

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-2011-172 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-2011-172. 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-2011-172 and should be submitted on or before January 11, 2012.

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

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011-32669 Filed 12-20-11; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65974; File No. SR-NYSEAmex-2011-81]

Self-Regulatory Organizations; NYSE Amex LLC; Order Approving a Proposed Rule Change Expanding the Scope of Potential "Users" of Its Co-Location Services To Include Any Market Participant That Requests To Receive Co-Location Services Directly From the Exchange and Amending Its Price List To Establish a Fee for Users That Host Their Customers at the Exchange's Data Center

December 15, 2011.

I. Introduction

On October 14, 2011, NYSE Amex LLC ("NYSE Amex" or the "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 expand the scope of potential "Users" of its co-location services, and to amend its Price List. The proposed rule change was published for comment in the **FEDERAL REGISTER** on November 1, 2011.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange operates a data center in Mahwah, New Jersey from which it provides co-location services to Users.⁴ For purposes of its co-location services, the term "User" currently includes member organizations, as that term is defined in Rule 2(b)—NYSE Amex Equities, and Sponsored Participants, as that term is defined in Rule 123B.30(a)(ii)(B)—NYSE Amex Equities. The Exchange proposed to expand the scope of potential Users of its co-location services to include any market participant that requests to receive co-location services directly from the

Exchange.⁵ Under the proposed rule change, Users could therefore include member organizations, Sponsored Participants, non-member broker-dealers and vendors.⁶

The Exchange also proposed to amend its Price List to establish a fee applicable to Users that provide hosting services to their customers ("Hosted Users") at the Exchange's data center.⁷ "Hosting" would be a service offered by a User to a Hosted User and could include, for example, a User supporting its Hosted User's technology, whether hardware or software, through the User's co-location space. Specifically, the Exchange proposed to charge each User a fee of \$500.00 per month for each Hosted User that the User hosts in the Exchange's data center. Users would independently set fees for their Hosted Users and the Exchange would not receive a share of any such fees.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁹ which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,¹⁰ which requires, among other things, that the rules of a national securities exchange be 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, and not be designed to permit unfair

⁵ As stated by the Exchange, Users must agree to, and be capable of satisfying, any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange. See Notice, 76 FR at 67521.

⁶ *Id.* The Exchange anticipated that the potential additional Users would provide, for example, hosting, service bureau, technical support, risk management, order routing and market data delivery services to their customers while the User is co-located in the Exchange's data center.

⁷ *Id.*

⁸ In approving this proposed rule change, 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).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78f(b)(5).

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 78s(b)(1).

¹² 17 CFR 240.19b-4.

¹³ See Securities Exchange Act Release No. 65627 (October 26, 2011), 76 FR 67520 ("Notice").

¹⁴ See Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299.

discrimination between customers, issuers, brokers, or dealers.

The Exchange noted that the expansion of the scope of potential Users of the Exchange's co-location services increases access to the Exchange's co-location facilities and that the co-location services would be offered to these additional Users in a manner that is not unfairly discriminatory.¹¹ The Commission believes that this expansion of the scope of potential Users is consistent with the Exchange Act and should increase access to the Exchange co-location facilities by allowing additional categories of market participants to access the Exchange's co-location services.

Regarding the proposed hosting fee, the Exchange represented that it will be applied uniformly and will not unfairly discriminate between Users of co-location services, as the hosting fee will be applicable to all interested Users that provide hosting services.¹² The Exchange also represented that the hosting fee is reasonable because it is designed to defray expenses incurred or resources expended by the Exchange.¹³ In light of the Exchange's representations, the Commission believes that the hosting fee is consistent with Section 6(b)(4) of the Exchange Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR-NYSEAmex-2011-81) be, and it hereby is, approved.

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

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2011-32667 Filed 12-20-11; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65972; File No. SR-CBOE-2011-125]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Expand the Weeklys Program

December 15, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that, on December 13, 2011, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("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

CBOE proposes to amend Rules 5.5 and 24.9 to increase the number of option classes on which Short Term Options Series ("Weekly options") may be opened in the Exchange's Short Term Option Series Program ("Weeklys Program") from 25 to 30 classes. 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, and at the Commission.

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

The purpose of this proposed rule change is to amend Rules 5.5 and 24.9 by increasing the number of option classes on which Weekly options may be opened in the Exchange's Weeklys Program.⁵ Currently, the Exchange may select up to 25 currently listed option classes on which Weekly options may be opened in the Weeklys Program. The Exchange is proposing to increase this to a total of 30 classes on which Weekly options may be opened for trading. This is a competitive filing and is based on recently approved filings submitted by The NASDAQ Stock Market LLC for the NASDAQ Options Market ("NOM") and NASDAQ OMX PHLX, Inc. ("PHLX").⁶

On November 17, 2011, CBOE amended its Weeklys Program by increasing the number of strikes that may be listed per class (from 20 to 30) that participates in the Weeklys Program,⁷ and by increasing the number of classes (from 15 to 25) that are eligible to participate in CBOE's Weeklys Program.⁸ On that same day, NOM and PHLX each increased the number of classes that are eligible to participate in their Weeklys Programs from 15 classes to 30 classes. As a result, CBOE is competitively disadvantaged since it operates a substantially similar Weeklys Program as NOM and PHLX but is limited to selecting only 25 classes that may participate in CBOE Weeklys Program (whereas PHLX and NOM may each select 30 classes).⁹

The Exchange is not proposing any changes to these additional Weeklys

⁵ On July 12, 2005, the Commission approved the Weeklys Program on a pilot basis. See Securities Exchange Act Release No. 52011 (July 12, 2005), 70 FR 41451 (July 19, 2005) (SR-CBOE-2004-63). The Weeklys Program was made permanent on April 27, 2009. See Securities Exchange Act Release No. 59824 (April 27, 2009), 74 FR 20518 (May 4, 2009) (SR-CBOE-2009-018).

⁶ See Securities Exchange Act Release Nos. 65775 (November 17, 2011), 76 FR 72476 (November 23, 2011) (SR-NASDAQ-2011-138) and 65776 (November 17, 2011), 76 FR 72482 (November 23, 2011) (SR-PHLX-2011-131).

⁷ See Securities Exchange Act Release No. 65772 (November 17, 2011), 76 FR 72484 (November 23, 2011) (SR-CBOE-2011-086).

⁸ See Securities Exchange Act Release No. 65774 (November 17, 2011), 76 FR 72488 (November 23, 2011) (SR-CBOE-2011-108).

⁹ CBOE is permitted to list Weekly options "on any option classes that are selected by other securities exchanges that employ a similar program under their respective rules." See CBOE Rule 5.5(d)(1) and 24.9(a)(2)(A)(i).

¹¹ See Notice, 76 FR at 67521.

¹² *Id.*

¹³ *Id.*

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 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).