Exchange believes that the proposed change would increase competition among execution venues and encourage additional liquidity. In this regard, the Exchange believes that the transparency and competitiveness of attracting additional executions on an exchange market would encourage competition. The proposed change would also permit the Exchange to compete with other markets, including NASDAQ, which similarly provides a process for ''Designated Retail Orders'' that provide liquidity.[26] The proposal would also promote competition on the Exchange because the ability to designate an order as ''retail'' would be available to all members and member organizations that submit qualifying orders and satisfy the other related requirements.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [27] and Rule 19b–4(f)(6) thereunder.[28] Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–(f)(6) [29] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[30] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange immediately to adopt clear and transparent criteria concerning the submission of orders that are designated as ''retail'' and eligible to receive fee credits under the Exchange's current fee schedule. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing. [31]

At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend this 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.

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–NYSE–2014–26 on the subject line.

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–NYSE–2014–26. 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 Section, 100 F Street, NE., Washington, DC 20549–1090. Copies of the filing will also be available for Web site viewing and printing at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* 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–NYSE–2014–26 and should be submitted on or before June 23, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Kevin M. O'Neill,

Deputy Secretary.

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BILLING CODE 8011–01–P

[26] *See supra* note 23.

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

[28] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived that requirement for this proposed rule change.

[29] 17 CFR 240.19b–4(f)(6).

[30] 17 CFR 240.19b–4(f)(6)(iii).

[31] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72251; File No. SR–Phlx–2014–36]

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

May 27, 2014.

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 May 15, 2014, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

[2] 17 CFR 240.19b–4.

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

The Exchange proposes to amend Section V of the Pricing Schedule entitled ''Routing Fees.''

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on June 2, 2014.

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of this filing is to amend the Routing Fees in Section V of the Pricing Schedule in order to recoup costs incurred by the Exchange to route orders to away markets.

Today, the Exchange assesses a Non-Customer a $0.95 per contract Routing Fee to any options exchange. The Customer [3] Routing Fee for option orders routed to The NASDAQ Options Exchange LLC (''NOM'') is a $0.10 per contract Fixed Fee in addition to the actual transaction fee assessed. The Customer Routing Fee for option orders routed to NASDAQ OMX BX, Inc. (''BX Options'') is $0.10 per contract. The Customer Routing Fee for option orders routed to all other options exchanges [4] (excluding NOM and BX Options) is a fixed fee of $0.20 per contract (''Fixed Fee'') in addition to the actual transaction fee assessed. If the away market pays a rebate, the Routing Fee is $0.10 per contract.

With respect to the fixed costs, the Exchange incurs a fee when it utilizes Nasdaq Execution Services LLC (''NES''),[5] a member of the Exchange and the Exchange's exclusive order router.[6] [sic] Each time NES routes an order to an away market, NES is charged a clearing fee [7] 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 currently recoups clearing and transaction charges incurred by the Exchange as well as certain other costs incurred by the Exchange when routing to away markets, such as administrative and technical costs associated with operating NES, membership fees at away markets, Options Regulatory Fees (''ORFs''), staffing and technical costs associated with routing options. The Exchange assesses the actual away market fee 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.

The Exchange is proposing to increase Routing Fees to account for increased OCC fees and other increased costs associated with clearing, ORF and other operational costs. The Exchange proposes to increase Routing Fees for Non-Customer orders from $0.95 to $0.97 per contract. The Exchange also proposes to increase Customer Routing Fees as described herein. The Exchange proposes to increase Customer Routing Fees to NOM from a Fixed Fee of $0.10 to $0.12 per contract, in addition to the actual transaction fee assessed. The Exchange proposes to increase Customer Routing Fees to BX Options from $0.10 to $0.12 per contract. The Exchange also proposes to amend Routing Fees to all other exchanges (except NOM and BX Options) from $0.20 to $0.22 per contract, in addition to the actual transaction fee assessed, provided the away market does not pay a rebate. If the away market pays a rebate, the Routing Fee assessed would be $0.12 per contract, an increase from the current $0.10 per contract. The Exchange proposes these increases to recoup an additional portion of the costs incurred by the Exchange for routing these orders.

The Exchange is proposing to increase Non-Customer and Customer Routing Fees by $0.02 per contract to cover the increased costs of offering its members the opportunity to route to other options exchanges. With the recent increase by OCC [8] as well as increases in ORFs and Phlx's operational expenses, the Exchange sees to further recoup a portion of increased costs with the increase to its Routing Fees.

