

Market-Makers than those originating from other market participants (including public customers) is equitable and not unfairly discriminatory because C2 Market-Makers take on certain obligations to the Exchange (such as providing two-sided markets) that other market participants do not undertake. Offering a slightly higher Maker rebate for orders originating from public customers than those originating from other market participants (not including C2 Market-Makers) is equitable and not unfairly discriminatory because the Exchange believes this will attract public customer order flow to the Exchange and incentivize broker-dealers and firms to execute public customer orders on the Exchange. To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the improved market liquidity and the greater number of public customer orders with which to trade. Further, the Exchange believes that the proposed public customer Maker rebate is not unfairly discriminatory because the same rebate would be assessed uniformly to all public customers.

Offering a slightly lower Taker fee for orders originating from public customers than for orders originating from other market participants is equitable and not unfairly discriminatory because the Exchange believes this will attract public customer order flow to the Exchange and incentivize broker-dealers and firms to execute public customer orders on the Exchange. To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the improved market liquidity and the greater number of public customer orders with which to trade. Further, the Exchange believes that the proposed public customer Taker fee is not unfairly discriminatory because the same fee would be assessed uniformly to all public customers. Also, a number of other exchanges offer different pricing for executions based on the type of market participant from which an order originates.<sup>7</sup>

The Exchange operates in a highly competitive market in which sophisticated and knowledgeable market participants readily can, and do, send order flow to competing exchanges based on fee levels. The Exchange believes that the fees it assesses must be competitive with fees assessed on other options exchanges. The Exchange believes that this competitive marketplace impacts the fees present on

the Exchange today and influences the proposals set forth above.

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

C2 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 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 proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4<sup>9</sup> thereunder. 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.

### **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](mailto:rule-comments@sec.gov). Please include File Number SR-C2-2011-032 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-C2-2011-032. 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 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 offices 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-C2-2011-032, and should be submitted on or before November 29, 2011.

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

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

[FR Doc. 2011-28830 Filed 11-7-11; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-65666; File No. SR-Phlx-2011-118]**

### **Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change Relating to Transfer of Positions Off the Floor**

November 2, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on October 20, 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

<sup>10</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>7</sup> See Note 3.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

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, pursuant to Section 19(b)(1) of the Act<sup>3</sup> and Rule 19b-4 thereunder,<sup>4</sup> proposes a new Exchange Rule 1058 entitled "Transfer of Positions" to provide a process by which members and member organizations may transfer option positions in limited circumstances.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, 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 the proposed rule change is to provide members and member organizations a mechanism in which to transfer option positions in certain specified circumstances. The Exchange is proposing to amend its Rules to adopt a new Exchange Rule 1058, entitled "Transfer of Positions."<sup>5</sup> The purpose of this Rule is to address narrowly-defined transfers of option positions between accounts, individuals, or entities and codify a current policy at the Exchange for off the floor transfers.

Currently, Exchange Rules do not specifically address transfers of option positions between accounts, individuals

or entities. The Exchange, however, has made exceptions to allow off the floor transfers in situations similar to those permitted on other exchanges. The proposed rule would formalize the Exchange's policies with respect to off the floor transfers of options positions in certain limited circumstances.

Specifically, the Exchange would permit off the floor transfers of options listed on the books of member or member organization only if such transfer involves one or more of the following events: (i) The dissolution of a joint account in which the remaining member or member organization assumes the positions of the joint account; (ii) the dissolution of a corporation or partnership in which a former nominee of that corporation or partnership assumes the positions; (iii) positions transferred as part of a member or member organization's capital contribution to a new joint account, partnership, or corporation; (iv) the donation of positions to a not-for-profit corporation; (v) the transfer of positions to a minor under the Uniform Gifts to Minors Act; (vi) a merger or acquisition resulting in a continuity of ownership or management; or (vii) consolidation of accounts within a member or member organization. The members and member organizations would be required to provide the Exchange with prior written notice of the transfer, specifically the positions to be transferred and the reason for the transfer.

