

options contract equivalent of the net delta of such positions for a each account that holds an index option position subject to the delta hedging exemption in excess of the levels specified in 24.4 (and Rule 24.4A, in the case of industry index options).²¹ Each member relying on the exemption would be required to retain, and undertake reasonable efforts to ensure that its non-member affiliates or customers relying on the exemption retain, a list of the options, securities, and other instruments underlying each option position net delta calculation reported to the Exchange; and to produce such information to the Exchange upon request.²² In addition, the options positions of a non-member relying on the exemption would be required to be carried by a member with which it is affiliated.²³

The Exchange will announce the operative date of the proposed rule change in a regulatory circular to be published no later than 60 days after Commission approval. The operative date shall be no later than 30 days after publication of the regulatory circular.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.²⁴ In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,²⁵ which requires, among other things, that CBOE rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In approving the Equity Exemption, the Commission noted its previous statement in support of recognizing options positions hedged on a delta neutral basis as properly exempted from position limits.²⁶ The Commission

believes that it is appropriate and consistent with the Act to expand the Equity Exemption to allow the use of correlated instruments in determining whether an ETF options position is delta neutral. The Commission further believes that it is appropriate and consistent with the Act to establish a delta based index options hedge exemption from position limits. Finally, the Commission believes that it is reasonable for CBOE to exempt Exchange Market-Makers and DPMs using the OCC Model from the reporting requirements of the Equity Exemption, and not to include them as subject to the reporting requirements of the Index Exemption, because the Exchange can access the information through the Exchange's market surveillance systems.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁷ that the proposed rule change (SR-CBOE-2010-021), as modified by Amendment No. 1, be, and it hereby is, approved.

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

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62192; File No. SR-CBOE-2010-052]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Trades for Less Than \$1

May 28, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 27, 2010, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and

Rule 19b-4(f)(6) thereunder.⁴ 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 proposing to extend its program that allows transactions to take place at a price that is below \$1 per option contract until June 1, 2011. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/Legal>), at the Exchange's Office of the Secretary, 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 self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

An "accommodation" or "cabinet" trade refers to trades in listed options on the Exchange that are worthless or not actively traded. Cabinet trading is generally conducted in accordance with the Exchange Rules, except as provided in Exchange Rule 6.54, *Accommodation Liquidations (Cabinet Trades)*, which sets forth specific procedures for engaging in cabinet trades. Rule 6.54 currently provides for cabinet transactions to occur via open outcry at a cabinet price of \$1 per option contract in any options series open for trading in the Exchange, except that the Rule is not applicable to trading in option classes participating in the Penny Pilot Program. Under the procedures, bids and offers (whether opening or closing a position) at a price of \$1 per option contract may be represented in the trading crowd by a Floor Broker or by a Market-Maker or provided in response to a request by a PAR Official/OBO, a Floor Broker or a Market-Maker, but

affiliates or trading units and the entity has designated in writing in advance the affiliates or trading units that are to be considered separate and distinct from each other.

²¹ See proposed Rule 24.4.05(F). See also *supra* note 12.

²² See proposed Rule 24.4.05(G).

²³ See proposed Rule 24.4.05(E)(2).

²⁴ In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ See Securities Exchange Act Release No. 40594 (October 23, 1998), 63 FR 59362, 59380 (November 3, 1998) (File No. S7-30-97) (adopting rules relating to OTC derivatives dealers), cited in Exemption Approval Order, *supra* note 7.

²⁷ 15 U.S.C. 78s(b)(2).

²⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

must yield priority to all resting orders in the PAR Official/OBO cabinet book (which resting cabinet book orders may be closing only). So long as both the buyer and the seller yield to orders resting in the cabinet book, opening cabinet bids can trade with opening cabinet offers at \$1 per option contract.

