

2010.<sup>9</sup> The Commission concluded this was appropriate and issued an order reducing the level of fees charged for one year.<sup>10</sup> As a result of the four waivers and reduced fee levels, the surplus was reduced from \$9 million in 2005 to a level of approximately \$3 million.

FINRA has again written to Commission staff, recommending revised annual and initial IARD filing fees commence on January 1, 2011.<sup>11</sup> The new recommended fee levels would increase the fee for advisers with assets under management of \$100 million or higher, but would not change the fee levels for advisers with assets under management under \$100 million.<sup>12</sup> The recommended annual filing fees due beginning January 1, 2011 are \$40 for advisers with assets under management under \$25 million; \$150 for advisers with assets under management from \$25 million to \$100 million; and \$225 for advisers with assets under management of \$100 million or higher. The recommended initial IARD filing fees due beginning January 1, 2011 are \$40 for advisers with assets under management under \$25 million; \$150 for advisers with assets under management from \$25 million to \$100 million; and \$225 for advisers with assets under management of \$100 million or higher. Based on projections of expected revenues and expenses and taking into account an expected reduction in the number of advisers registered or reporting to the SEC as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act,<sup>13</sup> the Commission believes these revised fee levels would be reasonable, as the Commission projects that they will provide adequate funding to cover IARD

system expenditures.<sup>14</sup> This reduction in fees is expected to reduce aggregate filing fees that SEC-registered advisers would incur by approximately \$2 million annually compared to the filing fees that would be collected based on the fee levels established in 2000. The revised filing fees will apply to all annual updating amendments filed by SEC-registered advisers beginning January 1, 2011 and to all initial applications for registration filed by advisers applying for SEC registration beginning January 1, 2011. The Commission will reassess the fee levels and issue orders, if necessary, to adjust these levels.

By the Commission.

Dated: December 2, 2010.

**Elizabeth M. Murphy,**

*Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63412; File No. SR-Phlx-2010-164]

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

December 2, 2010.

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 November 24, 2010, 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 [sic] to amend its fees governing pricing for Exchange members using the Phlx XL II system,<sup>3</sup>

<sup>14</sup> The fee levels for advisers with assets under management under \$100 million are not changed as the number of advisers in these categories are expected to fall as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

<sup>15</sup> U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> For a complete description of Phlx XL II, see Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32). The instant proposed fees will apply only

for routing certain equity and index option Customer orders to away markets for execution.

While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for trades settling on or after December 1, 2010.

The text of the proposed rule change is available on the Exchange’s Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, at the principal office of the Exchange, at the Commission’s Public Reference Room, and on the Commission’s Web site at <http://www.sec.gov>.

#### 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 the proposed rule change is to recoup costs that the Exchange incurs for routing and executing certain Customer orders in equity and index options to away markets.

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.<sup>4</sup> NOS is currently utilized by the Phlx XL II system solely to route orders in options listed and open for trading on the Phlx XL II system to destination markets.

Currently, the Exchange’s Fee Schedule includes Routing Fees for both Customer and Professional orders. The Exchange proposes to establish a Routing Fee of \$0.24 per contract in Customer option orders that are routed to the Chicago Board Options Exchange, Incorporated (“CBOE”). This would apply to orders greater than 99 contracts

to option orders entered into, and routed by, the Phlx XL II system.

<sup>4</sup> See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32).

<sup>9</sup> FINRA letter dated September 29, 2009, available at <http://www.sec.gov/rules/other/2009/finraletter092909-iardfees.pdf>.

<sup>10</sup> Approval of Investment Adviser Registration Depository Filing Fees, Investment Advisers Act Release No. 2959 (Dec. 10, 2009) [74 FR 66710 (Dec. 16, 2009)].

<sup>11</sup> FINRA letter dated November 12, 2010 available at <http://www.sec.gov/rules/other/2010/finraletter111210-iardfees.pdf>.

<sup>12</sup> The revised fee level for advisers in the largest category would newly include advisers that report assets under management of exactly \$100 million (not just over \$100 million). We are making this revision to track the new mid-sized adviser category for advisers reporting assets under management of \$25 million up to, but not including, \$100 million. See section 410 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, 124 Stat. 1376 (2010)).

<sup>13</sup> The threshold, for most advisers, to be eligible for SEC registration will be increased from \$25 million to \$100 million in assets under management. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, 124 Stat. 1376 (2010)).

in options on the Russell 2000® Index (the "Full Value Russell Index" or "RUT"), options on the one-tenth value Russell 2000® Index<sup>5</sup> (the "Reduced Value Russell Index" or "RMN"), options on the Nasdaq 100 Index<sup>6</sup> traded under the symbol NDX ("NDX") and options on the one-tenth value of the Nasdaq 100 Index traded under the symbol MNX ("MNX") as well as exchange-traded funds ("ETFs"), exchange-traded notes ("ETNs") and Holding Company Depositary Receipts ("HOLDRs"). The Exchange is proposing to caption these proposed fees "CBOE orders greater than 99 contracts in RUT, RMN, NDX, MNX, ETFs, ETNs and HOLDRs." The CBOE routing fee of \$0.26 per contract for Professional orders, which is assessed today, would apply to CBOE orders greater than 99 contracts in RUT, RMN, NDX, MNX, ETFs, ETNs and HOLDRs as well.

