

In light of the Exchange's proposal to make the Pilot permanent, the Exchange also proposes to amend endnote 30 of the Exchange's fee schedule to remove the following language: "[t]he payment for order flow fees will remain in effect as a pilot program that is scheduled to expire on May 27, 2009." The Exchange is not making any other changes to the Pilot at this time.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act,<sup>23</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>24</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. In particular, the Exchange believes that continuing the payment for order flow program and making it permanent should allow the Exchange to remain competitive.

### 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 that is 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>25</sup> and paragraph (f)(2) of Rule 19b-4<sup>26</sup> thereunder. At any time within 60 days of the filing of the 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, 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2009-38 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-Phlx-2009-38. 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 inspection and copying 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-Phlx-2009-38 and should be submitted on or before May 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**Elizabeth M. Murphy,**

*Secretary.*

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<sup>27</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59842; File No. SR-Phlx-2009-37]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing of Proposed Rule Change Relating to Quoting Requirements for Streaming Quote Traders, Remote Streaming Quote Traders and Specialists

April 29, 2009.

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 April 21, 2009, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("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 make specified technical adjustments to the quoting requirements for streaming quote traders, remote streaming quote traders and specialists contained in Exchange Rule 1014.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, 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.

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

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

<sup>23</sup> 15 U.S.C. 78f(b).

<sup>24</sup> 15 U.S.C. 78f(b)(4).

<sup>25</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>26</sup> 17 CFR 240.19b-4(f)(2).

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

1. Purpose

The purpose of the proposed rule change is to make minor adjustments to the quoting requirements for Streaming Quote Traders ("SQTs"), Remote Streaming Quote Traders ("RSQTs") and specialists contained in Exchange Rule 1014.<sup>3</sup> Currently, Rule 1014 requires an SQT and an RSQT (other than a DSQT or a DRSQT) to quote continuous, two-sided markets in not less than 60% of the series in each option in which such SQT or RSQT is assigned. The same rule requires a DSQT and a DRSQT on any given day to quote continuous, two-sided markets in not less than 99% of the series listed on the Exchange in at least 60% of the options in which such DSQT or DRSQT is assigned. Moreover, whenever on a given trading day a DSQT or DRSQT enters a quotation in an option in which such DSQT or DRSQT is assigned, the DSQT or DRSQT must maintain continuous quotations for not less than 99% of the series of the option listed on the Exchange until the close of that trading day. Finally, Rule 1014 requires each specialist to quote continuous, two-sided markets in not less than 99% of the series in each option in which such specialist is assigned.

Currently, any of the "continuous" quoting requirements referenced above may be deemed unsatisfied whenever there is an interruption in quoting during the trading day, no matter how brief in duration. The Exchange is, therefore, proposing to replace the continuous quoting requirement with a reference to the portion of the trading day when a quote must be available. Specifically, a market participant that is currently subject to any of the above-described continuous quoting obligations would, instead, be required to maintain a two-sided quote in a series for a total time equal to at least 90% (or higher, if so announced by the Exchange in advance) of the duration of the trading day. For example, on a normal trading day, which lasts 390 minutes (from 9:30 a.m. to 4 p.m.), quoting in a series would need to be maintained for

<sup>3</sup> The terms SQTs and RSQTs are defined in Rule 1014(b)(ii)(A) and (B) and generally connote participants who have received permission from the Exchange to trade in options for their own accounts and to generate and submit option quotations electronically. The terms Directed SQTs ("DSQTs") and Directed RSQTs ("DRSQTs") are defined in Rule 1080(l)(i)(c) and refer to SQTs and RSQTs that receive certain customer orders (known as "Directed Orders") that have been directed specifically to them.

the total of at least 351 minutes in order to meet the 90%-of-the-trading-day threshold.

In a shortened trading session, the total number of minutes the quote must be maintained would be lowered proportionately (and the same percentage threshold would apply). If a technical failure or limitation of a system of the Exchange prevents a participant from maintaining, or prevents a participant from communicating to the Exchange, timely and accurate quotes, the duration of such failure or limitation would also not be included in any of the calculations with respect to the affected quotes. The Exchange would have the ability to consider other exceptions to the quoting requirements based on demonstrated legal or regulatory requirements or other mitigating circumstances.<sup>4</sup>

Under the proposal, the Exchange would also have the discretion to set the threshold above 90% by publishing an appropriate advance announcement, which would then be available on the Exchange's Web site. In the illustration above, if the Exchange set the threshold, for example, at 99% (rather than 90%), then on a normal trading day, quoting would need to be maintained for 386 (rather than 351) minutes out of the total of 390 minutes.

