

OCC to close out open positions in options carried by a suspended clearing member “in the most orderly manner practicable.” OCC is proposing to amend Rule 1106 to add an additional provision with respect to positions in OTC options. The Commission has recently approved an OCC rule change providing OCC the authority to use an auction process as one of the means by which OCC may close out open positions in listed options carried by a suspended clearing member.<sup>15</sup> OCC anticipates it will use this auction process for OTC options as well. As an additional protection, however, OCC is proposing to amend Rule 1106 to give OCC the authority, in extraordinary circumstances, to fix a liquidation value for open OTC options positions of a suspended clearing member if OCC determines that fixing a close-out value is the most orderly manner of closing out such positions. This procedure would mean that one or more clearing members having the opposite side of options of the same series as those held by the defaulting clearing member could have their positions involuntarily closed out and would be required to accept or pay the close-out value of the positions as determined by OCC. OCC anticipates that the likelihood of having to exercise this authority is small, and that the authority would only be exercised in the event that OCC is unable to find a counterparty willing to purchase, or assume the obligations of, open long and short positions of the suspended clearing member at an appropriate value either through the regular OTC market or through the auction process. Nevertheless, in view of the fact that positions in OTC index options are expected to be large and that there may be no active trading market in options with terms precisely identical to the terms of the OTC index options in question, OCC believes that this is an appropriate failsafe provision.

OCC believes that the proposed changes to OCC’s By-Laws are consistent with the purposes and requirements of Section 17A of the Exchange Act because they are designed to permit OCC to perform clearing services for products that are subject to the jurisdiction of the CFTC without adversely affecting OCC’s obligations with respect to the prompt and accurate clearance and settlement of securities transactions or the protection of securities investors and the public interest. The proposed rule change is not inconsistent with any rules of OCC.

*(B) Self-Regulatory Organization’s Statement on Burden on Competition*

OCC does not believe that the proposed rule change would impose any burden on competition.

*(C) Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments relating to the proposed rule change have not been solicited or received. OCC will notify the Commission of any written comments received by OCC.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

*Electronic Comments*

- Use the Commissions Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2011-19 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-OCC-2011-19. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of OCC and on OCC’s Web site at [http://www.optionsclearing.com/components/docs/legal/rules\\_and\\_bylaws/sr\\_occ\\_11\\_19\\_a\\_1.pdf](http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_11_19_a_1.pdf). 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-OCC-2011-19 and should be submitted on or before January 30, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Kevin M. O’Neill**,  
Deputy Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-66086; File No. SR-PHLX-2011-181]**

**Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Access Service Fees**

January 3, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 21, 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 proposes to amend the following Access Service Fees: (i) the Trading/Administrative Booths and

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>15</sup> See Securities Exchange Act Release 65654 (October 28, 2011), 76 FR 68238 (November 3, 2011).

Market Maker Trading Space Fee; (ii) the Specialist Post Fee; and (iii) the Floor Facility Fee. The Exchange proposes to delete the following Access Service Fees: (i) the Shelf Space on Equity Option Trading Floor Fee; and (ii) Kiosk Construction Fee.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on January 3, 2012.

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, 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 amend the following Access Service Fees: (i) the Trading/Administrative Booths and Market Maker Trading Space Fee; (ii) Specialist Post Fee and (iii) Floor Facility Fee to keep pace with rising overhead costs associated with maintaining the trading floor. In addition, the Exchange proposes to delete the Shelf Space on Equity Option Trading Floor Fee and the Kiosk Construction Fee because these fees are not relevant and the Exchange has absorbed such costs, respectively. Each fee will be described below separately.

#### *Trading/Administrative Booths and Market Maker Trading Space Fee*

The Exchange is proposing to amend the name of the "Trading/Administrative Booths and Market Maker Trading Space" Fee to the "Trading/Administrative Booths" Fee. The Trading Post/Booth space is physical space on the Exchange's

trading floor, which space typically is used by floor brokers and clearing firms. The Exchange is proposing changes to the Floor Facility Fees, described in more detail below, and therefore is amending the name of the Trading/Administrative Booths and Market Maker Trading Space Fee to reflect the changes described below. Registered Options Traders<sup>3</sup> and SQTs<sup>4</sup> would be assessed the Floor Facility Fee, instead of this fee. Any floor participant may elect to obtain a booth on the Exchange's trading floor. The Exchange is not proposing to amend the fee rate of the Trading/Administrative Booths Fee.