The Exchange believes that the routing fees proposed will enable the Exchange to recover the transaction fees assessed by away markets, where applicable, plus clearing fees for the execution of Customer orders routed from the Phlx XL II system. Specifically, the Exchange seeks to recoup transaction and clearing fees assessed by CBOE in the above listed categories for orders greater than 99 contracts.<sup>7</sup>

As with all fees, the Exchange may adjust these Routing Fees in response to

<sup>5</sup> Russell 2000® is a trademark and service mark of the Frank Russell Company, used under license. Neither Frank Russell Company's publication of the Russell Indexes nor its licensing of its trademarks for use in connection with securities or other financial products derived from a Russell Index in any way suggests or implies a representation or opinion by Frank Russell Company as to the attractiveness of investment in any securities or other financial products based upon or derived from any Russell Index. Frank Russell Company is not the issuer of any such securities or other financial products and makes no express or implied warranties of merchantability or fitness for any particular purpose with respect to any Russell Index or any data included or reflected therein, nor as to results to be obtained by any person or any entity from the use of the Russell Index or any data included or reflected therein.

<sup>6</sup> NASDAQ®, NASDAQ-100® and NASDAQ-100 Index® are registered trademarks of The NASDAQ OMX Group, Inc. (which with its affiliates are the "Corporations") and are licensed for use by NASDAQ OMX PHLX, Inc. [sic] in connection with the trading of options products based on the NASDAQ-100 Index®. The options products have not been passed on by the Corporations as to their legality or suitability. The options products are not issued, endorsed, sold, or promoted by the Corporations. The Corporations make no warranties and bear no liability with respect to the options products.

<sup>7</sup> See Securities Exchange Act Release No. 62902 (September 14, 2010), 75 FR 57313 (September 20, 2010) (SR-CBOE-2010-081) (a rule change to assess a transaction fee of \$.18 per contract on public customer orders in options on Standard & Poor's Depositary Receipts, except for orders of 99 contracts or less).

competitive conditions by filing a new proposed rule change. While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for trades settling on or after December 1, 2010.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>9</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. 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 CBOE for orders greater than 99 contracts in the following symbols RUT, RMN, NDX and MNX as well as ETFs, ETNs and HOLDRs, on behalf of its members. The Exchange also believes that the proposed fees will be uniformly applied to all Customers orders.

### 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<sup>10</sup> and paragraph (f)(2) of Rule 19b-4<sup>11</sup> thereunder. At any time within 60 days of the filing of such 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>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

## 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2010-164 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-Phlx-2010-164. This file number should be included on the subject line if e-mail 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 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 No. SR-Phlx-2010-164 and should be submitted on or before December 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-30830 Filed 12-7-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63405; File No. SR-NSX-2010-15]

### Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Effectuate an Amendment to Bylaws of NSX Holdings, Inc.

December 1, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 19, 2010, National Stock Exchange, Inc. filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

National Stock Exchange, Inc. ("NSX" or "Exchange") is proposing to effectuate an amendment to the bylaws of its parent holding company, NSX Holdings, Inc., to extend the expiration date, from December 31, 2010 to December 31, 2015, of a right of first refusal in the bylaws covering the transfer of Holdings shares.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nsx.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 parts of such statements.

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

##### 1. Purpose

With this rule change, the Exchange is proposing to effectuate an amendment to the bylaws of its parent holding company, NSX Holdings, Inc. ("Holdings"), to extend the expiration date of a right of first refusal regarding the transfer of Holdings shares from December 31, 2010 until December 31, 2015.

Holdings is the sole stockholder of the Exchange. Holdings is a privately-held company and there is no public market for its shares. Pursuant to section 9.6 of Holdings' bylaws, shares of Holdings may not be sold, transferred, assigned, pledged or otherwise disposed of without complying with transfer restrictions contained in Holdings' charter and bylaws. The bylaws generally provide that stockholders may not transfer less than 1,000 shares in any one transfer, unless the stockholder is transferring all of the Holdings shares it owns. The bylaws also grant Holdings a right of first refusal to acquire shares a stockholder intends to sell or transfer. This right of first refusal does not apply (a) if the transferee is an affiliate of the transferor, (b) if the transferee is already a stockholder of Holdings, (c) if the transfer is by bequest, operation of law or judicial decree upon the death, legal disability, bankruptcy, or divorce/annulment/dissolution of marriage of a stockholder, or (d) after December 31, 2010.<sup>3</sup>

On October 6, 2010, the Holdings Board of Directors approved, subject to any required Securities and Exchange Commission ("Commission") approval, an amendment to Holdings' bylaws to extend the expiration date for the right of first refusal referenced above from December 31, 2010 until December 31, 2015. Accordingly, the instant rule filing proposes to effectuate an amendment to Holdings' bylaws that

<sup>3</sup> Shares of Holdings have not been registered under the Securities Act of 1933 or any state securities laws. As a result, they may be transferred only pursuant to an effective registration statement, or upon delivery to Holdings of an opinion of counsel that the transfer is exempt from such registration requirements and the delivery of documentation necessary to demonstrate that the transfer is exempt. Stockholders who wish to sell or transfer shares, or who have questions concerning sale or transfer restrictions, are encouraged to consult their legal counsel.

would extend the right of first refusal until December 31, 2015.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>4</sup> in general, and Section 6(b)(4) of the Act,<sup>5</sup> in particular, in that it is designed, among other things, to promote clarity, transparency and full disclosure, in so doing, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Moreover, the proposed rule change is not discriminatory in that it affects only the rights of Holdings shareholders; qualification of, and trading privileges resulting from, ETP Holder status is unrelated to and independent of a person's or entity's status as a Holdings shareholder.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

The proposed rule change will not be operative until 30 days after the date of filing (or such shorter time as the Commission may designate) pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>6</sup> and subparagraph (f)(6) of Rule 19b-4<sup>7</sup> thereunder, because the proposal is "non-controversial" and: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; *provided* that the self-regulatory organization has given the

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

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 240.19b-4.

<sup>12</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.