

printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-Phlx-2011-160 and should be submitted on or before December 30, 2011.

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

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65885; File No. SR-BSECC-2011-03]

Self-Regulatory Organizations; Boston Stock Exchange Clearing Corporation; Order Approving Proposed Rule Change With Respect to an Amendment to the By-Laws of The NASDAQ OMX Group, Inc.

December 5, 2011.

I. Introduction

On October 11, 2011, Boston Stock Exchange Clearing Corporation ("BSECC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-BSECC-2011-03 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder. The proposed rule change was published for comment in the **Federal Register** on October 28, 2011.³ The Commission received no comment letters regarding the proposal. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The rule change will permit an amendment to the by-laws of BSECC's parent corporation, The NASDAQ OMX Group, Inc. ("NASDAQ OMX"). NASDAQ OMX is seeking to amend provisions of its by-laws pertaining to the composition of committees of the NASDAQ OMX Board of Directors. First, NASDAQ OMX is amending the compositional requirements of its Audit Committee in Section 4.13(g) to provide that the committee shall include three or more directors. Currently, the provision provides that the Audit Committee shall be composed of either four or five directors. Second, NASDAQ OMX is proposing to amend the compositional requirements of the Nominating & Governance Committee in Section 4.13(h) to replace a requirement that the committee comprise four or five members with a requirement to include two or more members. Third, NASDAQ OMX proposes to delete a paragraph of the by-laws (Section 4.13(k)) that pertains to the qualifications of committee members who are not directors. Finally, NASDAQ OMX is correcting a typographical error in the numbering of the provisions of Section 4.13(h) of the by-laws.

III. Discussion

Section 19(b)(2)(B) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.⁴ In particular, Section 17A(b)(3)(A)⁵ of the Act requires, among other things, that the clearing agency be so organized and have the capacity to facilitate the prompt and accurate clearance and settlement of securities transactions, to safeguard the securities and funds which are in the custody or control of such clearing agency or for which it is responsible, and to comply with the provisions of the Act and the rules and regulations thereunder.

The proposed change would allow the NASDAQ OMX Board of Directors ("Board") to determine the size of its Audit Committee, so long as the Audit Committee includes at least three directors, as well as the size of its Nominating & Governance Committee, so long as the Nominating & Governance Committee includes at least two directors. The proposal is intended to provide greater flexibility to the NASDAQ OMX Board to determine the

appropriate size for these committees. The proposal does not change any other compositional requirements of either the Audit Committee or the Nominating & Governance Committee, including independence requirements. Moreover, the Commission notes that the proposal does not alter the application of Section 10A of the Exchange Act⁶ and Rule 10A-3 thereunder⁷ to the NASDAQ OMX Audit Committee.

The proposal also deletes an obsolete section from, and corrects a typographical error in, the NASDAQ OMX by-laws, which are clarifying revisions. For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act. The proposal also deletes an obsolete section from, and corrects a typographical error in, the NASDAQ OMX by-laws, which are clarifying revisions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2)⁸ of the Act, that the proposed rule change (File No. SR-BSECC-2011-03) be, and hereby is, approved.⁹

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65883; File No. SR-Phlx-2011-154]

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

December 5, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

⁶ 15 U.S.C. 78j-1.

⁷ 17 CFR 240.10A-3.

⁸ 15 U.S.C. 78s(b)(2).

⁹ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

¹⁰ 17 CFR 200.30-3(a)(12).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 34-65613 (October 24, 2011), 76 FR 67007 (October 28, 2011). In its filing with the Commission, BSECC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements is incorporated into the discussion of the proposed rule change in Section II below.

⁴ 15 U.S.C. 78s(b)(2)(B).

⁵ 15 U.S.C. 78q-1(b)(3)(A).

