Commission's action in the Temporary Exemptions Extension Release, to extend FINRA Rule 0180 for a limited period, to February 11, 2014, so as to coincide with the Commission's extension of the Temporary Exemptions.

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 17, 2013.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[11] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change would further the purposes of the Act because, consistent with the goals set forth by the Commission in the Exemptive Release and in the Temporary Exemptions Extension Release, the proposed rule change will help to avoid undue market disruption that could result if the expiration of FINRA Rule 0180 does not align with the expiration of the Temporary Exemptions.

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. FINRA believes that the proposed rule change would prevent undue market disruption that would otherwise result if security-based swaps were, by virtue of the expansion of the Act's definition of ''security'' to encompass security-based swaps, subject to the application of all FINRA rules before the expiration of the Temporary Exemptions. FINRA believes that, by extending the expiration of FINRA Rule 0180, the proposed rule change will serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) 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 Act[12] and Rule 19b–4(f)(6) thereunder.[13]

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–FINRA–2013–019 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–2013–019. 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 such filing also will be available for inspection and copying at the principal office 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–2013–019 and should be submitted on or before April 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–07941 Filed 4–4–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69253; File No. SR-Phlx–2013–23]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Routing Fees and the Customer Rebate Program

March 28, 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 March 19, 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.

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[11] 15 U.S.C. 78*o*–3(b)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

The Exchange proposes to amend Section V of the Pricing Schedule entitled ''Routing Fees.'' The Exchange is also proposing to amend the Customer Rebate Program.

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 April 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 the 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. The Exchange is also proposing to amend the Customer Rebate Program to continue to incentivize participants to transact Customer orders.

Routing

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 $0.05 per contract [3] fixed Routing Fee when routing orders to the NASDAQ Options Market LLC (''NOM'') and NASDAQ OMX BX, Inc. (''BX Options'') and a $0.11 per contract [4] 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,[5] 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 cost [6] 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 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. In the event that there is no transaction fee or rebate assessed by the away market, the only fee assessed is the fixed Routing Fee. With respect to the rebate, the Exchange pays a market participant the rebate offered by an away market where there is such a rebate. Any rebate available is netted against a fee assessed by the Exchange.[7]

C2 recently filed a rule change to amend its transaction fees and rebates for simple, non-complex orders, in equity options classes which became operative on February 1, 2013.[8] As a result of that filing the Exchange amended its Pricing Schedule and today assesses non-Customer simple, non-complex orders in equity options (single stock) that are routed to C2 a Routing Fee which includes a fixed cost of $0.11 per contract plus a flat rate of $0.85 per contract, except with respect to Customers.[9] With respect to Customers, the Exchange does not pass the rebate offered by C2, rather, Customer simple, non-complex orders in equity options (single stock) that are routed to C2 are assessed $0.00 per contract.

The Exchange is proposing to further simplify its Routing Fees by assessing a flat rate of $0.95 per contract on all non-Customer orders routed to any away market. The Exchange would no longer pass any rebate paid by an away market for non-Customer orders. With respect to Customer orders, the Exchange is proposing to continue to assess Customer orders routed to NOM a fixed fee of $0.05 per contract (''Fixed Fee'') in addition to the actual transaction fee assessed by the away market. This fee is not changing. With respect to Customer orders that are routed to BX Options, the Exchange will not assess a Routing Fee and will not pass the rebate. Today, BX Options pays a Customer Rebate to Remove Liquidity as follows: Customers are paid $0.12 per contract in IWM, SPY and QQQ, $0.32 per contract in All Other Penny Pilot Options and $0.70 per contract in Non-Penny Pilot Options.[10] The Exchange is proposing to not assess a Routing Fee when routing orders to BX Options because that exchange pays a rebate. Instead of netting the customer rebate paid by BX

[3] In a previous rule filing, the Exchange discussed the manner in which it analyzed costs related to routing to PHLX 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).

[4] 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.''

[5] 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.

[6] 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).