The proposed Exchange Rule 1058 provides that members and member organizations must transfer positions pursuant to this Rule at the same prices that appear on the books of the transferring member or member organization,<sup>6</sup> and the transfer must indicate the date when the original trade was made. In the course of transferring positions, no position shall net itself against another position.<sup>7</sup> Each member or member organization that is a party to a transfer of positions would be required to make and retain records which include: (i) The nature of the transaction; (ii) the name of the counter-

party; and (iii) any other information required by the Exchange.<sup>8</sup>

The Exchange believes that permitting off the floor transfers in very limited circumstances such as where there is no change in beneficial ownership, to contribute to a non-profit corporation, to transfer to a minor or a transfer by operation of law is reasonable to allow a member or member organization to accomplish certain goals efficiently. The Exchange is seeking to memorialize its current policy regarding off the floor transfers in order to allow its members to transfer positions in the same manner as on other exchanges.<sup>9</sup>

The above-referenced exceptions would allow the Exchange to permit transfers in situations involving dissolutions of entities or accounts, for purposes of donations, mergers or by operation of law. For example, a member that is undergoing a structural change and a one-time movement of positions may require a transfer of positions or a member is leaving a firm that will no longer be in business may require a transfer of positions to another firm. Also, a member may require a transfer of positions to make a capital contribution. The above-referenced circumstances are situations where the transferor continues to maintain some ownership interest or manage the positions transferred.

To date, the Exchange has permitted such off-the floor transfers in limited circumstances and this Rule seeks to codify the specific circumstances where off the floor transfers of positions would be permitted.

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>11</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 providing an accommodation for members and member organizations who desire to transfer options positions. The Exchange believes that establishing a new Rule which provides clear

<sup>6</sup> The same cost basis would apply to the positions once they have been transferred.

<sup>7</sup> Long positions and short positions will not be permitted to "net" against each other. For example, if a member desired to transfer 100 long calls into another account that contained 100 short calls of the same options series along with other positions, and the transfer met one of the above permitted exceptions, that transfer of the offsetting options series could not occur pursuant to this Rule because those positions would net against each other resulting in a closing of the position. The member would be required to trade out of that position as per the Exchange's Rules, either on the floor or electronically.

<sup>8</sup> Records should be maintained in accordance with the member or member organization's books and records policy and in conformity with Rules 17a-3 and 17a-4 of the Act.

<sup>9</sup> The Chicago Board Options Exchange, Incorporated ("CBOE") and NYSE Arca, Inc. ("NYSE Arca") permit members to effect off-floor transfers in certain circumstances. See CBOE Rule 6.49A. See also NYSE ARCA Rule 6.78.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>3</sup> 15 U.S.C. 78s(b)(1).

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

<sup>5</sup> Exchange Rule 1058 is currently reserved. The Exchange proposes to delete the word "Reserved" and insert this new Rule in its place.

guidelines on when such off the floor transfers would be permissible would assist members and member organizations seeking to transfer positions and provide notification to the Exchange.

The primary reason that members prefer to transfer positions as opposed to trading out of them is that transferring positions affords a reduction in administrative overhead and cost. In the typical situation, a member is undergoing a structural change and a one-time movement of positions offers efficiency in that process. The Exchange believes that this new Exchange Rule 1058 would allow members and member organizations the opportunity to efficiently and effectively transfer their option positions in limited situations off the floor.

The Exchange believes that the proposed rule creates an orderly process for allowing such transfers. The Rule serves to protect investors and the public interest because the proposed Rule permits transfers off-floor only in limited instances.

#### *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 45 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 Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2011-118 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-2011-118. 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 Number SR-Phlx-2011-118 and should be submitted on or before November 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

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

[FR Doc. 2011-28829 Filed 11-7-11; 8:45 am]

**BILLING CODE 8011-01-P**

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

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-65667; File No. SR-Phlx-2011-136]

### **Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change Relating to Transfer of Exchange House Accounts**

November 2, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on October 19, 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, pursuant to Section 19(b)(1) of the Act<sup>3</sup> and Rule 19b-4 thereunder,<sup>4</sup> proposes a new Exchange Rule 912 entitled "Transfer of Accounts" to codify a current Exchange policy with respect to the transfer of accounts.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, 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>3</sup> 15 U.S.C. 78s(b)(1).

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