

orders marked with the Self-Trade Prevention modifiers in the same manner during openings and re-openings as during regular trading.

Once the CBSX System is so enabled to permit the use of the Self-Trade Prevention modifiers, and such use has been appropriately tested, CBSX intends to announce the availability of the Self-Trade Prevention modifiers to the CBSX Traders via Regulatory Circular prior to the implementation of the Self-Trade Prevention modifiers.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>7</sup> in particular 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 proposed rule change advances these objectives by making available to market participants an order and quote modifier that will assist them in preventing unwanted executions against themselves. Allowing market participants to prevent unwanted executions against themselves removes impediments to and perfects the mechanism for a free and open market by allowing market participants to better manage order flow and prevent the potential for (or appearance of) "wash sales" that may occur as a result of the velocity of trading in today's high-speed marketplace, and by streamlining certain regulatory functions by reducing false positive results that may occur on Exchange-generated wash trading surveillance reports when orders are executed by the same CBSX Trader.

Finally, adding an interpretation to Rule 52.1 to provide that, in instances in which the Self-Trade Prevention modifiers are implicated, the Self-Trade Prevention modifier rules will supersede other allocation methods only for the purposes of preventing self-trades, as described in the proposed Self-Trade Prevention modifier rule, and also clarifying that, in circumstances where both the Market-Maker Self-Trade Prevention Order and a Self-Trade Prevention modifier are implicated, the Self-Trade Prevention modifier shall rule and take precedence, perfects the mechanism for a free and open national market system and protects investors

and the public interest by removing any potential confusion regarding priority and allocation methods.

### 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 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

The Exchange neither solicited nor received comments on the proposed rule change.

## 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 self-regulatory organization consents, the Commission will:

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-CBOE-2012-013 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-2012-013. 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 10:00 a.m. and 3:00 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-CBOE-2012-013 and should be submitted on or before May 22, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

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

[FR Doc. 2012-10463 Filed 4-30-12; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66857; File No. SR-NYSEAmex-2012-23]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Amending NYSE Amex Options Rule 928NY Specifying That the Potential Range for the Settings Applicable to the Market Maker Risk Limitation Mechanism Will Be Between One and 100 Executions per Second, To Eliminate the Current Reference to the Default Setting and, in the Future, To Specify the Applicable Minimum, Maximum and Default Settings via Regulatory Bulletin

April 25, 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>

<sup>8</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>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

notice is hereby given that on April 12, 2012, NYSE Amex LLC (the "Exchange" or "NYSE Amex") 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 self-regulatory organization. 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 NYSE Amex Options Rule 928NY to specify that the potential range for the settings applicable to the Market Maker Risk Limitation Mechanism ("Mechanism") will be between one and 100 executions per second, to eliminate the current reference to the default setting and, in the future, to specify the applicable minimum, maximum and default settings via Regulatory Bulletin. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and [www.nyse.com](http://www.nyse.com).

### 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 Exchange proposes to amend NYSE Amex Options Rule 928NY to specify that the potential range for the settings applicable to the Mechanism will be between one and 100 executions per second, to eliminate the current reference to the default setting and, in the future, to specify the applicable minimum, maximum and default settings via Regulatory Bulletin.

The Mechanism protects Market Makers from the risk associated with an excessive number of nearly simultaneous executions in a single

option class.<sup>3</sup> Specifically, if "n" executions occur within one second against the Market Maker's quotes in an appointed class, the NYSE Amex System automatically cancels all quotes posted by the Market Maker in that class.

The Mechanism currently defaults the "n" number of executions to 50 executions per second.<sup>4</sup> However, a Market Maker may instead set the "n" number of executions between five and 100 executions per second.<sup>5</sup> The Exchange proposes to decrease the low end of this range from five to one.<sup>6</sup> The Exchange also proposes to eliminate the reference to the default setting that is applicable to the Mechanism. In addition, the Exchange proposes that, in the future, it will specify the applicable minimum, maximum and default settings for the Mechanism via Regulatory Bulletin, all of which would be within the proposed range of one to 100 executions per second.<sup>7</sup>

The Exchange believes that this proposed change would provide the Exchange with greater flexibility with respect to changing these settings in the future. In particular, the Exchange may need to change the settings from time to time to accommodate systems capacity concerns. The Exchange believes that specifying these settings via Regulatory Bulletin, instead of within NYSE Amex Options Rule 928NY, is consistent with the manner in which the Commission currently permits other option exchanges to communicate settings or parameters for various exchange mechanisms to their members other than through the rule filing process, i.e., via notices, bulletins or circulars.<sup>8</sup>

<sup>3</sup> See Securities Exchange Act Release No. 59472 (February 27, 2009), 74 FR 9843 (March 6, 2009) (SR-NYSEALTR-2008-14).

