relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

F. Information may be disclosed to the National Archives and Records Administration in records management inspections.

G. Information may be disclosed to contractors, grantees, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for the Board and who have a need to have access to the information in the performance of their duties or activities for the Board.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The 1512 Data System records will be stored in digital format on a digital storage device. Long-term 1512 Data System records will be stored on magnetic tape format. All record storage procedures are in accordance with current applicable regulations.

RETRIEVABILITY:

Records are retrievable by database management systems software designed to retrieve data elements based upon role-based user access privileges.

SAFEGUARDS:

The Board has minimized the risk of unauthorized access to the system by establishing a secure environment for exchanging electronic information. There are multiple layers of security to physical access to the system. The entire complex is patrolled by security during non-business hours. Physical access to the data system housed within the facility is controlled by a computerized badge-reading system. Multiple levels of security are maintained via dual factor authentication for access using biometrics. The computer system offers a high degree of resistance to tampering and circumvention. This system limits data access to Board and contract staff on a need-to-know basis, and controls individuals' ability to access and alter records within the system. All users of the system of records are given a unique user identification (ID) with personal identifiers. All interactions between the system and the authorized individual users are recorded.

RETENTION AND DISPOSAL:

The Board will retain and dispose of these records in accordance with National Archives and Records Administration General Records Schedule 20, Item 1.c. This schedule provides disposal authorization for electronic files and hard copy printouts created to monitor system usage, including but not limited to log-in files, audit trail files, system usage files, and cost-back files used to access charges for system use. Records will be deleted or destroyed when the Board determines they are no longer needed for administrative, legal, audit, or other program purposes.

SYSTEM MANAGER AND ADDRESS:

Michael Wood, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006.

NOTIFICATION PROCEDURE:

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record should make a written request to the system manager.

RECORD ACCESS PROCEDURES:

A request for record access shall follow the directions described under Notification Procedure and will be addressed to the system manager at the address listed above.

CONTESTING RECORDS PROCEDURES:

If you wish to contest a record in the system of records, contact the system manager and identify the record to be changed, identify the corrective action sought, and provide a written justification.

RECORD SOURCE CATEGORIES:

Information is obtained from recipients and subrecipients (including vendors) of Recovery Act funds or other federal funds for which the Board has been assigned oversight responsibilities; federal, state, local, and foreign agencies; and public-source materials.

DATES: Comments on this amendment must be received by the Board on or before June 20, 2011. The Privacy Act, at 5 U.S.C. 552a(e)(11), requires that the public be provided a 30-day period in which to comment on an agency's intended use of information in a system of records. Appendix I to Office of Management and Budget (OMB) Circular A–130 requires an additional 10-day period, for a total of 40 days, in which to make such comments.) The amended system of records will be effective, as proposed, at the end of the comment period unless the Board determines, upon review of the comments received, that changes should be made. In that event, the Board will publish a revised notice in the **Federal Register.**

ADDRESSES: Comments on the proposed amendments should be clearly identified as such and may be submitted:

By Mail or Hand Delivery: Jennifer Dure, General Counsel, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006;

By Fax: (202) 254–7970; or,

By E-mail to the Board: comments@ratb.gov.

FOR FURTHER INFORMATION CONTACT: Jennifer Dure, General Counsel, Recovery Accountability and Transparency Board, 1717 Pennsylvania Avenue, NW., Suite 700, Washington, DC 20006, (202) 254–7900.

Ivan J. Flores,

Paralegal Specialist, Recovery Accountability and Transparency Board.

[FR Doc. 2011–11296 Filed 5–9–11; 8:45 am]

BILLING CODE 6821–15–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64401; File No. SR–Phlx–2011–55]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to In-Crowd Priority

May 4, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1], and Rule 19b–4 [2] thereunder, notice is hereby given that, on April 27, 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 and II 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 Exchange Rule 1014, Commentary .05(c), Non-Electronic Orders, to state that, respecting crossing, facilitation and solicited orders with a size of at least 500 contracts on each side that are represented and executed in open

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

outcry, priority will continue to be afforded to in-crowd participants (including, for purposes of this rule only, Floor Brokers) over Remote Specialists,[3] Remote Streaming Quote Traders ("RSQTs") [4] and out-of crowd Streaming Quote Traders ("SQTs"),[5] but not over public customer orders. The Exchange proposes to amend the rule to state that in-crowd participants in such orders would also have priority over out-of-crowd broker-dealer limit orders on the limit order book.