#### *Specialist Post Fee*

The Exchange proposes to amend the current fee structure for a Specialist Post and instead assess a \$3,000 fee for such a post. Currently, Specialist Post Fees vary with the size of the post. Specialist units are assessed a Specialist Post Fee of \$1,125 per month for a quarter post and \$4,500 per month for a full post with a maximum fee of \$4,500 per month. The Exchange proposes modifying the fee structure for a Specialist Post to assess the fee equally to all Specialist units. Each individual Specialist would also be assessed a Floor Facility Fee, as described below, which costs together (the Specialist Post Fee and the Floor Facility Fee) would assist the Exchange in recouping increasing occupancy costs, such as electricity usage due to the increase of member computers on the trading floor. The Exchange believes that the \$3,000 Specialist Post Fee is consistent with costs incurred by the Exchange for the usage of space on the Exchange's trading floor<sup>5</sup> by Specialists.

#### *Floor Facility Fee*

The Exchange proposes to increase the Floor Facility Fee from \$200 per month to \$300 per month. Currently, the

Floor Facility Fee is applicable to floor members that are not currently assessed fees related to the usage of a Trading/Administrative Booths and Market Maker Trading Space Fee. The Floor Facility Fee is intended to fairly allocate costs attendant to providing members with services necessary to the conduct of business on the floor of the Exchange. The Exchange proposes to increase this fee to offset the increased costs of operating a trading floor facility. In addition to increasing this fee, the Exchange proposes to apply the Floor Facility Fee to ROTs, SQTs and individual Specialists<sup>6</sup> located on the Exchange's trading floor. Today, a ROT and SQT are assessed the Trading/Administrative Booths and Market Maker Trading Space Fee and an individual Specialist is not assessed such a fee. The Exchange also proposes to remove the qualifier that the Floor Facility Fee is applicable to floor members that are not currently assessed fees related to the usage of a Trading/Administrative Booth or Market Maker Trading Space. Rather, ROTs, SQTs and individual Specialists on the Exchange's trading floor would be assessed a Floor Facility Fee. If a ROT or SQT also determined to acquire a Trading/Administrative Booth, they would also be assessed that fee as well. Each individual Specialist would be assessed this fee and the Specialist unit would be assessed the Specialist Post Fee. In the instance that an individual Specialist is also an SQT, that member will only pay a \$300 Floor Facility Fee per month; that Specialist would not be assessed the fee for each capacity.

#### *Shelf Space on Equity Option Trading Floor*

The Exchange maintained various fees on its Fee Schedule relating to XLE, the Exchange's equity trading system. The Exchange ceased operation of the technology used to operate XLE on October 24, 2008 and filed a proposal to amend the administration and enforcement of certain rules.<sup>7</sup> The Exchange also filed to delete XLE Fee Schedule and references to XLE fees

<sup>3</sup> A Registered Options Trader ("ROT") includes a Streaming Quote Trader ("SQT"), a Remote Streaming Quote Trader ("RSQT") and a Non-SQT, which by definition is neither a SQT or a RSQT. A Registered Option Trader is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. See Exchange Rule 1014 (b)(i) and (ii).

<sup>4</sup> 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.

<sup>5</sup> There are some Specialist units that currently pay a \$1,125 Specialist Post Fee that would experience an increased fee with the proposed \$3,000 fee rate, however these Specialist units comprise less than two percent of the Specialist Units.

<sup>6</sup> A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a). A Specialist Unit would be assessed the Specialist Post Fee and the individual Specialist would be assessed the Floor Facility Fee.

<sup>7</sup> See Securities Exchange Act Release No. 58613 (September 22, 2008), 73 FR 57181 (October 1, 2008) (SR-Phlx-2008-65). The Exchange later filed to delete various Rules relating to XLE. See Securities Exchange Act Release No. 64338 (April 25, 2011), 76 FR 24069 (April 29, 2011) (SR-Phlx-2011-13).

from the Fee Schedule.<sup>8</sup> The Shelf Space on Equity Option Trading Floor Fee should have been deleted along with the other XLE fees. This fee inadvertently remained on the Fee Schedule. The Exchange proposes to delete this outdated fee.

