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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76858; File No. SR-Phlx-2015-109)

January 8, 2016

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Permit Fees

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 December 30, 2015, 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 the Exchange’s Pricing Schedule at Section VI, entitled “Membership Fees.” The Exchange also proposes to correct a reference to The NASDAQ OMX Group, Inc. within the Pricing Schedule.

The Exchange purposes to increase certain permit fees. The Exchange’s permit fees remain competitive with those of other options Exchanges. While the changes proposed herein are effective upon filing, the Exchange has designated the amendments to become operative on January 4, 2016.

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

¹ 15 U.S.C. 78s(b)(1).

² 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 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 increase permit fees to allocate its costs to various options market participants, specifically floor participants. The Exchange assesses Permit Fees by market participant. Today, the Exchange assesses the same monthly Permit Fees of \$2,300 to

Floor Brokers,³ Specialists⁴ and Market Makers.⁵ All other market participants (Professionals,⁶ Firms⁷ and Broker-Dealers,⁸ collectively “Other Market Participants”) are assessed a Permit Fee of \$4,000 in a given month, unless the member or member organization or those member organizations under Common Ownership,⁹ execute at least 100 options in a Phlx house account that is assigned to one of the member organizations in a given month, in which case the Permit Fee is \$2,300 for that month. The Exchange believes that 100 options in a given month continues to be a reasonable level given the volume of options transacted on Phlx to receive the lower Permit Fee. Also, today, option members and member organizations pay an additional Permit Fee for each sponsored options participant, which fee is the Permit Fee that is assessed to

³ A “Floor Broker” is defined in Phlx Rule 1060 as “[a]n individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and executing options orders received from members and member organizations.”

⁴ A “Specialist” is an Exchange member who is registered as an options specialist. See Phlx Rule 1020(a).

⁵ A “Market Maker” includes Registered Options Traders (“ROTs”) (see Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (“SQTs”) (see Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (“RSQTs”) (see Rule 1014(b)(ii)(B)). An RSQT is defined in Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member affiliated with an Remote Streaming Quote Trader Organization or “RSQTO” with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A RSQTO, which may also be referred to as a Remote Market Making Organization (“RMO”), is a member organization in good standing that satisfies the RSQTO readiness requirements in Rule 507(a). An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

⁶ The term “Professional” means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Rule 1000(b)(14).

⁷ The term “Firm” applies to any transaction that is identified by a member or member organization for clearing in the Firm range at The Options Clearing Corporation.

⁸ The term “Broker-Dealer” applies to any transaction that is not subject to any of the other transaction fees applicable within a particular category.

⁹ The term “Common Ownership” shall mean members or member organizations under 75% common ownership or control. See Preface to Exchange’s Pricing Schedule.

the member or member organization sponsoring the options participant,¹⁰ of either \$2,300 or \$4,000.

The Exchange is not amending the Permit Fees for Other Market Participants or the criteria of the lower Permit Fee of \$2,300 per month for members and member organizations that execute a certain amount of volume on the Exchange.¹¹

The Exchange also proposes to correct a reference to The NASDAQ OMX Group, Inc. within the Pricing Schedule. The amendments are detailed below.

Permit Fee Amendments

- The Exchange proposes to increase the Floor Broker Permit Fee from \$2,300 to \$3,000 per month.
- The Exchange proposes to increase the Floor Specialist¹² and Floor Market Maker¹³ Permit Fee from \$2,300 to \$4,500 per month.

¹⁰ See Exchange Rule 1094 titled Sponsored Participants. A Sponsored Participant may obtain authorized access to the Exchange only if such access is authorized in advance by one or more Sponsoring Member Organizations. Sponsored Participants must enter into and maintain participant agreements with one or more Sponsoring Member Organizations establishing a proper relationship(s) and account(s) through which the Sponsored Participant may trade on the Exchange.

¹¹ A Series A-1 permit shall only be issued to an individual who is a natural person of at least twenty-one (21) years of age. A Series A-1 permit shall only be issued to a corporation who meets the eligibility and application requirements set forth in the By-Laws and Rules, including, without limitation, Rule 972, and no individual shall hold more than a single Series A-1 permit. See Rule 908. All members are required to have a permit. A member organization will be billed for each permit that is affiliated with the member organization. Each Floor Brokers must obtain a permit to transact business on the trading floor. Each Market Maker must obtain a permit to transact business either electronically or on the trading floor. Each member organization must have at least one member qualifying the firm and that one member will be billed a permit.

