR-NASDAQ-2012-129).

⁴ 17 CFR 242.612 (the "Sub-Penny Rule").

⁵ See Letter from Jeffrey Davis, Deputy General Counsel, The NASDAQ Stock Market LLC, to Elizabeth M. Murphy, Secretary, Commission, dated November 19, 2012).

⁶ See Letter from Jeffrey Davis, Deputy General Counsel, The NASDAQ Stock Market LLC, to John Ramsay, Division of Trading and Markets, Commission, dated January 14, 2013.

⁷ 15 U.S.C. 78s(b)(2).

⁸ 15 U.S.C. 78s(b)(2).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

disapprove, the proposed rule change (File Number SR-NASDAQ-2012-129).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68698; File No. SR-Phlx-2013-04]

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

January 18, 2013.

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 January 8, 2013, 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 amend its Routing Fees at Section V of the Pricing Schedule. While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated the proposed amendment to be operative on February 1, 2013. The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.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

The purpose of this filing is to amend Routing Fees in Section V of the Pricing Schedule in order to recoup costs that the Exchange incurs for routing and executing orders in equity options to various away markets.

Today, the Exchange calculates Routing Fees by assessing certain Exchange costs related to routing orders to away markets plus the away market's transaction fee. The Exchange assesses a \$0.04 per contract fixed Routing Fee when routing orders to the NASDAQ Options Market LLC ("NOM") and NASDAQ OMX BX, Inc. ("BX Options") and a \$0.10 per contract fixed Routing Fee to all other options exchanges in addition to the actual transaction fee or rebate paid by the away market.

The fixed Routing Fee is based on costs that are incurred by the Exchange when routing to an away market in addition to the away market's transaction fee. For example, 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 to route orders in options listed and open for trading on the PHLX XL system to destination markets. Each time NOS routes to away markets NOS incurs a clearing-related cost⁴ 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 also incurs administrative and technical costs associated with operating NOS, membership fees at away markets, Options Regulatory Fees

("ORFs") and technical costs associated with routing options.

The Exchange proposes to amend its Routing Fees to increase the current fixed Routing Fee to BX Options and NOM from \$0.04 to \$0.05⁵ per contract and the fixed Routing Fee to all other options exchanges from \$0.10 to \$0.11⁶ per contract to capture the increased costs that the Exchange incurs when routing to away markets in addition to the transaction fee that is being assessed by the away market. Specifically, several exchanges have increased ORFs or adopted ORFs and the Exchange proposes to increase its Routing Fees to recoup those increased fees.⁷

Today, the transaction fee assessed by the Exchange is based on the away market's actual transaction fee or rebate for a particular market participant at the time that the order was entered into the Exchange's trading system. This transaction fee is calculated on an order-by-order basis, since different away markets charge different amounts.⁸ In the event that there is no transaction fee

⁵ In a previous rule filing, the Exchange discussed the manner in which it analyzed costs related to routing to BX Options and NOM and determined the costs are lower as compared to other away markets because NOS is utilized by all three exchanges to route orders. In that filing the Exchange noted that because Phlx, BX Options and NOM all utilize NOS, the cost to the Exchange is less as compared to routing 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. See Securities Exchange Act Release No. 68213 (November 13, 2012), 77 FR 69530 (November 19, 2012) (SR-Phlx-2012-129).

⁶ The \$0.11 per contract fixed fee would apply to all options exchanges other than BX Options and NOM, which are discussed separately in this proposal. 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."

⁷ The Chicago Board Options Exchange, Incorporated ("CBOE") recently increased its ORF from \$0.0065 to \$0.0085 per contract. See Securities Exchange Act Release No. 68480 (December 19, 2012), 77 FR 76119 (December 26, 2012) (SR-CBOE-2012-118). C2 Options Exchange, Incorporated ("C2") recently increased its ORF from \$0.0015 to \$0.002 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, Inc. ("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). Miami International Securities Exchange, LLC ("MIAX") recently adopted an ORF of \$0.0040 per contract side. See SR-MIAX-2012-06 (not yet published).

⁸ This is similar to the methodology utilized by ISE in assessing Routing Fees. See ISE's Fee Schedule.

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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. See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32). NOS is utilized by the Exchange's fully automated options trading system, PHLX XL.[®] "PHLX XL" is the Exchange's automated options trading system.

⁴ The Options Clearing Corporation ("OCC") assesses a clearing fee of \$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).