

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61329; File No. SR-CBOE-2009-101]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Professional Fees

January 11, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 24, 2009, 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, II and III 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

CBOE is proposing to amend its Fees Schedule as it relates to fees for certain orders. 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, 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

On December 17, 2009, the Securities and Exchange Commission approved a proposed rule change by the CBOE to

establish a Professional<sup>3</sup> designation.<sup>4</sup> This designation provides that certain non-broker-dealer customers will participate in CBOE's allocation process on equal terms with broker-dealer orders. In the aforementioned filing, the Exchange represented that it intends to establish, via a separate rule filing, transaction fees applicable to Professionals. In accordance with that representation, the Exchange now proposes to amend its fees schedule to establish the transaction fees that would be applicable to Professional orders. These fees will be commencing on January 4, 2010.

The Exchange proposes to charge Professional orders in the same manner that it charges Voluntary Professional orders. Specifically, Professional orders will be charged a \$0.20 per contract transaction fee in all equity options and options on indexes, exchange-traded funds and holding company depository receipts (except those listed below). The Exchange proposes a \$0.40 per contract transaction fee in DXL, OEX, XEO, and DVS options and all volatility index options, and a \$0.85 per contract transaction fee in credit default and credit default basket options. The Exchange proposes to amend footnote 14 (index option surcharge fee) to clarify that the Surcharge Fee would apply to Professionals.

The Exchange notes that the Options Regulatory Fee contained in section 12 will apply to Professionals as it currently does to Voluntary Professionals (no changes to the text are needed to reflect this).<sup>5</sup> In addition, the Exchange notes that, as with Voluntary Professionals, Professional orders will not be subject to the order handling system order cancellation fee contained in section 14 (no changes to the text are needed to reflect this).

Lastly, the Exchange is proposing one other change to its fees schedule that will be applicable to both Voluntary Professional orders and Professional orders. Specifically, the Exchange is proposing to amend section 20 (non-customer linkage fees) to provide that the non-customer linkage fees will be

assessed on Voluntary Professional orders and Professional orders.<sup>6</sup>

###### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>8</sup> of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities. The proposed fee changes would enable the Exchange to implement the Professional designation.

###### 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 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

Because the foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(2)<sup>10</sup> thereunder. At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

<sup>6</sup> Under the non-customer linkage fee, for any non-customer order routed to other exchanges, CBOE assesses the following costs to the member that submitted the non-customer order to CBOE: (i) Charge a \$0.05 per contract routing fee, (ii) pass through all actual charges assessed by the away exchange(s) (these are calculated on an order-by-order basis since different away exchanges charge different amounts), and (iii) charge CBOE's customary execution fees applicable to the order. The routing fee helps offset costs incurred by the Exchange in connection with using an unaffiliated broker-dealer to access other exchanges. Passing through charges assessed by other exchanges for "linkage" executions and charging for related CBOE executions are appropriate because non-customer order flow can route directly to those exchanges if desired and the Exchange chooses not to absorb those costs at this time.

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

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 19b-4(f)(2).

<sup>3</sup> See CBOE Rule 1.1(ggg).

<sup>4</sup> See Securities Exchange Act Release No. 61198 (December 17, 2009) (SR-CBOE-2009-078).

<sup>5</sup> The Options Regulatory Fee is assessed by CBOE to each member for all options transactions executed or cleared by the member that are cleared by The Options Clearing Corporation ("OCC") in the customer range, excluding Linkage orders, regardless of the exchange on which the transaction occurs. Professional orders, which will use order origin code "W," are cleared in the customer range at OCC.

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

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

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-CBOE-2009-101 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-2009-101. 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,<sup>11</sup> 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 CBOE. 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-

2009-101 and should be submitted on or before February 9, 2010.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-823 Filed 1-15-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61326; File No. SR-Phlx-2009-113]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Index Option Position Limits

January 11, 2010.

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 December 29, 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, pursuant to Section 19(b)(1) of the Act<sup>3</sup> and Rule 19b-4 thereunder,<sup>4</sup> proposes to increase the position limits<sup>5</sup> for certain narrow-based (industry) index option contracts.<sup>6</sup> Phlx also proposes to amend Rule 1001A to delete obsolete references to index options which no longer trade on the Exchange, and to delete the word "Phlx" from the term "Phlx/KBW Bank Index".

The text of the proposed rule change is set forth below. Proposed new language is in italics and deleted language is bracketed.

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

<sup>15</sup> 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.

<sup>5</sup> Position limits generally impose a ceiling on the number of option contracts in each class on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls) that can be held or written by an investor or group of investors acting in concert.

<sup>6</sup> Also known as Sector Index Options.

Rule 1001A.

#### Position Limits

(a) Except as otherwise indicated, the position limit for a broad-based (market) index option shall be 25,000 contracts on the same side of the market. All other broad-based (market) index options contracts shall be subject to a contract limitation fixed by the Exchange, which shall not be larger than the limits provided in this section (a), except certain positions must be aggregated in accordance with paragraph (d) or (e) below:

[(i) Respecting the Value Line Composite Index, VLE, and the U.S. Top 100 Index, TPX, 75,000 contracts total, of which no more than 45,000 contracts can be in the nearest expiration month.

(ii) Respecting the National Over-the-Counter Index, XOC, 75,000 contracts total.

(iii) Respecting the Nasdaq Composite Index, (1) 50,000 contracts total for full-size options, with 30,000 contracts in the nearest expiration month, and (2) 500,000 contracts total for mini size options, with 300,000 contracts total in the nearest expiration month.]

(i[v]) Respecting the Full Value Russell 2000® Options and the Reduced Value Russell 2000® Options, there shall be no position limits.

(i[v]) Respecting the Full Value Nasdaq 100 Options and the Reduced Value Nasdaq 100 Options, there shall be no position limits.

(b)(i) In determining compliance with Rule 1001, option contracts on a narrow-based (industry) index shall, subject to the procedures specified in subparagraph (iii) of this rule, be subject to the following position limits:

—18,000 contracts (*or 54,000 contracts for options on the PHLX Oil Service Sector, PHLX Semiconductor Sector, PHLX Utility Sector, PHLX Gold/Silver Sector, PHLX Housing Sector, SIG Energy MLP Index, SIG Oil Exploration & Production Index and the NASDAQ China Index*) if the Exchange determines, at the time of a review conducted pursuant to subparagraph (ii) of this paragraph (b), that any single underlying stock accounted, on average, for 30% or more of the index value during the 30-day period immediately preceding the review; or

—24,000 contracts (*or 72,000 contracts for options on the PHLX Oil Service Sector, PHLX Semiconductor Sector, PHLX Utility Sector, PHLX Gold/Silver Sector, PHLX Housing Sector, SIG Energy MLP Index, SIG Oil Exploration & Production Index and the NASDAQ China Index*) if the Exchange determines, at the time of a review conducted pursuant to subparagraph (ii) of this paragraph (b), that any single underlying stock accounted, on average, for 20% or more of the index value or that any five underlying stocks together accounted, on average, for more than 50% of the index value, but that

<sup>11</sup> The text of the proposed rule change is available on CBOE's Web site at <http://www.cboe.org/legal>, on the Commission's Web site at <http://www.sec.gov>, at CBOE, and at the Commission's Public Reference Room.