<sup>4</sup> See NYSE Amex Options Rule 928NY(b)(1).

<sup>5</sup> See NYSE Amex Options Rule 928NY(b)(2).

<sup>6</sup> The high end of the range would remain unchanged at 100 executions per second.

<sup>7</sup> See proposed NYSE Amex Options Rule 928NY(b)(1). The Exchange proposes to designate NYSE Amex Options Rule 928NY(b)(2) as "reserved."

<sup>8</sup> See, e.g., Chapter VI, Section 16 of the Boston Options Exchange ("BOX") Rules, which provides that, related to BOX's Quote Removal Mechanism Upon Technical Disconnect, BOX Market Makers will be notified of the value that "n" seconds represents via Regulatory Circular. See also Securities Exchange Act Release No. 58140 (July 10, 2008), 73 FR 41384 (July 18, 2008) (SR-BSE-2008-40), in which the Commission noted [sic] that "n" seconds would be configurable by BOX and any subsequent re-configurations will be announced to Market Makers via Regulatory Circular. See also Interpretation and Policy .05 to Chicago Board Options Exchange ("CBOE") Rule 6.74A, which provides that any determinations made by CBOE regarding CBOE's Automated Improvement Mechanism, such as eligible classes, order size parameters and the minimum price increment for certain responses, shall be communicated in a

The Exchange anticipates announcing via Regulatory Bulletin that the applicable minimum, maximum and default settings for the Mechanism will be decreased to 2, 50 and 5 executions per second, respectively. The Exchange believes that decreasing these settings would provide Market Makers with greater flexibility with respect to managing their risk on the Exchange, consistent with the flexibility available on other option markets. In this regard, the Exchange understands that the Commission has previously permitted similar risk mechanisms to be implemented on other option exchanges without requiring any applicable minimum, maximum and/or default settings in the exchanges' corresponding rules.<sup>9</sup>

The Exchange is not proposing any other changes to the Mechanism at this time.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to

Regulatory Circular. See also CBOE Rule 6.13(b)(i)(C)(2)(a), which provides that CBOE may establish certain maximum order size eligibility requirements with respect to automatic executions and announce such determinations via Regulatory Circular. See also CBOE Rules 6.45A and 6.45B, which provide that CBOE will issue a Regulatory Circular to specify certain priority-related information, including specifying which priority rules will govern which classes of options any time the Exchange changes the priority. See also CBOE Rule 6.25(a)(4)(i), which provides that, for purposes of nullifying a trade due to an erroneous print in an underlying or related instrument, CBOE may announce such underlying or related instrument via Regulatory Circular. See also C2 Options Exchange ("C2") Rule 6.13, which provides that C2 may make certain determinations regarding the price check parameter feature and announce such determinations via Regulatory Circular. See also Securities Exchange Act Release No. 65311 (September 9, 2011), 76 FR 57094 (September 15, 2011) (SR-C2-2011-018).

<sup>9</sup> See, e.g., Chapter VI, Section 15 of the BOX Rules, which provides for Automatic Quote Cancellation. See also Securities Exchange Act Release No. 65001 (August 1, 2011), 76 FR 47635 (August 5, 2011) (SR-BX-2011-050). See also Supplementary Material .01 to International Securities Exchange ("ISE") Rule 804, which provides for Automated Quotation Adjustments for Market Makers.

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

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

and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change would prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade because it would continue to provide Market Makers with greater control and flexibility with respect to managing risk and the manner in which they enter quotes. The Exchange believes that this increased control and flexibility also fosters cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in, securities. The Exchange further believes that the proposed rule change would remove impediments to and perfect the mechanisms of a free and open market and a national market system because it would permit the Exchange to adjust the minimum, maximum and default settings for the Mechanism via Regulatory Bulletin, which would be consistent with the manner in which other option exchanges are permitted to communicate settings or parameters for various exchange mechanisms to their members other than through the rule filing process, i.e., via notices, bulletins or circulars.<sup>12</sup> The Exchange further believes that the proposed rule change is consistent with, and furthers the objectives of, the Act because it would permit the Exchange to increase or decrease the minimum, maximum and default settings from their current levels, should the Exchange choose to do so, for example, to accommodate systems capacity concerns.<sup>13</sup> The Exchange also believes that specifying the applicable minimum, maximum and default settings for the Mechanism via Regulatory Bulletin would further remove impediments to and perfect the mechanisms of a free and open market by reducing the resources that would otherwise be expended, by both the Exchange and the Commission, if the Exchange is required to propose a rule

<sup>12</sup> See *supra* note 8.

