

of data to consume on the basis of the total cost of interacting with NASDAQ or other exchanges. Of course, the explicit data fees are but one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa. The market for this Depth-of-Book information is highly competitive and continually evolves as products develop and change.

Additional evidence cited by NYSE Arca in SR-NYSE Arca-2010-097<sup>17</sup> which was not before the *NetCoalition* court also demonstrates that availability of Depth-of-Book data attracts order flow and that competition for order flow can constrain the price of market data:

1. Terrence Hendershott & Charles M. Jones, *Island Goes Dark: Transparency, Fragmentation, and Regulation*, 18 *Review of Financial Studies* 743 (2005);
2. Charts and Tables referenced in Exhibit 3B to that filing;
3. PHB Hagler Bailly, Inc., "Issues Surrounding Cost-Based Regulation of Market Data Prices;" and
4. PHB Hagler Bailly, Inc., "The Economic Perspective on Regulation of Market Data."

*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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>18</sup> NASDAQ has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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.

<sup>17</sup> See Securities Exchange Act Release No. 63291 (Nov. 9, 2010).

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

### 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-NASDAQ-2012-044 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-2012-044. 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 a.m. and 3 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-NASDAQ-2012-044 and should be submitted on or before April 30, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66719; File No. SR-NASDAQ-2012-046]

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

April 3, 2012

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 28, 2012, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") 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 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, Options Pricing, Section 2, of the Options Rules portion of the NASDAQ Rulebook governing pricing for NASDAQ members using The NASDAQ Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options. The proposed rule change amends certain Customer Routing Fees to recoup costs incurred by the Exchange in routing to away markets. While changes proposed herein are effective upon filing, the Exchange has designated these changes to be operative on April 2, 2012.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

<sup>19</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.

**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 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 Customer orders in equity and index options to the International Securities Exchange, LLC ("ISE") and to the NASDAQ OMX PHLX, LLC ("PHLX"). Chapter XV, Section 2 currently includes the following Routing Fees for routing Customer, Firm, Market Maker and Professional orders to away markets.

Exchange	Customer	Firm	MM	Professional
BATS .....	\$0.55	\$0.55	\$0.55	\$0.55
BOX .....	0.11	0.55	0.55	0.11
CBOE .....	0.11	0.55	0.55	0.31
CBOE orders greater than 99 contracts in NDX, MNX ETFs, ETNs & HOLDERS .....	0.29	0.55	0.55 0.3	1
C2 .....	0.55	0.55	0.55	0.55
ISE .....	0.11	0.55	0.55	0.29
ISE Select Symbols * .....	0.23	0.55	0.55 0.39	
NYSE Arca Penny Pilot .....	0.55	0.55	0.55	0.55
NYSE Arca Non Penny Pilot .....	0.11	0.55	0.55	0.11
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 ** .....	0.35	0.55	0.55 0.51	

\* 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.

\*\* These fees are applicable to orders routed to PHLX that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See PHLX's Fee Schedule for the complete list of symbols that are subject to these fees.

\* \* \* \* \*

The Exchange is proposing to amend the "ISE Select Symbols" Customer Routing Fee from \$0.23 per contract to \$0.31 per contract. ISE recently amended its "taker" fee for regular, or non-complex, Priority Customer orders in the Select Symbols, regardless of size, from \$0.15 per contract to \$0.20 per contract.<sup>4</sup> In addition to the ISE taker fee, the Exchange also incurs other routing costs which it seeks to recoup.

The Exchange is also proposing to amend the "PHLX Select Symbols" Customer Routing Fee from \$0.35 per contract to \$0.50 per contract. PHLX recently amended its Single contra-side Customer Fee for Removing Liquidity for its Select Symbols from \$0.31 per contract to \$0.39 per contract.<sup>5</sup> In addition to the PHLX Single contra-side Customer Fee for Removing Liquidity for its Select Symbols, the Exchange also incurs other routing costs which it seeks to recoup.

In addition, NASDAQ Options Services LLC ("NOS"), a member of the Exchange, is the Exchange's exclusive order router. 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 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; the Exchange's membership fees at away markets; and technical costs associated with routing.<sup>6</sup>

As with all fees, the Exchange may adjust these Routing Fees in response to competitive conditions by filing a new proposed rule change. While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on April 2, 2012.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the

<sup>6</sup> The Exchange is therefore increasing the ISE Select Symbols Customer Routing Fee to \$0.31 per contract to account for the \$0.20 ISE taker fee, the \$0.06 clearing cost and another \$0.05 per contract associated with administrative and technical costs associated with operating NOS. It is also increasing the PHLX Select Symbols Customer Routing Fee to \$0.50 per contract to account for the \$0.39 PHLX Customer Single contra-side Fee for Removing Liquidity for its Select Symbols, the \$0.06 clearing cost and another \$0.05 per contract associated with administrative and technical costs associated with operating NOS.

provisions of Section 6 of the Act,<sup>7</sup> in general, and with Section 6(b)(4) of the Act,<sup>8</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls.

The Exchange believes that these fees are reasonable because they seek to recoup costs that are incurred by the Exchange when routing Customer orders to ISE and PHLX on behalf of its members. Each destination market's transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange. The Exchange believes that the proposed Routing Fees would enable the Exchange to recover the customer taker fees assessed by ISE and customer Single contra-side Fee for Removing Liquidity assessed by PHLX, plus clearing fees for the execution of customer orders. The Exchange also believes that the proposed Routing Fees are equitable and not unfairly discriminatory because they would be uniformly applied to all Customers.

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

The Exchange does not believe that the proposed rule change will impose

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

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

<sup>3</sup> See ISE's Schedule of Fees for the complete list of symbols that are subject to these fees.

<sup>4</sup> See ISE's Schedule of Fees. See also Securities Exchange Act Release No. 66597 (March 14, 2012), 77 FR 16295 (March 20, 2012) (SR-ISE-2012-17).

<sup>5</sup> See Securities Exchange Act Release No. 66367 (February 9, 2012), 77 FR 8934 (February 15, 2012) (SR-Phlx-2012-15). See also Section I of PHLX's Pricing Schedule.

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> 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-NASDAQ-2012-046 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-2012-046. 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](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 will also 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 No. SR-NASDAQ-2012-046 and should be submitted on or before April 30, 2012. For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-66729; File No. SR-NASDAQ-2012-037]

**Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees for Newly Listed Indexes**

April 3, 2012.

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 28, 2012, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") 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 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 pricing for NASDAQ members using the NASDAQ Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NASDAQ proposes to adopt fees for newly listed indexes and make other minor amendments to Chapter XV at Section 2 entitled "NASDAQ Options Market—Fees."

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

The text of the proposed rule change is 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 Statutory Basis for, the Proposed Rule Change*

1. Purpose

NASDAQ proposes to amend Chapter XV, Section 2 to adopt fees for the following newly listed index options: PHLX Semiconductor Sector<sup>SM</sup> (SOX<sup>SM</sup>), PHLX Housing Sector<sup>TM</sup> (HGX<sup>SM</sup>) and PHLX Oil Service Sector<sup>SM</sup> (OSX<sup>SM</sup>).<sup>3</sup>

Specifically, the Exchange proposes to assess the following Fees for Adding Liquidity and Fees for Removing Liquidity for transactions in SOX, HGX and OSX:

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</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> The Exchange plans on listing these index options on April 2, 2012.