#### *Kiosk Construction Fee*

The Exchange proposes to amend the Fee Schedule to eliminate the Kiosk<sup>9</sup> Construction Fee. This fee was adopted in 2002 to require individual Specialists and Specialist units to pay for the cost of construction of a kiosk if the Specialist unit initiates the construction request.<sup>10</sup> The Exchange has not assessed this fee since approximately 2008. The Exchange has determined to absorb this cost in the few circumstances that it believes any construction would be necessary going forward. The Exchange proposes to eliminate the Kiosk Construction Fee.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on January 3, 2012.

#### **2. Statutory Basis**

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>11</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>12</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that it is reasonable to amend its Trading/Administrative Booths Fee to eliminate the requirement that a market maker, which includes a ROT and a SQT in this case, pay the \$300 monthly fee. The Exchange also believes that it is reasonable to apply the Floor Facility Fees to ROTs, SQTs and individual Specialists and increase that fee to \$300. Finally, the Exchange believes that it is reasonable to assess all Specialist Units a Specialist Post Fee of \$3,000 instead of a fee based on the size of the post. The revenue from these fees would assist the Exchange in defraying the occupancy costs of maintaining the trading floor. The Exchange also believes that it is reasonable to assess ROTs and SQTs the Floor Facility Fee

instead of the newly named "Trading/Administrative Booths" Fee in order that market makers retain their own fee category. There is no impact in terms of the amount such ROTs and SQTs will be assessed because both fees, the Trading/Administrative Booths Fee and the Floor Facility Fee, will be \$300. Finally, the Exchange believes that removing the qualifier that the Floor Facility Fee is applicable to floor members that are not currently assessed fees related to the usage of a Trading/Administrative Booth is reasonable because these fees are meant to apply to different types of market participants. In the event that a ROT or SQT determined that they would also require a booth, the Exchange believes that the use of the booth should be a separate fee from the Facility Fee.

The Exchange also believes that the fee amendments to the newly named Trading/Administrative Booths Fee, Specialist Post Fee and Floor Facility Fees are equitable and not unfairly discriminatory because the Specialist Post Fees are higher because Specialists generate higher occupancy costs from electricity usage and other facility usage as compared to other floor participants. The Specialist Post Fee combined with the Floor Facility Fee would allow the Exchange to cover such costs as cleaning, HVAC and general maintenance. All other floor members would be assessed the Floor Facility Fee of \$300 per month to conduct business on the Exchange's trading floor. The Exchange believes these fees are indicative of the costs attributable to each category of participant. In addition, the amendment to the Specialist Post Fee would cause all Specialist units to be uniformly assessed the same fee. All individual Specialists would also be uniformly assessed a \$300 Floor Facility Fee, which would be equal to the Trading/Administrative Booths Fee paid by floor brokers and clearing firms, also \$300 per month. Only a small number of Specialist units would pay a higher cost for Specialist Posts. When combining the Specialist Post Fee and Floor Facility Fee some Specialists units/Specialists would experience a higher fee overall, which fees are consistent with increased costs to maintain the Exchange's trading floor. Other Specialist units/Specialists would experience a lower fee overall. Finally, the Exchange believes that removing the qualifier that the Floor Facility Fee is applicable to floor members that are not currently assessed fees related to the usage of a Trading/Administrative Booth is equitable and not unfairly discriminatory because all members

would be billed equally for each service based on their participation and requests for space.

The Exchange believes that eliminating the outdated Shelf Space on Equity Option Trading Floor Fee is reasonable, equitable and not unfairly discriminatory because there is no longer an equity trading floor and the fee inadvertently remained on the Fee Schedule after the shutdown of XLE. Similarly, the Exchange believes that eliminating the Kiosk Construction Fee is reasonable, equitable and not unfairly discriminatory because the Exchange has recently not received any requests for construction and has determined to absorb such costs in the future if such construction is necessary. By eliminating this fee, no member on the Exchange's trading floor would be assessed for such a cost.