¹² A Floor Specialist is a Specialist that does have a physical presence on the Exchange's trading floor.

¹³ A Floor Market Maker is a Market Maker that does have a physical presence on the Exchange's trading floor.

- The Exchange proposes to increase the Permit Fee for Remote Specialists and Remote Market Makers¹⁴ from \$2,300 to \$4,000¹⁵ and offer Remote Specialists and Remote Market Makers an opportunity to lower the Permit Fee to \$2,300 provided the member or member organization, or member organizations under Common Ownership, executes at least 100 options in a Phlx house account that is assigned to one of the member organizations in a given month.

The Exchange believes that these increased fees will raise revenue for the Exchange. The Exchange believes that these Permit Fees remain competitive with fees at other options exchanges¹⁶ and reasonably allocate costs based on Exchange resources consumed by these market participants.

Name Change

- The Exchange proposes to correct a reference to The NASDAQ OMX Group, Inc. within the Pricing Schedule to newly named Nasdaq, Inc.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act¹⁸ 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 the Exchange operates

¹⁴ Remote Specialists and Remote Market Makers do not have a physical presence on an Exchange floor.

¹⁵ While this Permit fee for Remote Specialists and Remote Market Makers is being increased, today all Remote Specialists and Remote Market Makers qualify for the lower Permit Fee of \$2,300.

¹⁶ See note 25 below.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(4) and (5).

or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, for example, the Commission indicated that market forces should generally determine the price of non-core market data because national market system regulation “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁹ Likewise, in NetCoalition v. NYSE Arca, Inc. [sic]²⁰ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.²¹ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”²²

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution

¹⁹ Securities Exchange Act Release No. 51808 [sic] at 37499 (June 9, 2005) (“Regulation NMS Adopting Release”).

²⁰ NetCoalition v. NYSE Arca, Inc. [sic] 615 F.3d 525 (D.C. Cir. 2010).

²¹ See NetCoalition, at 534.

²² Id. at 537.

of order flow from broker dealers'²³ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Amendments to Permit Fees

The Exchange's proposal to increase Floor Broker Permit Fees from \$2,300 to \$3,000 and Floor Specialist and Floor Market Maker Permit Fees from \$2,300 to \$4,500 is reasonable because the Exchange incurs costs in operating and maintaining a trading floor that are unique to a floor operation. The Exchange believes it is reasonable to allocate the Exchange's expenses, among the market participants on the trading floor, and raise the floor Permit Fees because of the unique resources consumed by each category of floor market participant and additional floor services. The proposed increase covers the rising facility costs and staffing expenses required to service the floor community, process trading tickets and service the trading floor. The Exchange has not increased these fees in two years.

Floor Specialists and Floor Market Makers benefit from the access they have to interact with orders which are made available in open outcry on the trading floor. These market participants may choose to conduct their business either electronically or on the trading floor, unlike Floor Brokers, who have a business model that is naturally tied to the physical trading space. The Exchange offers Specialists and Market Makers a choice on how to conduct business, electronic or floor. The Exchange believes that it is reasonable to assess Floor Specialists and Floor Market Makers the higher floor permits because it is offering different trading experiences to these market participants.

The Exchange notes that assessing different Permit Fee rates to different types of market

²³ Id. at 539 (quoting ArcaBook Order, 73 FR at 74782-74783).

participants is not novel.²⁴ Both CBOE and NYSE Arca have different fixed and transaction fees for floor as compared to electronically transmitted orders. Also, the proposed Permit Fees are competitive with fees at other options exchanges. Both CBOE and NYSE Arca assess different fees to Floor Brokers and Market Makers.²⁵

The Exchange's proposal to increase Floor Broker Permit Fees from \$2,300 to \$3,000 and Floor Specialist and Floor Market Maker from \$2,300 to \$4,500 is equitable and not unfairly discriminatory because the Exchange seeks to allocate the costs in a fair and equitable manner by assessing fees consistent with the consumption of resources. The differentiation in fees as between electronic trading and floor trading recognizes these different business models. For example, Floor Brokers are registered with the Exchange for the purpose, while on the options floor, of accepting and executing options orders received from members and member organizations.²⁶ This type of business model is distinct from that of an electronic trader. Additionally, Floor Specialists and Floor Market Makers have the opportunity to interact with Floor Broker order flow on the Exchange floor and to provide liquidity to the Exchange. The proposed Permit Fee structure recognizes the resources consumed by these market participants

²⁴ The Chicago Board Options Exchange, Incorporated ("CBOE"), the International Securities Exchange, LLC ("ISE") and Miami International Securities Exchange LLC ("MIAX") assess different Trading Permit Fees to different market participants. See CBOE's Fees Schedule, ISE's Fee Schedule and MIAX's Fee Schedule.