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 amend Commentary .05 of Rule 1014 to state that in-crowd participants will continue, as today, to have priority over Remote Specialists, RSQTs and out of crowd SQTs respecting crossing, facilitation and solicited orders with a size of at least 500 contracts on each side, and to state that, respecting such orders, in-crowd participants will now be afforded priority over out-of-crowd broker-dealer limit orders on the limit order book. The proposal is also intended to provide that the term "in-crowd participants" includes, for purposes of this rule only, Floor Brokers representing such orders in open outcry in the trading crowd. In keeping with current Exchange practices and rules, public customer limit orders represented in the trading crowd and resting on the limit order book have, and will continue to have, priority over all other participants and accordingly must be executed up to the aggregate size of such orders before any in-crowd participant is entitled to priority.

Current Rule

Currently, Exchange Rule 1014, Commentary .05 states that respecting crossing, facilitation and solicited orders [6] with a size of at least 500 contracts on each side that are represented and executed in open outcry, priority is afforded to in-crowd participants over Remote Specialists, RSQTs and out-of crowd SQTs. The current rule does not affirmatively afford priority to in-crowd participants over orders on the limit order book, whether such orders are for public customers or non-customers. Thus, Floor Brokers representing and executing crossing, facilitation and solicited orders in open outcry are required to execute against all marketable orders on the limit order book before executing against the crowd, because the marketable orders on the limit order book have time priority.

The Proposal

The proposed amendment to the rule would state that the rule also affords priority to in-crowd participants over out-of out-of-crowd broker-dealer limit orders on the limit order book. Public customer orders on the limit order book that are eligible for execution would still be required to be executed before the Floor Broker could execute its order in the crowd and/or with a contra-side order it holds. The proposed rule would also provide that the term "in-crowd participants" includes, for purposes of this rule only, Floor Brokers representing orders in open outcry in the trading crowd.

The Exchange believes that this should enable it to compete for order flow with other exchanges that have similar rules in place without limiting eligible order types.[7] The instant proposal will not affect public customer priority. The Exchange will continue to execute public customer limit orders up to their aggregate size at a particular price point.

The proposed rule change is intended to replicate, in open outcry, the current electronic trade allocation algorithm applicable to trades executed and allocated electronically on the Exchange's electronic trading platform for options, PHLX XL.[8] Specifically, the Exchange notes that Exchange Rules 1014(g)(vii) and (viii) both provide that, if any contracts remain to be allocated after public customers and PHLX XL participants (including the specialist, SQTs, RSQTs and non-SQT ROTs with limit orders on the limit order book) that are bidding or offering at the execution price have received their respective allocations, off-floor broker-dealers that have placed limit orders on the limit order book which represent the Exchange's disseminated price are thereafter entitled to receive any remaining contracts. The instant proposal is intended to state that this is also the case respecting crossing, facilitation and solicited orders with a size of at least 500 contracts on each side that are represented in open outcry.

Non-Affiliated Floor Brokers

The Exchange represents that all of its Floor Brokers are currently independent business operations and are not affiliated with any other Exchange member. The Exchange recognizes that if a Floor Broker becomes affiliated with a member, an issue could arise under Section 11a of the Act [9] concerning in-person trading on the Exchange floor. Floor brokers are able to achieve in-crowd priority in accordance with this proposal provided, however, that a Floor Broker who is affiliated with a

[3] A Remote Specialist is a qualified RSQT approved by the Exchange to function as a specialist in one or more options if the Exchange determines that it cannot allocate such options to a a floor based specialist. A Remote Specialist has all the rights and obligations of a specialist, unless Exchange rules provide otherwise. *See* Exchange Rules 501 and 1020. *See* also, Securities Exchange Act Release No. 63717 (January 14, 2011), 76 FR 4141 (January 24, 2011) (SR–Phlx–2010–145).

[4] An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(B).

[5] An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(A).

[6] *See* Exchange Rule 1064.

