

clearance” and FINRA has deployed (and continues to deploy) significant technology resources and process enhancements to accommodate those needs.⁷ The Department also has seen growth in filings of unlisted REITs, business development companies and other DPPs, which raise complex issues.

In support of its reviews under FINRA Rule 5110 and other regulatory responsibilities, FINRA is proposing to increase the rate and the fee cap for filings pursuant to FINRA Rule 5110. This fee, which is assessed on members, though typically borne by issuers, funds the Department’s reviews as well as FINRA’s extensive regulatory programs and services that support the public capital markets being accessed by issuers through such member firms. The proposed fee would increase the rate of the filing fee from .01 percent to .015 percent of the proposed maximum aggregate offering price or other applicable value of the securities, and would increase the maximum fee from \$75,500 to \$225,500.

Implementation

FINRA has filed the proposed rule change for immediate effectiveness. FINRA is proposing that the implementation date of the proposed rule change will be July 2, 2012. Specifically, the proposed adjusted fees and fee cap would become effective for filings and amendments made on or after July 2, 2012.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,⁸ which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed fees are reasonable based on the nature and scope of the Department’s review pursuant to FINRA Rule 5110. The proposed fee also contributes to the general funding of FINRA’s overall regulatory program and serves to ensure that FINRA is sufficiently capitalized to meet its regulatory responsibilities. The proposed fees are equitably allocated among members (or borne by issuers) as they are assessed as a percentage of the aggregate maximum offering proceeds in much the same way that SEC registration fees are assessed under Section 6(b) of the Securities Act of

1933. Moreover, the cap on offerings above \$1.5 billion ensures that the fees collected from any particular member (or borne by any particular issuer) with respect to a filing are equitably allocated and not disproportionately borne by members (or issuers) participating in the very largest offerings.

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is 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

Written comments were neither solicited nor 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)(i) of the Act.⁹ 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.] [sic]

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-FINRA-2012-029 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-2012-029. 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 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 FINRA. 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-2012-029, and should be submitted on or before July 19, 2012.

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

Kevin M. O’Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67245; File No. SR-Phlx-2012-80]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Technical and Conforming Amendments to the Pricing Schedule

June 22, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4² thereunder, notice is hereby given that, on June 14, 2012, NASDAQ OMX PHLX LLC

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁷ See, e.g., *Regulatory Notice* 12-22 (April 2012).

⁸ 15 U.S.C. 78o-3(b)(5).

⁹ 15 U.S.C. 78s(b)(3)(a)(i). [sic]

("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 make various technical amendments to the Pricing Schedule to format pricing the same throughout the Pricing Schedule, correct a reference to Section IV fees and add the term "Specialist" to Section V.

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 Exchange proposes to make clarifying amendments to the Pricing Schedule. The Exchange proposes to amend Section II entitled "Multiply Listed Options" to reformat the rebates and fees from the current format, "\$.xx," to the format utilized in Section I, "\$0.xx," to conform the pricing format throughout the Pricing Schedule.

The Exchange also proposes to amend Section IV, A entitled "PIXL Pricing" to correct a reference which was inadvertently not amended in a prior filing to refer to Section II fees as "Multiply Listed Options." The Exchange recently amended the title of Section II from "Equity Options Fees" to

"Multiply Listed Options Fees."³ Finally, the Exchange proposes to amend Section V entitled "Routing Fees" to add the term "Specialist" to the category "Firm/Broker Dealer/Market Maker." The Exchange recently amended the Pricing Schedule to redefine its market participant categories and separate the Specialist category from that of Market Maker.⁴ At that time, the Exchange also filed SR-Phlx-2012-75, a filing pertaining to Routing Fees, and noted in that filing that for the purposes of Routing Fees, a Market Maker includes Specialists.⁵ At this time the Exchange proposes to indicate that a Specialist shall be as defined in the Pricing Schedule and add the Specialist category to the Routing Fees. The Exchange believes that using the defined terms for purposes of the Routing Fees will provide more clarity to the Pricing Schedule and therefore proposes to add the term Specialist to the fees instead of utilizing the term Market Maker to define a Specialist solely for the Routing Fees.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act⁷ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange's amendments to Section II are reasonable, equitable and not unfairly discriminatory because the amendments are not substantive in nature, but merely conform the manner in which the pricing is displayed so that the format is similar throughout the Pricing Schedule.