[7] For example, if a Customer order is routed to BOX, and BOX offers a customer rebate of $0.20 per contract, the Exchange would assess a $0.11 per contract fixed fee which would net against the rebate ($0.20 per contract in this example). The market participant for whom the Customer contract was routed would receive a $0.09 per contract rebate.

[8] *See* Securities Exchange Act Release No. 68792 (January 31, 2013), 78 FR 8621 (February 6, 2013) (SR–C2–2013–004).

[9] *See* Securities Exchange Act Release No. 68984 (February 25, 2013), 78 FR 13925 (March 1, 2013) (SR–Phlx–2013–17).

[10] *See* BX Options Rules at Chapter XV, Section 2(1).

Options against the fixed fee,[11] the Exchange would simply not assess a fee. Although market participants routing to BX Options will not receive a credit, as is the case today, market participants will not pay a Customer Routing Fee when their orders are routed to BX Options with this proposal. The Exchange proposes to assess a Customer Routing Fee of $0.11 per contract (''Fixed Fee'') in addition to the actual transaction fee when routing to an options exchange other than NOM and BX Options, as is the case today. The Exchange is amending the payment of rebates and will no longer pay rebates when routing Customer orders to an away market, instead the Exchange will not assess a Routing Fee if a Customer order is routed to an away market that pays a rebate.

Customer Rebate Program

The Exchange is proposing to relocate text from Section A of the Pricing Schedule to Section V (Routing) regarding credits applied to Routing Fees when a member organization qualifies for certain Customer rebate tiers. Today, a member organization qualifying for a Tier 2, 3 or 4 rebate in the Customer Rebate Program in Section A of the Pricing Schedule is entitled to receive a credit of $0.10 per contract toward the Routing Fee specified in Section V of the Pricing Schedule if a Customer order is routed to NOM and a $0.05 per contract credit if a Customer order is routed to BX Options. A member organization qualifying for a Tier 2, 3 or 4 rebate receives a credit of $0.16 per contract toward the Routing Fee specified in Section V of the Pricing Schedule if the Customer order is routed to an away market other than BX Options or NOM unless the away market transaction fee is $0.00 or the away market pays a rebate, in which case the member organization is entitled to receive a credit of $0.11 per contract toward the Routing Fee specified in Section V of the Pricing Schedule.

The Exchange is proposing to relocate this text to Section V of the Pricing Schedule because it relates to Routing Fees. The Exchange is also proposing to amend the text to provide that a member organization qualifying for a Tier 2, 3 or 4 rebate in the Customer Rebate Program in Section A of the Pricing Schedule is entitled to receive a credit equal to the Fixed Fee (either $0.05 or $0.11 per credit) plus $0.05 per contract, unless the away market transaction fee is $0.00 per contract or the away market pays a rebate, in which case the member organization is entitled to receive a credit equal to the Fixed Fee.

Finally, the Exchange is proposing to amend the Customer Rebate Program. Today, the Exchange's four tier Customer Rebate Program pays rebates based on the percentage thresholds of national customer multiply-listed options volume by month based on four Categories, A, B, C and D, of transactions. Specifically, a market participant's qualification for a rebate is based on the percentage of total national customer volume in Multiply Listed Options which are transacted monthly on Phlx. The percentage is the total number of electronically-delivered and executed Customer contracts in Multiply Listed Options, which includes equity, ETF and index options volume (excluding volume associated with electronic QCC Orders, as defined in Exchange Rule 1080(o), transacted on Phlx (''Qualifying Volume'') divided by Multiply Listed customer options volume, which also includes equity, ETF and Index options volume, as reported by The Options Clearing Corporation (''OCC''). The Exchange proposes to amend this qualification so that the Exchange would instead divide Qualifying Volume by total Multiply Listed equity and ETF options volume, as reported by OCC. By amending the calculation, the Exchange would exclude index volume that is included today from the total industry volume that qualifies member organizations for a rebate, which would mathematically result in advantaging member organizations by providing them the opportunity to achieve higher percentages because the indexes are excluded from the industry volume.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act [12] in general, and furthers the objectives of Section 6(b)(4) of the Act,[13] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