("Act")¹, and Rule 19b-4 thereunder,² notice is hereby given that on November 22, 2011, NASDAQ OMX PHLX LLC ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing a proposed rule change to pricing for PHLX members using the NASDAQ OMX PSX System. The new pricing will take effect immediately.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, at the principal office of the Exchange, on the Commission's Web site at <http://www.sec.gov/> 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 the proposed rule change is to adopt fees applicable to the new routing services on PSX. PHLX recently adopted rules that allow it to route orders to other trading venues for execution.³ The different routing strategies, PSTG, PSCN, PMOP, PTFY and PCRT, are defined in PHLX Rule 3315. These routing strategies correlate to some of the routing strategies of NASDAQ, as explained below. PHLX

proposes to amend its fee schedule to adopt fees for the execution of routed orders, which are the same as or less than NASDAQ's, as explained below.

Respecting PSTG⁴ and PSCN⁵ orders, the routing charge is \$0.0027 per share executed at venues other than NYSE and \$0.0023 per share executed at NYSE. Respecting NASDAQ's⁶ comparable STGY and SCAN orders,⁷ this charge is the same for shares executed on NYSE and less than what NASDAQ charges for routed executions at other venues in NASDAQ-listed securities, NYSE-listed securities and for securities listed on exchanges other than NASDAQ or NYSE (\$0.0030 per share).⁸ The Exchange seeks to attract users to its new routing program and has accordingly determined to charge \$0.0027 per share rather than the \$0.0030 that NASDAQ charges for orders executed at NASDAQ and other venues. The Exchange currently charges \$0.0027 per share for executions on its own market, so the Exchange believes that it is reasonable and equitable, as well as appropriate from a business standpoint to charge the same for executions on other markets in order to attract business. The Exchange has determined to charge the same \$0.0023 per share that NASDAQ charges for executions on the NYSE and believes it could be successful attracting this business at that price.

Respecting PMOP⁹ orders, the charge is \$0.0025 per share executed at NYSE and \$0.0035 per share executed at venues other than NYSE. This is the same as what NASDAQ charges for its comparable MOPP orders,¹⁰ which is, following the format of the NASDAQ fee schedule: (i) For NASDAQ-listed securities, \$0.0035 per share;¹¹ (ii) for NYSE-listed securities, \$0.0035 per share executed at venues other than NYSE or charge of \$0.0025 per share

executed at NYSE; and (iii) for securities listed on exchanges other than NASDAQ or NYSE, \$0.0035 per share. The Exchange has determined that this is the appropriate charge to attract PMOP orders.

Respecting PTFY¹² orders, the routing charge is \$0.0022 per share executed at NYSE and \$0.0005 per share executed at venues other than NYSE, NASDAQ or BX; for orders that execute at BX, PHLX will give a credit of \$0.0014 per share and for orders that execute at NASDAQ, PHLX will charge \$0.0027 per share executed. This is the same as what NASDAQ charges for its comparable TTTY orders,¹³ which is \$0.0022 per share executed at NYSE, \$0.0005 per share executed at venues other than NYSE, BX or PSX, and a credit of \$0.0014 for orders that execute at BX, except that NASDAQ has a pass through of all fees assessed and rebates offered by PSX for orders that execute at PSX, which is akin to PSX's basic charge of \$0.0027 per share on PSX and lower than NASDAQ's charge of \$0.0030. In order to attract additional business to PSX, the fee for executions resulting from orders routed to NASDAQ from PSX is less than the charge for removing liquidity directly on NASDAQ.

Respecting PCRT¹⁴ orders, for orders that execute at BX, PHLX will give a credit of \$0.0014 per share and charge \$0.0027 for orders that execute at NASDAQ.¹⁵ This is the same or less than what NASDAQ charges for its comparable CART orders,¹⁶ which is a credit of \$0.0014 for orders that execute at BX (the same), respecting all securities regardless of where they are listed. NASDAQ generally charges \$0.0030 for removing liquidity from NASDAQ and passes through fees assessed and rebates offered by PSX for orders that execute at PSX, which today is a charge of \$0.0027 per share. The proposed PHLX charge of \$0.0027 for orders that execute at NASDAQ would be the same as the PSX charge to remove liquidity and less than NASDAQ's charge of \$0.0030.