<sup>13</sup> As noted above, the Exchange anticipates that the current minimum, maximum and default settings will be decreased to 2, 50 and 5 executions per second, respectively. The Exchange understands that the Commission has previously permitted similar risk mechanisms to be implemented on other option exchanges without any applicable minimum, maximum and/or default settings in the exchanges' corresponding rules. See *supra* note 9.

change with the Commission each time it wishes to change the settings.

The Exchange believes that the proposed decrease of the low end of the range of the Mechanism's settings to one execution per second would continue to reasonably ensure that, consistent with their obligations, Market Makers maintain a quote on the Exchange. In this regard, the Exchange notes that the proposed rule change would not relieve Market Makers on the Exchange of their quoting obligations under the Exchange's Rules.<sup>14</sup> As is the case today, a Market Maker quote that is cancelled would no longer count toward satisfying the Market Maker's percentage quoting obligation under NYSE Amex Options Rule 925NY. The Exchange further notes that the proposed rule change would not relieve a Market Maker of its "firm quote" obligation under Rule 602 of Regulation NMS<sup>15</sup> or NYSE Amex Options Rule 970NY, thereby promoting the protection of investors and the public interest.

The Exchange further believes that the proposed rule change is not unfairly discriminatory because the same minimum, maximum and default settings would be applicable to all Market Makers and because the settings would be announced via Regulatory Bulletin to all Market Makers at the same time.

#### *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 solicited or received with respect to the proposed rule change.

### **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 self-regulatory organization consents, the Commission will:

<sup>14</sup> See, e.g., NYSE Amex Options Rule 925NY.

<sup>15</sup> 17 CFR 242.602.

(A) By order approve or disapprove the 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-NYSEAmex-2012-23 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-NYSEAmex-2012-23. 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. The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov>. 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–NYSEAmex–2012–23 and should be submitted on or before May 22, 2012.

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

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

[FR Doc. 2012–10391 Filed 4–30–12; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66859; File No. SR–Phlx–2012–52]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Account Fee

April 25, 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 April 18, 2012, 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 Account Fee displayed in the Pricing Schedule at Section VI, A entitled “Membership Fees.”

While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on May 1, 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 this filing is to recoup some of the billing and processing costs associated with participant accounts. The proposed amendment would also encourage members to discontinue holding inactive trading accounts, which the Exchange believes should, in turn, eliminate the need to expend resources to create additional account fields. As a result, the staff time allocated to maintaining account records would be reduced, which would allow for a more efficient use of staff resources.

Currently, member organizations receive one free account for each permit assigned to the member organization and the Exchange assesses an Account Fee of \$50.00 for each additional account a member holds. The Exchange initially adopted this Account Fee in 2006 to encourage member organizations to discontinue holding inactive trading accounts, which the Exchange believed would, in turn, eliminate the need to expend resources to create additional account.<sup>3</sup> The Exchange is proposing to amend this fee to assess an Account Fee of \$50.00 per month for each account held by a member organization. The Exchange would remove the following text from the Pricing Schedule “for each account beyond the number of permits billed to that member organization.” While today member organizations receive one free account for each permit assigned to the member organization, the proposal would bill a member organization \$50.00 for each account. The Account Fee would cover any month, or any part of a month, during which an account is maintained by a member.

Member organizations are not restricted in the number of trading accounts they may request through the Exchange’s Membership Department. In many instances, multiple accounts are

requested by a member organization as a means of tracking various trading activity using the Exchange’s account numbers or because they have multiple clearing arrangements.

##### 2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act<sup>4</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>5</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the proposed amendment to the Account Fee is reasonable because it seeks to recoup costs incurred by the Exchange. Further, the Exchange is seeking to incentivize members to discontinue inactive trading accounts. The Exchange also believes that the proposed Account Fee is equitable and not unfairly discriminatory because it would be uniformly applied to all members.

#### 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>6</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

<sup>3</sup> See Securities Exchange Act Release No. 53046 (January 3, 2006), 71 FR 1459 (January 9, 2006) (SR–Phlx–2005–89). The Exchange noted in its filing that the \$50 per month fee would be applicable to any part of a month.

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

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<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.