Today the Exchange does not assess the actual transaction fee assessed by BX Options, rather the Exchange only assesses the Fixed Fee, because the Exchange would continue to retain the rebate to offset the cost to route orders to BX Options. This is the not the case for all orders routed to BX Options because not all Customer orders receive a rebate.[9] This will remain the same. Similarly, the Exchange is proposing to amend the Customer Routing Fee assessed when routing to all other options exchanges, if the away market pays a rebate, from a $0.10 to a $0.12 per contract Fixed Fee, in order to recoup an additional portion of the costs incurred by the Exchange for routing these orders. The Exchange does not assess the actual transaction fee assessed by the away market, rather the Exchange only assesses the Fixed Fee, because the Exchange would continue to retain the rebate to offset the cost to route orders to these away markets. This will remain the same. Finally, the Exchange is not amending the credit it offers to member organizations that qualify for a Tier 2, 3, 4 or 5 rebate in the Customer Rebate Program in Section B of the Pricing Schedule; and route away more than 5,000 Customer contracts per day in a given month to an away market.[10]

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[3] The term ''Customer'' applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of broker or dealer or for the account of a ''Professional'' (as that term is defined in Rule 1000(b)(14)).

[4] Including BATS Exchange, Inc. (''BATS''), BOX Options Exchange LLC (''BOX''), the Chicago Board Options Exchange, Incorporated (''CBOE''), C2 Options Exchange, Incorporated (''C2''), International Securities Exchange, LLC (''ISE''), the Miami International Securities Exchange, LLC (''MIAX''), NYSE Arca, Inc. (''NYSE Arca''), NYSE MKT LLC (''NYSE Amex'') and ISE Gemini, LLC (''Gemini'').

[5] The Exchange filed a proposed rule change to utilize Nasdaq Execution Services, LLC (''NES'') for outbound order routing. *See* Securities Exchange Act Release No. 71417 (January 28, 2014), 79 FR 6253 (February 3, 2014) (SR–Phlx–2014–04).

[7] OCC assessed a $0.01 per contract side. The fee has recently been increased from $0.01 to $0.02 per contract side. *See* Securities Exchange Act Release No. 71769 (March 21, 2014), 79 FR 17214 (March 21, 2014) (SR–OCC–2014–05).

[8] *Id.*

[9] BX Options pays a Customer Rebate to Remove Liquidity as follows: Customers are paid $0.32 per contract in All Other Penny Pilot Options (excluding BAC, IWM, QQQ, SPY and VXX) and $0.70 per contract in Non-Penny Pilot Options. *See* BX Options Rules at Chapter XV, Section 2(1).

[10] Today, a member organization that: (1) Qualifies for a Tier 2, 3, 4 or 5 rebate in the Customer Rebate Program in Section B of the Pricing Schedule; and (2) routes away more than 5,000 Customer contracts per day in a given month to an away market is entitled to receive a credit equal to the applicable Fixed Fee plus $0.05 per

Continued

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act [12] 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 Phlx operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that amending the Non-Customer and Customer Routing Fees by $0.02 per contracts is reasonable because the Exchange desires to recoup an additional portion of the cost it incurs when routing Non-Customer and Customer orders. Specifically, the Exchange's proposal to increase Non-Customer fees from $0.95 to $0.97 per contract is reasonable because the additional $0.02 per contract fee will recoup increased costs borne by Phlx.

The Exchange believes that amending the Customer Routing Fees for orders routed to NOM from a Fixed Fee of $0.10 to $0.12 per contract is reasonable because the Exchange desires to recoup an additional portion of the cost it incurs when routing Customer orders to NOM. The Exchange will continue to also assess actual transaction fees assessed by NOM for Customer orders.

The Exchange believes that amending the Customer Routing Fee for orders routed to BX Options from a Fixed Fee of $0.10 to $0.12 per contract is reasonable because the Exchange desires to recoup an additional portion of the cost it incurs when routing Customer orders to BX Options, similar to the amount of Fixed Fee it proposes to assess for orders routed to NOM. While the Exchange would continue to retain any rebate paid by BX Options, the Exchange does not assess the actual transaction fee that is charged by BX Options for Customer orders.

The Exchange believes that continuing to assess lower Fixed Fees to route Customer orders to NOM and BX Options, as compared to other options exchanges, is reasonable as the Exchange is able to leverage certain infrastructure to offer those markets lower fees as explained further below.

The Exchange believes that increasing the fee for routing to all other options exchanges (other than NOM and BX Options) from $0.20 to $0.22 per contact is reasonable because the increased fee would recoup costs associated with routing Customer orders, in addition to the actual transaction fee when no rebate is paid. Similarly, the Exchange believes that amending the Customer Routing Fee to other away markets, other than NOM and BX Options, in the instance the away market pays a rebate from $0.10 to $0.12 per contract is reasonable because the Exchange desires to recoup an additional portion of the cost it incurs when routing orders to these away markets. While the Exchange would continue to retain any rebate paid by these away markets, the Exchange does not assess the actual transaction fee that is charged by the away market for Customer orders. The Fixed Fee for Customer orders is an approximation of the costs the Exchange will be charged for routing orders to away markets. As a general matter, the Exchange believes that the proposed fees for Customer orders routed to markets which pay a rebate, such as BX Options and other away markets, would allow it to recoup and cover a portion of the costs of providing optional routing services for Customer orders because it better approximates the costs incurred by the Exchange for routing such orders. While each destination market's transaction charge varies and there is a cost incurred by the Exchange when routing orders to away markets, including, OCC clearing costs, administrative and technical costs associated with operating NES, 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 increased costs it incurs to route Customer orders to away markets.