Respecting securities priced at less than \$1 executed at a venue other than PHLX, PHLX proposes to adopt a charge of 0.3% of the total transaction cost. This is the same as what NASDAQ charges for orders that route and execute

⁴ See PHLX Rule 3315(a)(1)(A)(iii).

⁵ See PHLX Rule 3315(a)(1)(A)(iv).

⁶ Similar to the fees proposed herein, NASDAQ bases the charge on the type of routing strategy employed and where the order was executed, because routing fees are generally intended to recoup the cost of routing the order to another venue for execution. However, unlike PHLX, NASDAQ also bases its routing fees on where the security is listed. This is not a significant difference because the proposed fees include a separate charge for execution on the NYSE.

⁷ See NASDAQ Rule 4758(a)(1)(A)(iii) and (iv).

⁸ For NASDAQ-listed securities, there is no separate, lower fee for orders executed at NYSE, because NASDAQ-listed securities do not trade on NYSE and thus would not route there.

⁹ See PHLX Rule 3315(a)(1)(A)(vi).

¹⁰ See NASDAQ Rule 4758(a)(1)(A)(vi).

¹¹ For NASDAQ-listed securities, there is no separate, lower fee for orders executed at NYSE, because NASDAQ-listed securities do not trade on NYSE and thus would not route there.

¹² See PHLX Rule 3315(a)(1)(A)(v).

¹³ See NASDAQ Rule 4758(a)(1)(A)(v).

¹⁴ See PHLX Rule 3315(a)(1)(A)(vii).

¹⁵ PCRT orders can only execute on BX, PSX or NASDAQ. See PHLX Rule 3315(a)(1)(A)(vii).

¹⁶ See NASDAQ Rule 4758(a)(1)(A)(xi).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 65469 (October 3, 2011), 76 FR 62486 (October 7, 2011) (SR-PHLX-2011-108).

at an away market,¹⁷ which the Exchange believes is reasonable.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁸ in general, and with Sections 6(b)(4) of the Act,¹⁹ 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. The new routing fees are reasonable because they seek to recoup the cost of the execution on the other venue, which is generally borne by the order router and, ultimately, the routing exchange.

The proposed fees generally mimic the routing fee structure in effect on NASDAQ for some time.²⁰ The difference in the proposed routing fees as compared to NASDAQ's routing fees is that PHLX is proposing to charge less than NASDAQ (\$0.0027 versus \$0.0030 per share) for PSTG and PSCN orders routed to markets other than the NYSE (as compared to STGY and SCAN orders on NASDAQ). The Exchange believes that this difference is reasonable because it is the same charge that is applicable to orders executed on its own market. Similarly, the proposed \$0.0027 fee for PTFY and PCRT orders executed on NASDAQ is the same charge that is applicable to orders executed on PSX's own market.

The Exchange also believes that the proposed routing fees are equitable. All similarly situated members are subject to the same fee structure, and access to PHLX is offered on fair and non-discriminatory terms; specifically, the same routing fee, credit or pass through fee applies to any participant and does not differ based on user type (e.g., customer or broker-dealer).

Furthermore, the new routing fees are reasonable and equitable in that the decision to send routable orders and to use PHLX as a router is entirely voluntarily; members can avail themselves of numerous other means of directing orders to other venues, including becoming members of those markets or using any of a number of competitive routing services offered by other exchanges and brokers.

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. Because the market for order execution and routing is extremely competitive, members may readily opt to disfavor PHLX's execution and routing services if they believe that alternatives offer them better value. For this reason and the reasons discussed in connection with the statutory basis for the proposed rule change, PHLX does not believe that the proposed fees will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.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 No. SR-Phlx-2011-154 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 No. SR-Phlx-2011-154. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-Phlx-2011-154 and should be submitted on or before December 30, 2011.

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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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending November 19, 2011

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural

¹⁷ See NASDAQ Rule 7018(b).

¹⁸ 15 U.S.C. 78f.

¹⁹ 15 U.S.C. 78f(b)(4).

²⁰ See NASDAQ Rule 7018.

²¹ 15 U.S.C. 78s(b)(3)(A)(ii).

²² 17 CFR 200.30-3(a)(12).