Routing

The Exchange believes that its proposal to amend its non-Customer Routing Fees from a fixed fee plus actual transaction charges to a flat rate is reasonable because the flat rate makes it easier for market participants to anticipate the Routing Fees which they would be assessed at any given time. The Exchange believes that assessing all non-Customer orders the same flat rate will provide market participants with certainty with respect to Routing Fees. While, each destination market's transaction charge varies and there is a cost incurred by the Exchange when routing orders to away markets, including clearing costs, administrative and technical costs associated with operating NOS, membership fees at away markets, ORFs and technical costs associated with routing options, the Exchange believes that the proposed Routing Fees will enable it to recover the costs it incurs to route non-Customer orders to away markets. Other exchanges similarly assess a fixed rate fee to route non-Customer orders.[14]

The Exchange believes that its proposal to amend the non-Customer Routing Fees from a fixed fee plus actual transaction charges to a flat rate is equitable and not unfairly discriminatory because the Exchange would uniformly assess the same Routing Fees to all non-Customer market participants. Under its flat fee structure, taking all costs to the Exchange into account, the Exchange may operate at a slight gain or a slight loss for non-Customer orders routed to and executed at away markets. The proposed Routing Fee for non-Customer orders is an approximation of the maximum fees the Exchange will be charged for such executions, including costs, at away markets. As a general matter, the Exchange believes that the proposed fees will allow it to recoup and cover its costs of providing routing services for non-Customer orders. The Exchange believes that the fixed rate non-Customer Routing Fee is equitable and not unfairly discriminatory because market participants have the ability to directly route orders to an away market and avoid the Routing Fee. Also, market participants may submit orders to the Exchange as ineligible for routing or ''DNR'' to avoid Routing Fees.[15] It is important to note that when orders are routed to an away market they are routed based on price first.[16]

[11] BX Options does not assess a Customer a Fee to Remove Liquidity in any symbols today. *See* Chapter V, Section 2(1) of the BX Options Rules.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] BATS Exchange, Inc. (''BATS'') assesses non-Customer fixed rates of $0.57 and $0.95 per contract when routing to away markets. *See* BATS BZX Exchange Fee Schedule. The Chicago Board Options Exchange Incorporated (''CBOE'') assesses non-Customer orders a $0.50 per contract routing fee in addition to the customary CBOE execution charges. *See* CBOE's Fees Schedule.

[15] *See* Rule 1066(h) (Certain Types of Orders Defined) and 1080(b)(i)(A) (PHLX XL and PHLX XL II).

[16] PHLX XL will route orders to away markets where the Exchange's disseminated bid or offer is inferior to the national best bid (best offer) (''NBBO'') price. *See* Rule 1080(m). The Phlx XL II system will contemporaneously route an order marked as an Intermarket Sweep Order (''ISO'') to

Continued

The Exchange believes that its proposal to not pass a rebate that is offered by an away market for non-Customers orders is reasonable because to the extent that another market is paying a rebate, the Exchange will assess a $0.95 per contract fee as its total cost in each instance. The Routing Fee is transparent and simple. If a market participant desires the rebate, the market participant has the option to direct the order to that away market. Other options exchanges today do not pass the rebate.[17] The Exchange believes that its proposal to not pass a rebate that is offered by an away market for non-Customers orders is equitable and not unfairly discriminatory because the Exchange would not pay such a rebate on any non-Customer order.

The Exchange believes that amending the Customer Routing Fee to BX Options from $0.05 per contract in addition to the actual transaction fee to $0.00 is reasonable, because, unlike NOM,[18] BX Options pays a Customer Rebate to Remove Liquidity as follows: Customers are paid $0.12 per contract in IWM, SPY and QQQ, $0.32 per contract in All Other Penny Pilot Options and $0.70 per contract in Non-Penny Pilot Options.[19] The Exchange believes that not assessing a fee for routing orders to BX Options, instead of netting the customer rebate paid by BX Options against the Fixed Fee [20] is reasonable because although market participants routing orders to BX Options will not receive a credit, as is the case today with respect to Customer orders routed to BX Options, the Routing Fee will be more transparent. Market participants will not pay a Customer Routing Fee when routing orders to BX Options with this proposal instead of the $0.05 per contract fee netted against the rebate, as is the case today. The Exchange believes that the proposed Customer Routing Fee to BX Options is equitable and not unfairly discriminatory because the proposal would apply uniformly to all market participants.