The Exchange believes that amending the Non-Customer Routing Fees from $0.95 to $0.97 per contract is equitable and not unfairly discriminatory because the Exchange would assess the same Non-Customer Routing Fee to all Non-Customer orders routed away. The Exchange believes that amending the Customer Routing Fee for orders routed to NOM from a Fixed Fee of $0.10 to $0.12 per contract, in addition to the actual transaction fee, is equitable and not unfairly discriminatory because the Exchange would assess the same Fixed Fee to all orders routed to NOM in addition to the transaction fee assessed by that market. With respect to BX Options, the Exchange believes that amending the Customer Routing Fee for orders routed to BX Options from a Fixed Fee of $0.10 to $0.12 per contract is equitable and not unfairly discriminatory because the Exchange would assess the same Fixed Fee to all Customer orders routed to BX Options. With respect routing Customer orders to all other away markets (except NOM and BX Options) the Exchange believes that amending the Customer Routing Fee from $0.20 to $0.22 per contract, in addition to the actual transaction fee assessed) is equitable and not unfairly discriminatory because the Exchange would assess the same fee to all Customer orders routed to away markets, provided the away market does not pay a rebate. The Exchange believes that increasing the Routing Fee to away markets (other than NOM and BX Options), when the away market pays a rebate, from $0.10 to $0.12 per contract is equitable and not unfairly discriminatory because all Customer orders routed to away markets (other than NOM and BX Options) would be assessed the same fee, provided the away market paid a rebate.

The Exchange would uniformly assess a $0.12 per contract Fixed Fee to orders routed to NASDAQ OMX exchanges because the Exchange is passing along the saving realized by leveraging NASDAQ OMX's infrastructure and scale to market participants when those orders are routed to NOM or BX Options and is providing those savings to all market participants. Furthermore, PHLX XL routes orders to away markets where the Exchange's disseminated bid or offer is inferior to the national best bid (best offer) (''NBBO'') price and based on price first.[13] The Exchange believes that it is equitable and not unfairly discriminatory to assess a fixed cost of $0.12 per contract to route orders to NOM and BX Options because the cost, in terms of actual cash outlays, to the Exchange to route to those markets is lower. For example, costs related to routing to NOM and BX Options are lower as compared to other away markets because NES is utilized by all

contract, 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 equal to the applicable Fixed Fee.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4), (5).

[13] *See* Rule 1080(m). The Phlx XL II system will contemporaneously route an order marked as an Intermarket Sweep Order (''ISO'') to 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).

three exchanges to route orders.[14] NES and the three NASDAQ OMX options markets have a common data center and staff that are responsible for the day-to-day operations of NES. 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 lower than the costs to route to a non-NASDAQ OMX exchange. When routing orders to non-NASDAQ OMX exchanges, the Exchange incurs costly connectivity charges related to telecommunication lines, membership and access fees, and other related costs when routing orders. 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]

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 a burden on intra-market competition because the Exchange is applying the same Routing Fee increase of $0.02 per contract to all market participants. The Exchange will continue to assess separate Customer Routing Fees. Customers will continue to receive the lowest fees as compared to Non-Customers 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.[17]

The Exchange's proposal would allow the Exchange to continue to recoup its costs when routing both Non-Customer and Customer orders. The Exchange continues to pass along savings realized by leveraging NASDAQ OMX's infrastructure and scale to market participants when Customer orders are routed to NOM and BX Options and is providing those savings to all market participants. Today, other options exchanges also assess fixed routing fees to recoup costs incurred by the exchange to route orders to away markets.[18] Market participants may submit orders to the Exchange as ineligible for routing or ''DNR'' to avoid Routing Fees.[19] It is important to note that when orders are routed to an away market they are routed based on price first.[20]

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.[21] 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–2014–36 on the subject line.

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–2014–36. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2014–36, and should be submitted on or before June 23, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Kevin M. O'Neill,

Deputy Secretary.

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[14] *See* Chapter VI, Section 11 of the BX Options and NOM Rules.

[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.

[17] BATS assesses lower customer routing fees as compared to non-customer routing fees per the away market. For example BATS assesses Phlx customer routing fees of $0.45 per contract and an ISE [sic] non-customer routing fee of $0.65 per contract. *See* BATS BZX Exchange Fee Schedule.

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

[19] *See* note 15.

[20] *See* note 16.

[21] 15 U.S.C. 78s(b)(3)(A)(ii).

[22] 17 CFR 200.30–3(a)(12).