The Exchange has temporarily amended the procedures through June 1, 2010 to allow transactions to take place in open outcry at a price of at least \$0 but less than \$1 per option contract.⁵ These lower priced transactions are traded pursuant to the same procedures applicable to \$1 cabinet trades, except that (i) bids and offers for opening transactions are only permitted to accommodate closing transactions in order to limit use of the procedure to liquidations of existing positions, and (ii) the procedures are also available for trading in option classes participating in the Penny Pilot Program.⁶ The Exchange believes that allowing a price of at least \$0 but less than \$1 better accommodates the closing of options positions in series that are worthless or not actively traded, particularly due to recent market conditions which have resulted in a significant number of series being out-of-the-money. For example, a market participant might have a long position in a call series with a strike price of \$100 and the underlying stock might now be trading at \$30. In such an instance, there might not otherwise be a market for that person to close-out the position even at the \$1 cabinet price (e.g., the series might be quoted no bid).⁷

⁵ See Securities Exchange Act Release Nos. 59188 (December 30, 2008), 74 FR 480 (January 6, 2009) (SR-CBOE-2008-133) (adopting the amended procedures on a temporary basis through January 30, 2009), 59331 (January 30, 2009), 74 FR 6333 (February 6, 2009) (extending the amended procedures on a temporary basis through May 29, 2009), and 60020 (June 1, 2009), 74 FR 27220 (June 8, 2009) (SR-CBOE-2009-034) (extending the amended procedures on a temporary basis through June 1, 2010).

⁶ Currently the \$1 cabinet trading procedures are limited to options classes traded in \$0.05 or \$0.10 standard increment. The \$1 cabinet trading procedures are not available in Penny Pilot Program classes because in those classes an option series can trade in a standard increment as low as \$0.01 per share (or \$1.00 per option contract with a 100 share multiplier). Because the temporary procedures allow trading below \$0.01 per share (or \$1.00 per option contract with a 100 share multiplier), the procedures are available for all classes, including those classes participating in the Penny Pilot Program.

⁷ As with other accommodation liquidations under Rule 6.54, transactions that occur for less than \$1 are not be disseminated to the public on the consolidated tape. In addition, as with other accommodation liquidations under Rule 6.54, the transactions are exempt from the Consolidated Options Audit Trail ("COATS") requirements of Exchange Rule 6.24, *Required Order Information*. However, the Exchange maintains quotation, order

The purpose of the instant rule change is to extend the operation of these temporary procedures through June 1, 2011, so that the procedures can continue without interruption while CBOE considers whether to seek permanent approval of the temporary procedures.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act⁸ and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that allowing for liquidations at a price less than \$1 per option contract better facilitates the closing of options positions that are worthless or not actively trading.

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

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange neither solicited nor received comments on the proposal.

and transaction information for the transactions in the same format as the COATS data is maintained. In this regard, all transactions for less than \$1 must be reported to the Exchange following the close of each business day. The rule also provides that transactions for less than \$1 will be reported for clearing utilizing forms, formats and procedures established by the Exchange from time to time. In this regard, the Exchange initially intends to have clearing firms directly report the transactions to the Options Clearing Corporation ("OCC") using OCC's position adjustment/transfer procedures. This manner of reporting transactions for clearing is similar to the procedure that CBOE currently employees for on-floor position transfer packages executed pursuant to Exchange Rule 6.49A, *Transfer of Positions*.

⁸ 15 U.S.C. 78s(b)(1).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

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

Because the foregoing proposed rule 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 if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

Under Rule 19b-4(f)(6) of the Act,¹³ a proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative date so that the pilot may continue without interruption while the Exchange considers whether to seek permanent approval of the temporary procedures. The Exchange believes that waiver of the operative delay will continue to allow for the orderly closing of option positions that are worthless or not actively traded. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and thus designates the proposal as operative upon filing.¹⁴

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate 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,

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its 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 Exchange has satisfied this requirement.

¹³ *Id.*

¹⁴ For purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f). See also 17 CFR 200.30-3(a)(59).