[7] The Exchange notes that Chicago Board Options Exchange, Inc. ("CBOE") Rule 6.74(d)(vi)) affords priority to in-crowd participants over out-of-crowd participants, including non-public customer orders on the limit order book, in all open outcry situations after public customers on the limit order book have been executed. *See* Securities Exchange Act Release No. 54726 (November 8, 2006), 71 FR 66810 (November 16, 2006) (SR–CBOE–2006–89).

[8] In May, 2009 the Exchange enhanced the system and adopted corresponding rules referring to the system as "Phlx XL II." *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). The Exchange intends to submit a separate technical proposed rule change that would change all references to the system from "Phlx XL II" to "PHLX XL" for branding purposes.

[9] 15 U.S.C. 78k(11)(a).

PHLX member, and represents an order on behalf of such member, must ensure that the PHLX member qualifies for an exemption from Section 11(a)(1) of the Exchange Act or that the transaction satisfies the requirements of Exchange Act Rule 11a2–2(T), otherwise the Floor Broker must yield priority to orders for the accounts of non-members.

Conclusion

The Exchange believes that the proposed rule should provide incentive and liquidity for order flow providers that submit larger size crossing, facilitation and solicited orders for execution in open outcry to the Exchange, thus enabling the Exchange to compete with exchanges that have similar priority rules in effect.[10]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(5) of the Act [12] 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 adopting a rule that affords priority to in-crowd participants over out-of-crowd broker-dealer limit orders on the limit order book in certain crossing, facilitation and solicited orders represented and executed in open outcry.

The Exchange believes that the proposal promotes just and equitable principles of trade by retaining customer priority in all cases, and by affording priority to in-crowd participants who are required to meet minimum quoting requirements,[13] and that the proposal removes impediments to and perfects the mechanism of a free and open market by improving Floor Brokers' ability to trade crossing, facilitation and solicited orders with at least 500 contracts on each side, all to the benefit of customers and the public interest.

Exchange Rule 1014 currently affords priority to in-crowd participants over Remote Specialists. A Remote Specialist is first required to be an RSQT, and the instant proposal would continue to afford priority to Remote Specialists in the same manner as it provides such priority over RSQTs. In January 2011, the Commission approved the Exchange's proposal to amend Commentary .05(c)(i) of Rule 1014 to establish priority for Remote Specialists that is coextensive with the priority afforded in that rule to RSQTs and out-of-crowd SQTs.[14] The Exchange believes this established priority that treats RSQTs and Remote Specialists equally is just and equitable, because neither a Remote Specialist nor an RSQT is required to respond to a Floor Broker entering the crowd and requesting a market, whereas in-crowd participants are required to verbalize a market in response to such a request.[15]

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

Pursuant to Section 19(b)(3)(A) [16] of the Act and Rule 19b–4(f)(6) [17] thereunder, the Exchange has designated this proposal as one that effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.[18] The Exchange has satisfied this requirement.

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:

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.* Please include File Number SR–Phlx–2011–55 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–2011–55. 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 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 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

[10] *See supra* note 7.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *See, e.g.,* Exchange Rule 1014(b)(ii)(D).

[14] *See* Securities Exchange Act Release No. 63717 (January 14, 2011), 76 FR 4141 (January 24, 2011) (SR–Phlx–2010–145).

[15] *See* Exchange Rules 1014(c) and (d).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6).

should refer to File Number SR–Phlx–2011–55 and should be submitted on or before May 31, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–11315 Filed 5–9–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64405; File No. SR–CBOE–2011–042]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Retroactive Waiver of PAR Official Fees

May 4, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b-4 thereunder,[2] notice is hereby given that, on April 25, 2011, Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") 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 CBOE. 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

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to retroactively waive PAR Official Fees for the month of February 2011. 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'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, CBOE 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. CBOE 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 Exchange proposes to retroactively waive PAR Official Fees for the month of February 2011.

Background

The Exchange established PAR Official [3] Fees in January 2011.[4] These fees apply to all orders executed by a PAR Official, except for customer orders ("C" origin code) that are not directly routed to the trading floor (an order that is directly routed to the trading floor is directed to a PAR Official for manual handling by use of a field on the order ticket). The PAR Official Fees established in January 2011 were $.02 per contract and a discounted rate of $.01 per contract for crossed orders.[5] PAR Official Fees help to offset the Exchange's costs of providing PAR Official services (*e.g.,* salaries, *etc*).