The Exchange is also proposing to make a minor adjustment to the 99%-of-the-series provisions. As explained above, on a given trading day, each DSQT and DRSQT is required to maintain two-sided quotations for at least 99% of the listed series: (a) in at least 60% of its total option assignments, and (b) in any assignment after entering a quotation in it. A specialist must maintain quotes in at least 99% of the series in each of its option assignments. The proposed adjustment would replace the 99% requirement in all of these instances with the lesser of two alternatives: 99% of the series, or 100% minus a single call-and-put "pair." The eligible pair in this case would consist of two individual options, one call and one put, which cover the same underlying instrument and have the same expiration date and exercise price. Failure to maintain a qualifying (90% of the trading day or higher, as discussed above) quote in just one call, one put,

<sup>4</sup> Another exchange recently modified its rules to set its market makers' quoting obligation at 90% of the time that the exchange is open for business. That exchange also provided for similar automatic exceptions for technical failures and discretionary exceptions based on demonstrated legal or regulatory requirements or other mitigating circumstances. Securities Exchange Act Release No. 57186 (Jan. 22, 2008), 73 FR 4931 (Jan. 28, 2008) (approving SR-NYSEArca-2007-121).

or in one call and one "paired" put, would not by itself (assuming all other series of a given option are being quoted as required) constitute a violation of the 99%-of-the-series requirement. The purpose of this particular modification is to make the rules more flexible with respect to those assignments that contain relatively fewer series and to avoid situations when failure to quote 90% of the trading day in merely one individual option or one pair breaches the 99% requirement.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>6</sup> in particular, in that it is designed 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, by removing unnecessary rigidity from the existing quotation requirements, reducing the associated burdens on the affected market participants, and ultimately making the Exchange more competitive.

*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**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date 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 such proposed rule change, or
- (b) Institute proceedings to determine whether the proposed rule change should be disapproved.

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2009-37 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-Phlx-2009-37. 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 inspection and copying in the Commission's Public Reference Room, 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-Phlx-2009-37 and should be submitted on or before May 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Elizabeth M. Murphy,**

*Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-59845; File No. SR-OCC-2009-08]**

#### **Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Stock as Margin**

April 29, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> notice is hereby given that on April 14, 2009, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

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

The proposed rule change will revise OCC's eligibility requirements for the deposit of stocks as margin.

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

In its filing with the Commission, OCC 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. OCC 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**

OCC is proposing to amend its rules to facilitate the deposit of common

stocks as margin collateral by: (1) Reducing the minimum price for stocks from \$10 to \$3 and (2) eliminating the 10% concentration test for certain Exchange-Traded Funds ("ETFs").

##### **1. Minimum Price Test**

Prior to this rule change, OCC Rule 604(b)(4) required that all stocks ("Valued Securities") including common and preferred stocks, submitted as margin collateral had to have a market value greater than \$10 per share. The dramatic fall in equity prices over the last several months has led to a significant increase in the number of stocks that are priced below \$10. Approximately one year ago, eleven stocks in the S&P 500 were priced below \$10. As of April 13, 2009, sixty-six stocks were priced below \$10. Although OCC's \$10 minimum price requirement for stock collateral was intended to exclude stocks that might be volatile, illiquid, close to delisting, *etc.*, it did so at the expense of excluding many stocks that if looked at individually would be deemed appropriate for margin collateral purposes.

Under this filing, OCC will reduce the minimum market value for stocks from \$10 to \$3. OCC has performed an analysis of the impact of reducing the minimum share price for common stock and has concluded that such a change can be implemented for both option and non-option securities without materially increasing risk to OCC. OCC states that its approach to valuing Valued Securities is conservative because the current 30% haircut is high relative to the haircuts that will be applied upon implementation of its Collateral in Margins project.<sup>2</sup> Moreover, OCC has examined the member accounts that hold the most volatile Valued Securities and found no instance where the amount of such holdings in any particular account was excessive. OCC nevertheless intends to closely monitor any account with a large amount of

<sup>2</sup> Securities Exchange Act Release No. 58158 (July 15, 2008), 73 FR 42646 (July 15, 2008). Under the Collateral in Margins filing, OCC will be updating its margin requirement methodology and risk management system known as "STANS" to more accurately measure the risk in clearing members' accounts. Some of the changes include providing OCC with greater flexibility to determine the amount of replacement collateral when securities deposited as margin are withdrawn and eliminating certain concentration limits and minimum share prices.

OCC expects to fully implement the new Collateral in Margins methodology in the second quarter of 2010. In order to address current market conditions, OCC is proposing changes now to reduce the impact of the minimum price requirement and the 10% concentration test, both of which will be eliminated altogether for options securities when Collateral in Margins is implemented.

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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