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 e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2010-052 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-CBOE-2010-052. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the 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-CBOE-2010-052 and should be submitted on or before June 25, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62194; File No. SR-Phlx-2010-48]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Market Data Fees

May 28, 2010.

I. Introduction

On April 6, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to establish fees for a data product, Top of Phlx Options Plus Orders ("TOPO Plus Orders" or "TOPO Plus"), which currently provides disseminated Exchange top-of-market data (including orders, quotes and trades), together with all information that is included in the Exchange's Specialized Order Feed ("SOF"). The proposed rule change was published for comment in the **Federal Register** on April 16, 2010.³ The Commission received three comment letters on the proposed rule change.⁴ The Exchange submitted one letter in response to these comment letters.⁵

This order approves the proposed rule change.

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 61878 (April 8, 2010), 75 FR 20023 (April 16, 2010) ("Notice").

⁴ See Letter from Lawrence Lempert, Bullock Trading, LP, Michael Waber, Fairview Trading Corp., Andy Yang, Cutler Group, LP, Theodore Raven, TSR Associates, LLC, and Tim Lobach, Keystone Trading Partners to Mary Schapiro, Chairman, Commission, dated May 3, 2010 ("Lempert Letter") and Letter from Robert Sullivan, Empire Options Corporation to Mary Schapiro, Chairman, Commission, received May 3, 2010 ("Sullivan Letter"). See also Letter from Michael Waber, Fairview Trading, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated May 23, 2010 ("Waber Letter") (responding to the Phlx Letter, *infra* note 5).

⁵ See Letter from Richard S. Rudolph, Assistant General Counsel, NASDAQ OMX PHLX, Inc. to Elizabeth M. Murphy, Secretary, Commission, dated May 13, 2010 ("Phlx Letter").

II. Description of the Proposed Rule Change

In June 2009, the Exchange launched Phlx XL II, an electronic trading platform on which all options on the Exchange are currently traded.⁶ In conjunction with the launch and rollout of the Phlx XL II system, the Exchange developed the Top of Phlx Options direct data feed ("TOPO"),⁷ which provides to subscribers the Exchange's best bid and offer position, with aggregate size, based on displayable order and quoting interest on the Phlx XL II system.

In October 2009, the Exchange made the TOPO Plus Orders data feed available to all market participants for free.⁸ According to the Exchange, TOPO Plus Orders provides disseminated Exchange top-of-market data (including orders, quotes and trades) together with all information that is included in SOF, the Exchange's real-time full limit order book data feed. When it established TOPO Plus Orders, the Exchange stated that it planned to submit a proposed rule change to the Commission in order to implement fees for the use of TOPO Plus Orders.

SOF is currently available to any Exchange quoting participant (*i.e.*, specialists, Streaming Quote Traders, and Remote Streaming Quote Traders (collectively, "users")) and is available to users on an issue-by-issue basis at the user's request. A user does not have to be assigned in an issue for the Exchange to provide SOF to such user in that issue. The SOF provides real-time information to keep track of the single order book(s), single and complex orders, complex strategy and Live Auction for all symbols for which the user is configured. Users may be configured for one or more symbols. SOF provides real-time data for the entire book to its users. It is a compilation of limit order data resident in the Exchange's limit order book for options traded on the Exchange that the Exchange provides through a real-time data feed. The Exchange updates SOF information upon receipt of each displayed limit order. For every limit

⁶ See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32).

⁷ See Securities Exchange Act Release No. 60459 (August 7, 2009), 74 FR 41466 (August 17, 2009) (SR-Phlx-2009-54). The Exchange represents that the data contained in the TOPO data feed is identical to the data sent to the processor for the Options Price Regulatory Authority ("OPRA"), and the TOPO and OPRA data leave the Phlx XL II system at the same time.

⁸ See Securities Exchange Act Release No. 60877 (October 26, 2009), 74 FR 56255 (October 30, 2009) (SR-Phlx-2009-92).