

### *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 that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded fund that will enhance competition among market participants, to the benefit of investors and the marketplace.

### *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**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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-2014-019 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2014-019. 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 Nasdaq. 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-2014-019 and should be submitted on or before March 18, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

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

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-71570; File No. SR-NASDAQ-2014-018]

### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Options Regulatory Fee**

February 19, 2014.

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 February 11, 2014, 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 the Substance of the Proposed Rule Change**

NASDAQ proposes to modify Chapter XV, entitled "Options Pricing," at Section 5 governing pricing for NASDAQ members using the NASDAQ Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NOM proposes to amend its fees to specify the frequency with which the Exchange may change the Options Regulatory Fee ("ORF").

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on March 3, 2014.

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 its Rules at Chapter XV, Section 5 to specify the frequency with which the Exchange may change the ORF. The ORF is assessed by the Exchange on each member for all options transactions executed or cleared by the member that are cleared by The Options Clearing Corporation ("OCC") in the customer range (i.e., transactions that clear in the customer account of the member's clearing firm at OCC) regardless of the exchange on which the transaction occurs.<sup>3</sup> The fee is collected indirectly

<sup>29</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> NOM Participants who do not transact an equities business on the NASDAQ Stock Market

from members through their clearing firms by OCC on behalf of the Exchange. The dues and fees paid by members go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation.

In response to feedback from market participants requesting greater certainty as to when ORF changes may occur, the Exchange proposes to specify in the Pricing Schedule that the Exchange may only increase or decrease the ORF semi-annually, and any such fee change will be effective on the first business day of February or August.<sup>4</sup> In addition to submitting a proposed rule change to the Securities and Exchange Commission (“Commission”) as required by the Act to increase or decrease the ORF, the Exchange will notify participants via an Options Trader Alert of any anticipated change in the amount of the fee at least 30 calendar days prior to the effective date of the change. The Exchange believes that by providing guidance on the timing of any changes to the ORF, the Exchange would make it easier for market participants to ensure their systems are configured to properly account for the ORF.

The proposed change is not intended to address any other issues, and the Exchange is not aware of any problems that members would have in complying with the proposed change.

## 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>6</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change to limit changes to the ORF to twice a year on specific dates with advance notice is reasonable because it will give market participants certainty on the timing of changes, if

LLC in a calendar year receive a refund of the fees specified in Rule 7003(b) upon written notification to the Exchange along with documentation evidencing that no equities business was conducted on the NASDAQ Stock Market for that calendar year. The Exchange accepts refund requests up until sixty (60) days after the end of the calendar year.

<sup>4</sup> The Exchange monitors the amount of revenue collected from the ORF so that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. See, e.g., Securities Exchange Act Release Nos. 65913 (December 8, 2011), 76 FR 77883 (December 14, 2011) (SR-NASDAQ-2011-163).

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(4) and (5).

any, and better enable them to properly account for ORF charges among their customers. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because it will apply in the same manner to all members that are subject to the ORF and provide them with additional advance notice of changes to that fee.

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

NASDAQ does not believe that the proposed rule change will impose an undue burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not intended to address a competitive issue but rather to provide members with better notice of any change that the Exchange may make to the ORF. In any event, because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their trading practices, the Exchange believes that the degree to which fee or credit changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed change will impair the ability of members, or competing order execution venues to maintain their competitive standing in the financial markets.

## 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>7</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.

<sup>7</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-2014-018 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-2014-018. 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 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-2014-018, and should be submitted on or before March 18, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71569; File No. SR-Phlx-2014-12]

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

February 19, 2014.

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 February 11, 2014, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend its Pricing Schedule to specify the frequency with which the Exchange may change the Options Regulatory Fee ("ORF").

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on March 3, 2014.

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 Exchange proposes to amend its Pricing Schedule at Section IV, Part D to specify the frequency with which the Exchange may change the ORF. The ORF is assessed by the Exchange on each member for all options transactions executed or cleared by the member that are cleared by The Options Clearing Corporation ("OCC") in the customer range (i.e., transactions that clear in the customer account of the member's clearing firm at OCC) regardless of the exchange on which the transaction occurs. The fee is collected indirectly from members through their clearing firms by OCC on behalf of the Exchange. The dues and fees paid by members go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation.

In response to feedback from market participants requesting greater certainty as to when ORF changes may occur, the Exchange proposes to specify in the Pricing Schedule that the Exchange may only increase or decrease the ORF semi-annually, and any such fee change will be effective on the first business day of February or August.<sup>3</sup> In addition to submitting a proposed rule change to the Securities and Exchange Commission ("Commission") as required by the Act to increase or decrease the ORF, the Exchange will notify participants via an Options Trader Alert of any anticipated change in the amount of the fee at least 30 calendar days prior to the effective date of the change. The Exchange believes that by providing guidance on the timing of any changes to the ORF, the Exchange would make it easier for market participants to ensure their

<sup>3</sup> The Exchange monitors the amount of revenue collected from the ORF so that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. See, e.g., Securities Exchange Act Release Nos. 61133 (December 9, 2009), 74 FR 66715 (December 16, 2009) (SR-Phlx-2009-100); 61529 (February 17, 2010), 75 FR 8421 (February 24, 2010) (SR-Phlx-2010-17), 62619 (July 30, 2010), 75 FR 47874 (August 9, 2010) (SR-Phlx-2010-100); 63436 (December 6, 2010), 75 FR 77021 (December 10, 2010) (SR-Phlx-2010-166); 65897 (December 6, 2011), 76 FR 77277 (December 12, 2011) (SR-Phlx-2011-163) and 66664 (March 27, 2012), 77 FR 19743 (April 2, 2012).

systems are configured to properly account for the ORF.

The proposed change is not intended to address any other issues, and the Exchange is not aware of any problems that members would have in complying with the proposed change.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>5</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change to limit changes to the ORF to twice a year on specific dates with advance notice is reasonable because it will give market participants certainty on the timing of changes, if any, and better enable them to properly account for ORF charges among their customers. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because it will apply in the same manner to all members that are subject to the ORF and provide them with additional advance notice of changes to that fee.

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

The Exchange Exchange [sic] does not believe that the proposed rule change will impose an undue burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not intended to address a competitive issue but rather to provide members with better notice of any change that the Exchange may make to the ORF. In any event, because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their trading practices, the Exchange believes that the degree to which fee or credit changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed change will impair the ability of members, or competing order execution venues to maintain their competitive standing in the financial markets.

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

<sup>5</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>8</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.