After establishing PAR Official Fees, the Exchange became concerned that the PAR Official Fee structure did not allocate these fees to take into consideration the amount that Trading Permit Holders rely on PAR Officials such that those Trading Permit Holders that incidentally use PAR Officials were assessed the same fee as Trading Permit Holders that routinely conduct their business through PAR Officials and rely heavily on PAR Officials for the execution of orders. Reliance on PAR Officials as the primary means of execution is inconsistent with the Exchange's intent to provide PAR Official services as a supplementary means of execution for incidental orders. Heavy reliance on PAR Officials subjects the Exchange to the additional expense and undue strain of providing the additional staffing of PAR Officials.

PAR Official Fees compensate the Exchange for providing overflow services to order originating firms or, as applicable, executing firms, particularly Floor Brokers,[6] when they do not have personnel available to act as agent. Some Trading Permit Holders or TPH organizations obtain only one or two Floor Broker Trading Permits, making it unlikely that, regardless of business level, they could cover all locations on the Exchange and thus rely on CBOE personnel as part of the Floor Broker's daily, ongoing business operations. The Exchange believes that those firms that rely heavily on PAR Officials to conduct their floor brokerage business, such that PAR Officials execute more than an incidental number of orders on their behalf, may obtain a minimum number of Trading Permits to access the floor. Thus, these firms subsidize their floor brokerage operations at CBOE's expense in that PAR Officials are either contractors paid by CBOE or CBOE employees. Trading Permit Holders that adequately staff their business operations and rely incidentally on PAR Officials incur higher costs to retain a sufficient number of Trading Permits.[7] The Exchange determined such Trading Permit Holders should not be subject to the same amount for PAR Official Fees incurred by a Trading Permit Holder that relies disproportionately on PAR Officials to conduct its floor brokerage business because it does not maintain

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A PAR Official is an Exchange employee or independent contractor whom the Exchange may designate as being responsible for (i) operating the PAR workstation in a Designated Primary Market-Maker trading crowd with respect to the classes of options assigned to him/her; (ii) when applicable, maintaining the book with respect to the classes of options assigned to him/her; and (iii) effecting proper executions of orders placed with him/her. The PAR Official may not be affiliated with any Trading Permit Holder that is approved to act as a Market-Maker. *See* CBOE Rule 7.12.

[4] *See* Securities Exchange Act Release No. 67301 (January 11, 2011), 76 FR 2934 (January 18, 2011) (SR–CBOE–2010–116).

[5] PAR Official Fees for crossed orders, like Floor Brokerage Fees, are assessed at a discounted rate because these fees are assessed "per side" and thus, these fees are equal to the amount assessed for one standard (non-crossed) order.

[6] CBOE Rule 6.70 provides: "A Floor Broker is an individual (either a Trading Permit Holder or a nominee of a TPH organization) who is registered with the Exchange for the purpose, while on the Exchange floor, of accepting and executing orders received from Trading Permit Holders or from registered broker-dealers. A Floor Broker shall not accept an order from any other source unless he is the nominee of a TPH organization approved to transact business with the public in accordance with Rule 9.1. In the event the organization is approved pursuant to Rule 9.1, a Floor Broker who is the nominee of such organization may then accept orders directly from public customers where (i) the organization clears and carries the customer account or (ii) the organization has entered into an agreement with the public customer to execute orders on its behalf. Among the requirements a Floor Broker must meet in order to register pursuant to Rule 9.1 is the successful completion of an examination for the purpose of demonstrating an adequate knowledge of the securities business."

[7] For example, pursuant to Section 10 of CBOE's Fees Schedule, Floor Broker Trading Permit Holders are subject to a $6,000 per month Trading Permit Fee. A Floor Broker Trading Permit Holder that requires ten Floor Broker Trading Permits to adequately staff its business is subject to a cost of $60,000 per month for Trading Permit Fees (totaling $720,000 per year). By comparison, a Trading Permit Holder that routes the majority of its orders to PAR Officials for execution and maintains one Trading Permit is subject to a $6,000 per month Trading Permit Fee ($72,000 annually).