²⁵ See CBOE's Fees Schedule. A Market-Maker Trading Permit is \$5,500 per month, except for ETH only permits which are \$1,000 per month. A Floor Broker Trading Permit is \$9,000 per month. An Electronic Access Permit is \$1,600 per month, except for ETH only which is \$500 per month. There are also other permits for SPX and VIX trading and some waivers apply to ETH for the first permit. See also NYSE Arca, Inc.'s ("NYSE Arca") Options Trading Participation Rights in NYSE Arca Options Fees and Charges. Floor Brokers on NYSE Arca are assessed a \$1,000 per month options trading participant rights ("OTP") fee for the first OTP and \$250 for each additional OTP. NYSE Arca Market Makers are assessed \$6,000 for the first OTP and then the OTP fee declines on a scale down to \$1,000 for additional OTPs.

²⁶ See Exchange Rule 1060.

on the trading floor. The Exchange is one of only four options exchanges that offer a trading floor environment in addition to the electronic environment. The Exchange is required to staff the trading floor with regulatory personnel and provide a physical infrastructure in addition to other costs which are also incurred to operate an electronic environment. The floor environment offers floor market participants the choice of transacting certain complex transactions, i.e. a Complex Order²⁷ with multiple legs, on the trading floor in open outcry or the electronic market. Certain FLEX transactions,²⁸ transfers²⁹ or accommodation transactions³⁰ also lend themselves to the trading floor environment and the Exchange.

The Exchange believes that the increased Permit Fees to Floor Brokers, Floor Specialists and Floor Market Makers is equitable and not unfairly discriminatory because the Exchange is allocating the additional floor cost to the market participants that benefit from the trading floor. Further, the Exchange believes that it is equitable and not unfairly discriminatory to assess Floor Specialists and Floor Market Makers the higher floor Permit Fees among all floor participants because Specialists and Market Makers may decide to stream remotely or conduct their business on the trading floor in open outcry. These market participants are offered the opportunity to also avail themselves of both means to access the Exchange, whereby they may interact with order floor in the electronic Order Book and/or interact with order floor in the trading crowd on the

²⁷ A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or ETF coupled with the purchase or sale of options contract(s). See Exchange Rule 1080, Commentary .08(a)(i).

²⁸ See Phlx Rule 1079.

²⁹ See Phlx Rule 1058.

³⁰ See Phlx Rule 1059.

Exchange's trading floor. This opportunity to conduct their business on the trading floor and access the Exchange through both avenues comes at a cost to the Exchange,³¹ which costs is being allocated to Floor Specialists and Floor Market Makers through higher Permit Fees as compared to Floor Brokers.

The Exchange's proposal to increase Permit Fees for Remote Specialists and Remote Market Makers from \$2,300 to \$4,000 is reasonable because the Exchange is allocating costs differently as between electronic and floor trading. The differentiation in fees as between electronic trading and floor trading recognizes the distinctions in these business models. The Exchange's proposal will also offer Remote Specialists and Remote Market Makers the opportunity to reduce the Permit Fee from \$4,000 to \$2,300 by directing at least 100 option contracts to the Exchange in a given month.³² This proposal allocates costs to each market participants based on their chosen business model.

The Exchange's proposal to increase Permit Fees for Remote Specialists and Remote Market Makers that conduct an electronic business from \$2,300 to \$4,000 is equitable and not unfairly discriminatory as all electronic market participants will uniformly be assessed a \$4,000 a month Permit Fee and will uniformly be offered an opportunity to decrease that Permit Fee to \$2,300 by directing at least 100 option contracts in a given month to the Exchange. This liquidity benefits all market participants and in turn brings revenue to the Exchange through transaction fees assessed to these orders. The Exchange believes that assessing different rates for

³¹ As noted herein, the Exchange staffs the trading floor with regulatory personnel and provides a physical infrastructure for the trading floor. Surveillances for the floor and electronic environment may also differ. For example, the Exchange monitors Specialist and Market Maker quoting obligations separately for electronic quoting versus floor quoting.