The Exchange's amendment to Section IV is reasonable, equitable and not unfairly discriminatory because this amendment clarifies the Pricing Schedule by correcting a reference that was inadvertently omitted in a prior filing to refer to Section II fees.

The Exchange's amendment to Section V is reasonable, equitable and not unfairly discriminatory because it also clarifies the Pricing Schedule by reverting to the terms as defined in the Preface. Today, a Specialist is defined in the Pricing Schedule as a separately defined market participant apart from a

Market Maker,⁸ although the Exchange noted in a separate filing that for purposes of Routing Fees a Market Maker includes a Specialist.⁹ The Exchange now proposes to utilize the definition of Specialist, as defined in the Preface of the Pricing Schedule, for consistency. The Routing Fees which are applicable to a Specialist will remain the same.

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.¹⁰ 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. Please include File Number SR-Phlx-2012-80 on the subject line.

⁸ See SR-Phlx-2012-77.

³ See Securities Exchange Act Release No. 67189 (June 12, 2012) (SR-Phlx-2012-77).

⁴ *Id.*

⁵ See Securities Exchange Act Release No. 67123 (June 5, 2012), 77 FR 35092 (June 12, 2012) (SR-Phlx-2012-75). Specifically, see note 3.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁹ See Securities Exchange Act Release No. 67123 (June 5, 2012), 77 FR 35092 (June 12, 2012) (SR-Phlx-2012-75). Specifically, see note 3.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

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–2012–80. 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–2012–80 and should be submitted on or before July 19, 2012.

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

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67244; File No. SR–NYSEArca–2012–67]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending NYSE Arca Rule 3.2 and NYSE Arca Equities, Inc. Rule 3.2, Which Concern the Nomination and Election of Fair Representation Directors

June 22, 2012.

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 June 18, 2012, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NYSE Arca. 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 NYSE Arca Rule 3.2 and NYSE Arca Equities, Inc. (“NYSE Arca Equities”) Rule 3.2, which concern the nomination and election of fair representation directors. 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Rule 3.2 and NYSE Arca Equities Rule 3.2, which concern the nomination and election of fair representation directors.

Background

Section 6(b)(3) of the Securities Exchange Act of 1934, as amended (the “Act”), requires that the rules of an exchange shall “assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.” ³ Exchange members who serve on exchange boards thus are sometimes referred to as “fair representation directors.” NYSE Arca Rule 3.2 sets forth a process for the nomination and selection of fair representation directors for the NYSE Arca Board of Directors (“NYSE Arca Board”), and NYSE Arca Equities Rule 3.2 sets forth a similar process for the nomination and selection of fair representation directors for the NYSE Arca Equities Board of Directors (“Equities Board”). ⁴

The Exchange proposes to amend both rules to streamline those processes and make them more similar to the processes used by the New York Stock Exchange LLC (“NYSE”) ⁵ and NYSE MKT LLC (“NYSE MKT”). ⁶

Amendments to NYSE Arca Rules

Under Section 3.02(a) of the NYSE Arca Bylaws, the NYSE Arca Board must have 8–12 Directors, and at least

³ 15 U.S.C. 78f(b)(3).

⁴ NYSE Arca Equities is a wholly-owned subsidiary of NYSE Arca.

⁵ See Section 2.03(a) of the Third Amended and Restated Operating Agreement of New York Stock Exchange LLC (“NYSE Operating Agreement”), available at <http://usequities.nyx.com/sites/corporate.nyx.com/files/thirdamendedandrestatedoperatingagreementofnewyorkstockexchange.pdf> [sic]; Article III, Sections 1(C) and 5 of the Amended and Restated Bylaws of NYSE Market, Inc. (“NYSE Market Bylaws”), available at http://usequities.nyx.com/sites/usequities.nyx.com/files/final_second_amended_and_restated_bylaws_of_nyse_market_inc_0.pdf and Article III, Sections 1(C) and 5 of the Third Amended and Restated Bylaws of NYSE Regulation, Inc. (“NYSE Regulation Bylaws”), available at <http://www.nyse.com/pdfs/SecondAmendedandRestatedBylawsofNYSERegulationInc.PDF>.

⁶ See Second Amended and Restated Operating Agreement of NYSE MKT LLC (“NYSE MKT Operating Agreement”), Section 2.03(a) and (h), available at http://nyseamexrules.nyse.com/AMEX/pdf/operating_agreement.pdf.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹¹ 17 CFR 200.30-3(a)(12).