#### *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.

#### *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.<sup>13</sup> 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:

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> See Securities Exchange Act Release No. 59030 (December 1, 2008), 73 FR 74548 (December 8, 2008) (SR-Phlx-2008-80).

<sup>9</sup> A kiosk is an open, flat surface that contains computer terminals and allows the Specialist units to face the trading crowd.

<sup>10</sup> See Securities Exchange Act Release No. 458470 (April 20, 2002), 67 FR 30409 (May 6, 2002) (SR-Phlx-2002-30).

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

### 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](mailto:rule-comments@sec.gov). Please include File No. SR-Phlx-2011-181 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-2011-181. 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-2011-181 and should be submitted on or before January 30, 2012.

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

**Kevin M. O'Neill,**  
Deputy Secretary.

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66083; File No. SR-CME-2011-19]

### Self-Regulatory Organizations; Chicago Mercantile Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Comply With New CFTC DCO Regulations

January 3, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 20, 2011, the Chicago Mercantile Exchange Inc. ("CME") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I and II below, which items have been prepared primarily by CME. The Commission is publishing this Notice and Order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

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

CME proposes to amend certain of its rules to comply with new CFTC Regulations 39.16(d) (Insolvency of a clearing member) and 39.15(d) (Transfer of customer positions), respectively. The text of the proposed rule change is below. The italicized text indicates additions. Bracketed text indicates deletions.

#### CME Rulebook

#### Rule 100—Rule 441—No Change.

#### Chapter 4. Enforcement of Rules

#### Rule 442. NOTIFICATION OF SIGNIFICANT EVENTS

Each Member shall *provide* immediate[ly] *notice to* [fy] the Market Regulation Department *(and each Member that is a Member Firm or a Clearing member shall also provide immediate notice to the Clearing House)*, in writing upon becoming aware of any of the following events relating to such Member:

1. any suspension, expulsion, revocation or restriction of such Member's trading privileges or any fine in excess of \$25,000, through an adverse determination, voluntary settlement or otherwise, by any court, commodity or securities exchange or related clearing organization, the Securities and

Exchange Commission, the Commodity Futures Trading Commission or the securities commission or equivalent authority of any state, territory, the District of Columbia or foreign country, the National Futures Association, the Financial Industry Regulatory Authority, Inc. or any self-regulatory or regulatory organization;

2. any indictment of the Member or any of its officers for, any conviction of the Member or any of its officers of, or any confession of guilt or plea of guilty or nolo contendere by the Member or any of its officers to 1) any felony or 2) any misdemeanor involving, arising from, or related to the purchase or sale of any commodity, security, futures contract, option or other financial instrument or involving or arising from fraud or moral turpitude; and/or

3. any *filing of a [involuntary] bankruptcy petition or insolvency, receivership or equivalent proceeding of which the member is a subject. [that has been filed against such Member, or i] In the case of a voluntary bankruptcy, insolvency, receivership or equivalent proceeding, the Member also shall notify the Market Regulation Department, and the Clearing House in the case of a Member that is a Member Firm or Clearing Member* when such Member [has filed or has] forms[ed] a definite intention to file *such* proceeding [for bankruptcy].

Nothing in this Rule shall limit or negate any other reporting obligations that any member may have to the Exchange or any other regulator or person.

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#### Rule 443—Rule 852—No Change.

#### Chapter 8. Clearing House and Performance Bonds

#### Rule 853. TRANSFERS OF TRADES AND CUSTOMER ACCOUNTS

##### 853.A. Transfers of Trades

1. Subject to the limitations of Rule 854, existing trades may be transferred either on the books of a clearing member or from one clearing member to another clearing member provided:

i[1]. The transfer merely constitutes a change from one account to another account provided the underlying beneficial ownership in said accounts remains the same; or

ii[2]. An error has been made in the clearing of a trade and the error is discovered and the transfer is completed within two business days after the trade date.

[B]2. Subject to the limitations of Rule 854, Exchange staff may, upon request by the clearing member(s), approve a

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>14</sup> 17 CFR 200.30-3(a)(12).