Further, the Exchange believes that it is reasonable to also not assess a Customer Routing Fee when routing to all other options exchanges, except NOM and BX Options, if the away market pays a rebate. The Exchange will continue to assess a Fixed Fee of $0.11 per contract plus the actual transaction charge assessed by the away market when routing to all other options exchanges, except NOM and BX Options, but instead of paying the rebate, as is the case today, the Exchange will not assess a Customer Routing Fee to that away market because the Exchange will collect the rebate to offset the fee. The Exchange believes that market participants will have more certainty as to the Customer Routing Fee that will be assessed by the Exchange. The Exchange believes that the proposed pricing for the Customer Routing Fee to all other away markets, except NOM and BX Options, is equitable and not unfairly discriminatory because while the Exchange may operate at a slight gain or a slight loss when routing Customer orders to the away market, depending on the rebate paid by the away market, the proposal would apply uniformly to all market participants when routing to an away market that pays a rebate.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to continue to assess Customer orders that are routed to NOM a Fixed Fee of $0.05 per contract and orders that are routed to other away markets, other than NOM and BX Options, a Fixed Fee of $0.11 per contract because the cost, in terms of actual cash outlays, to the Exchange to route to NOM (and BX Options) [21] is lower. For example, costs related to routing to NOM are lower as compared to other away markets because NOS is utilized by all three exchanges to route orders.[22] NOS and the three NASDAQ OMX options markets have a common data center and staff that are responsible for the day-to-day operations of NOS. Because the three exchanges are in a common data center, Routing Fees are reduced because costly expenses related to, for example, telecommunication lines to obtain connectivity are avoided when routing orders in this instance. The costs related to connectivity to route orders to other NASDAQ OMX exchanges are de minimis. When routing orders to non-NASDAQ OMX exchanges, the Exchange incurs costly connectivity charges related to telecommunication lines and other related costs when routing orders. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to pass along savings realized by leveraging NASDAQ OMX's infrastructure and scale to market participants when those orders are routed to NOM.

Finally, the Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess different fees for Customers orders as compared to non-Customer orders because the Exchange has traditionally assessed lower fees to Customers as compared to non-Customers. Customers will continue to receive the lowest fees or no fees when routing orders, as is the case today. Other options exchanges also assess lower Routing Fees for customer orders as compared to non-customer orders.[23]

Customer Rebates

The Exchange's proposal to amend the text, which was relocated from Section A of the Pricing Schedule to Section V, is reasonable because the Exchange will continue to credit market participants that qualify for Tiers 2, 3, and 4 in the Customer Rebate Program with the amendment in order to incentivize those market participants to transact Customer orders to the benefit of all market participants. The Exchange is proposing to relocate this text to Section V of the Pricing Schedule because it relates to Routing Fees.

The Exchange believes that the amendment to the relocated text is equitable and not unfairly discriminatory because the Exchange will continue to offer market participants that qualify for the credit a $0.10 credit for orders routed to NOM and a $0.05 credit for orders routed to BX Options, as is the case today. Also, orders routed to other away markets, with the exception of NOM and BX Options, will continue to receive a credit of $0.16 per contract (the $0.11 per contract Fixed Fee plus $0.05 per contract) toward the Routing Fee unless the away market transaction fee is $0.00 or the away market pays a rebate, the Exchange would pay a credit toward the

each away market disseminating prices better than the Exchange's price, for the lesser of: (a) The disseminated size of such away markets, or (b) the order size and, if order size remains after such routing, trade at the Exchange's disseminated bid or offer up to its disseminated size. If contracts still remain unexecuted after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the Phlx XL II system will not route the order to the locking or crossing market center, with some exceptions noted in Rule 1080(m).