³² The Exchange believes that 100 options in a given month continues to be a reasonable level given the volume of options transacted on Phlx to receive the lower Permit Fee.

floor market participants as compared to electronic market participants for Permit Fees is equitable and not unfairly discriminatory because of the increasing costs incurred by the Exchange in operating and maintaining the trading floor, which costs have increased over the years. The Exchange believes that it is equitable and not unfairly discriminatory to assess Remote Specialists and Remote Market Makers a lower rate than Floor Specialists and Floor Market Makers. Specialists and Market Makers have the ability to operate an electronic business on the Exchange, as compared to Floor Brokers, who have a business model that is naturally tied to the physical trading space. Floor Specialists and Floor Market Makers desiring to interact with the order flow generated by these Floor Brokers are offered the opportunity to transact business on the trading floor in addition to the electronic market. This opportunity comes at a cost for the Exchange which is being equitably allocated to the consumers of this resource.

Name Change

The Exchange's proposal to correct the reference to The NASDAQ OMX Group, Inc. within the reference to the trademark PHLX® to recently renamed Nasdaq, Inc.³³ is reasonable, equitable and not unfairly discriminatory because the amendment simply updates the name.

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. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more

³³ See Securities Exchange Act Release No. 75421 (July 16, 2015), 80 FR 42136 (July 10, 2015) (SR-BSECC-2015-001; SR-BX-2015-030; SR-NASDAQ-2015-058; SR-Phlx-2015-46; SR-SCCP-2015-01).

favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The Exchange's proposal to increase Floor Broker Permit Fees from \$2,300 to \$3,000 and Floor Specialist and Floor Market Maker from \$2,300 to \$4,500 does not impose an undue burden on intra-market competition because the Exchange proposes to allocate the costs to floor participants because they consume a greater amount of Exchange resources. The Exchange is required to staff the trading floor with regulatory personnel and provide a physical infrastructure in addition to other costs which are also incurred to operate an electronic environment. The Exchange has incurred increasing costs in operating and maintaining the trading floor, which costs have increased over the years. Specialists and Market Makers have the ability to operate an electronic business on the Exchange, as compared to Floor Brokers, who have a business model that is naturally tied to the physical trading space.

Floor Specialists and Floor Market Makers desiring to interact with the order flow generated by these Floor Brokers are offered the opportunity to transact business on the trading floor in addition to the electronic market. This opportunity comes at a cost for the Exchange. The Exchange believes that the increased fee to Floor Specialists and Floor Market Makers does not impose an undue burden on intra-market competition because the Exchange is allocating the additional floor cost to the participants that benefit from such a dual structure.

The Exchange's proposal to increase Permit Fees for Remote Specialists and Remote Market Makers from \$2,300 to \$4,000 does not impose an undue burden on intra-market competition because all electronic market participants will uniformly be assessed a \$4,000 a month Permit Fee and will uniformly be offered an opportunity to decrease that fee by directing at least 100 option contracts in a given month. This liquidity benefits all market participants and in turn brings revenue to the Exchange through transaction fees assessed to these orders. The Exchange believes that assessing Remote Specialists and Remote Market Makers a lower rate than Floor Specialists and Floor Market Makers does not impose an undue burden on intra-market competition because Specialists and Market Makers have the ability to operate an electronic business on the Exchange, as compared to Floor Brokers, who have a business model that is naturally tied to the physical trading space. Specialists and Market Makers desiring to interact with the order flow generated by these Floor Brokers are offered the opportunity to transact business on the trading floor in addition to the electronic market. This opportunity comes at a cost for the Exchange.

The proposed Permit Fees are competitive with fees at other options exchanges.³⁴ If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

Name Change

The Exchange's proposal to correct the reference to The NASDAQ OMX Group, Inc. within the reference to the trademark PHLX® to recently renamed Nasdaq, Inc. does not impose

³⁴ See note 25 above.

any undue burden on intra-market competition because the amendment simply updates the name.

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.³⁵

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2015-109 on the subject line.

³⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

Paper comments:

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

All submissions should refer to File Number SR-Phlx-2015-109. 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 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-Phlx-2015-109, and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁶

³⁶ 17 CFR 200.30-3(a)(12).

Robert W. Errett,
Deputy Secretary.

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