[17] *See* CBOE's Fees Schedule and International Securities Exchange LLC's (''ISE'') Fee Schedule.

[18] The NOM Customer Routing Fee is not being amended by this proposal. The Exchange would continue to assess Customer orders routed to NOM a $0.05 per contact Fixed Fee along plus the actual transaction fee.

[19] *See* BX Options Rules at Chapter XV, Section 2(1).

[20] BX Options does not assess a Customer a Fee to Remove Liquidity in any symbols today. *See* Chapter V, Section 2(1) of the BX Options Rules.

[21] With this proposal, the Exchange would not assess the $0.05 per contract Fixed Fee for routing orders to BX Options because that exchange pays Customer rebates, which the Exchange would retain to offset its cost.

[22] *See* Chapter VI, Section 11 of the NASDAQ and BX Options Rules and Phlx Rule 1080(m)(iii)(A).

[23] BATS assesses lower customer routing fees as compared to non-customer routing fees per the away market. For example BATS assesses ISE customer routing fees of $0.30 per contract and an ISE non-customer routing fee of $0.57 per contract. *See* BATS BZX Exchange Fee Schedule.

Routing Fee equal to the Fixed Fee of $0.11 per contract, as is the case today. The Exchange is proposing to amend the text to provide that a member organization qualifying for a Tier 2, 3 or 4 rebate in the Customer Rebate Program in Section A of the Pricing Schedule is entitled to receive a credit equal to the Fixed Fee (either $0.05 or $0.011 per credit) plus $0.05 per contract, unless the away market transaction fee is $0.00 per contract or the away market pays a rebate, in which case the member organization is entitled to receive a credit equal to the Fixed Fee. Although the Exchange is describing the credit differently in the rule text, the credit remains the same and the Exchange will continue to apply the credit in a uniform manner

Finally, the Exchange proposes to amend the Customer Rebate qualification to exclude indexes from the industry volume that is utilized to calculate a member organization's qualification for the Customer Rebate Tier. The Exchange believes that this amendment is reasonable because by including equity, ETF and index option volume in the calculation of member contracts and excluding indexes from the industry volume will provide member organizations an opportunity to achieve higher rebates because the industry volume number will be smaller.

The Exchange believes that its proposal to amend the Customer Rebate qualification is equitable and not unfairly discriminatory because the Customer Rebate Tiers would continue to apply in a uniform manner to all market participants.

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. The Exchange does not believe that the proposal creates intra-market competition because the Exchange is applying the same Routing Fees and credits to all market participants in the same manner dependent on the routing venue, with the exception of Customers. The Exchange has proposed separate Customer Routing Fees. Customers will continue to receive the lowest fees or no fees when routing orders, as is the case today. Other options exchanges also assess lower Routing Fees for customer orders as compared to non-customer orders.[24]

The Exchange's proposal would allow the Exchange to recoup its costs when routing orders to away markets when such orders are designated as available for routing by the market participant. The Exchange is passing along savings realized by leveraging NASDAQ OMX's infrastructure and scale to market participants when those orders are routed to NOM and is providing those saving to all market participants. Members and member organizations may choose to mark the order as ineligible for routing to avoid incurring these fees.[25] Today, other options exchanges also assess fixed routing fees to recoup costs incurred by the Exchange to route orders to away markets.[26]

Further, the amendments to the Customer Rebate Program are likewise applied in the same manner to all participants. The Exchange's proposal, which merely amends the manner in the Customer Rebate Tiers will be calculated, continues to impact all market participants equally. The Exchange does not believe that this proposal will impose a burden on competition.

The Exchange operates in a highly competitive market, comprised of eleven exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Accordingly, the fees that are assessed by the Exchange must remain competitive with fees charged by other venues and therefore must continue to be reasonable and equitably allocated to those members organizations that opt to direct orders to the Exchange rather than competing venues.

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.[27] 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–2013–23 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–2013–23. 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

[24] *Id.*

[25] *See supra* note 15.

[26] *See* CBOE's Fees Schedule and ISE's Fee Schedule.

[27] 15 U.S.C. 78s(b)(3)(A)(ii).

should refer to File Number SR–Phlx–2013–23, and should be submitted on or before April 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–07939 Filed 4–4–13; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Cook County, Illinois

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Revised Notice of Intent.

SUMMARY: The FHWA is issuing this revised notice of intent to advise the public that an environmental impact statement is being prepared for the proposed I–290 highway improvement project in Cook County, Illinois, and that the project limits in the Notice of Intent (NOI) published in the **Federal Register** on February 26, 2010 have been expanded.

FOR FURTHER INFORMATION CONTACT: Mr. J. Michael Bowen, P.E., Acting Division Administrator, Federal Highway Administration, 3250 Executive Park Drive, Springfield, Illinois 62703, Phone: (217) 492–4600. John Fortmann, P.E., Acting Deputy Director of Highways, Acting Region One Engineer, District 1, Illinois Department of Transportation, 201 W. Center Court, Schaumburg, IL. 60196–1096, Phone: (847) 705–4110.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Illinois Department of Transportation, is preparing an environmental impact statement (EIS) on a proposal to improve Interstate 290 (I–290) located in Cook County, Illinois. Based on public input and studies conducted to date, FHWA and IDOT now will include an additional section of I–290 from east of IL 50 (Cicero Avenue) to Racine Avenue in the EIS so that the limits of the proposed improvements are from west of Mannheim Road to Racine Avenue, a total distance of 13.0 miles. The additional section between east of Cicero Avenue and Racine Avenue may include operational improvements consisting of the potential conversion of two or more lanes of the eight lane expressway to accommodate managed lanes or various tolling strategies.

Improvements to the corridor are considered necessary due to safety concerns, operational issues, traffic congestion, and age of facility. Alternatives under consideration include (1) taking no action; (2) a full range of multi-modal build alternatives that involve reconstruction of all, or portions of, I–290 and the rehabilitation of the remainder to include operational changes.

Improvements to I–290 have the potential to affect environmental features in the project area depending on the alternative selected. The corridor is located in a highly developed mature urban setting with limited biological and natural resources. The built environment has the potential to be effected. Some features include: cemeteries, parks, special waste sites, nearby historic districts, possible residential and commercial displacements, sensitive noise receptors, a crossing of the Des Plaines River, and related indirect and cumulative impact considerations.

Letters have been sent to appropriate Federal, State, and local agencies reflecting the revised project limits, describing the proposed action, and soliciting comments. Input from Resource Agencies will continue to be obtained through the established stakeholder involvement methods including the Corridor Advisory Group (CAG) and NEPA/404 Merger process.

The Illinois Department of Transportation's Context Sensitive Solutions (CSS) process will continue to be used for public involvement. The existing Stakeholder Involvement Plan (SIP) will be updated to ensure that the full range of issues related to the change in project limits are identified and addressed. The SIP will continue to provide meaningful opportunities for all stakeholders to participate in defining transportation issues and solutions for the study area. The Corridor Advisory Group will continue as a primary method of stakeholder interaction. In addition, a public hearing and comment period will be held following the release of the Draft EIS. Public notice will be given for the time and place of the public hearing. A project Web site has been established (*www.eisenhowerexpressway.com)* as one element of the project public involvement process.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued On: April 1, 2013.

J. Michael Bowen,

Acting Division Administrator, Springfield, Illinois.

[FR Doc. 2013–07936 Filed 4–4–13; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 33 (Sub-No. 302X)]

Union Pacific Railroad Company—Abandonment Exemption—in Dunn County, WI.

Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 CFR part 1152 subpart F–*Exempt Abandonments* to abandon a 0.58-mile line of railroad on its Menomonie Industrial Lead from milepost 0.32 near Cedar Falls Road to the end of the line at milepost 0.90 near Oak Avenue, in Menomonie, Dunn County, Wis. (the Line). The Line traverses United States Postal Service Zip Code 54751.

UP has certified that: (1) No local traffic has moved over the Line for at least two years; (2) there is no overhead traffic on the Line; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

[28] 17 CFR 200.30–3(a)(12).