

investors and the public interest. Permitting the Exchange to accommodate possible customer requests and allow execution of trades on the Exchange will encourage competition and not harm investors or the public interest.

#### *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) of the Act<sup>12</sup> and Rule 19b-4(f)(6)<sup>13</sup> thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the Exchange has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of 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.<sup>14</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>15</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay period. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. In particular, the Exchange would be permitted to list the restricted series

solely for the purpose of closing transactions as long as the restricted series is listed on another national securities exchange. In addition, the proposed rule change is substantially similar to the rules of CBOE.<sup>16</sup> The Commission therefore designates the proposal operative upon filing.<sup>17</sup>

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, or otherwise in furtherance of the purposes of the Act.<sup>18</sup>

### 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-Phlx-2009-90 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-2009-90. 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 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 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-2009-90 and should be submitted on or before November 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60881; File No. SR-OCC-2009-16]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change relating to Its Market Loan Program To Allow Dividend Equivalent Payments To Be Principally Effected Through The Depository Trust Company's Facilities

October 26, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on September 28, 2009, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. OCC filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>2</sup> and Rule 19b-4(f)(4)<sup>3</sup> thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

<sup>19</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>3</sup> 17 CFR 240.19b-4(f)(4).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> Phlx has satisfied this requirement.

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>16</sup> See CBOE Rules 5.4 and 5.4.12(b).

<sup>17</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>18</sup> 15 U.S.C. 78s(b)(3)(C).

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change would amend OCC's rules relating to its Market Loan Program to allow Dividend Equivalent Payments to be principally effected through The Depository Trust Company's ("DTC") facilities.

### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>4</sup>

#### *(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

With respect to a stock loan effected under OCC's Market Loan Program ("Market Loan"), OCC guarantees payments in lieu of cash dividends and distributions ("Dividend Equivalent Payments") that a lending clearing member is entitled to receive with respect to the loaned stock during the term of such Market Loan. OCC's guaranty is limited to the amount for which OCC has collected margin from the responsible borrowing clearing member prior to the expected payment date. Until now, OCC has effected collections and payments of Dividend Equivalent Payments between the relevant clearing members through its daily cash settlement system. However, clearing members participating in the Market Loan Program are now requesting that Dividend Equivalent Payments be made through DTC's Automatic Dividend Tracking Services ("Dividend Service"). In order to accommodate such request, OCC proposes to amend its Rules as described below.

OCC proposes to amend paragraph (a)(ii) of Rule 2206A so that Dividend Equivalent Payments would be effected through DTC's facilities on each payment date by transfers from and to the relevant clearing members with such transfers flowing through OCC's account at DTC in order to maintain anonymity

between lenders and borrowers.<sup>5</sup> In order to provide reasonable assurance that there would not be any net settlement obligations against OCC's account at the end of any day, OCC is reserving the authority to remove a Market Loan from the Dividend Service and is reserving the authority to make null and void any obligation to effect such payments through DTC's facilities. Once such authority is exercised, Dividend Equivalent Payments for such Market Loans would no longer be settled through DTC's facilities. Instead, they would be settled through OCC's cash settlement system on the next business day to the extent that, as described above, OCC had already collected sufficient margin from the responsible borrowing clearing member. The new procedure for processing Dividend Equivalent Payments will be applied to Market Loans effected on and after October 2, 2009.

Although OCC will no longer serve as the primary channel through which collections and payments of Dividend Equivalent Payments are made, OCC will continue to collect margin with respect to such Dividend Equivalent Payments based on calculations provided by a loan market. Furthermore, OCC will continue to have no liability to a clearing member for errors in a loan market's calculations. Accordingly, OCC also proposes to amend Paragraph (a)(ii) of Rule 2206A to provide clarification with respect to such calculations and OCC's liability.

The proposed rule change is consistent with Section 17A of the Act,<sup>6</sup> as amended, because it will streamline the processing of Dividend Equivalent Payments thereby promoting the prompt and accurate clearance and settlement of securities lending transactions.

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

OCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

#### *(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments relating to the proposed rule change were not and are not intended to be solicited or received.

<sup>5</sup> Preserving anonymity between lenders and borrowers is important to the operation of the Market Loan Program because the Market Loan Program is intended to provide a framework within which securities lending transactions will be executed, mostly on an anonymous basis, through electronic trading systems.

<sup>6</sup> 15 U.S.C. 78q-1.

OCC will notify the Commission of any written comments received by OCC.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>7</sup> and Rule 19b-4(f)(4)<sup>8</sup> thereunder because the proposed rule change effects a change in an existing service of OCC that: (i) Does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of OCC or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2009-16 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Elizabeth M. Murphy, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-OCC-2009-16. 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

<sup>4</sup> The Commission has modified the text of the summaries prepared by OCC.

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>8</sup> 17 CFR 240.19b-4(f)(4).

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 such filings also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at [http://www.theocc.com/publications/rules/proposed\\_changes/sr\\_occ\\_09\\_16.pdf](http://www.theocc.com/publications/rules/proposed_changes/sr_occ_09_16.pdf). 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-OCC-2009-16 and should be submitted on or before November 20, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60877; File No. SR-Phlx-2009-92]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the TOPO Plus Orders Data Feed

October 26, 2009.

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 21, 2009, NASDAQ OMX PHLX, Inc. ("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 make available without charge a direct data product related to the trading of standardized options on the Exchange's enhanced electronic trading platform for options, Phlx XL II.<sup>3</sup> Specifically, the Exchange is proposing to establish and deploy a direct data feed product called Top of Phlx Options Plus Orders ("TOPO Plus Orders"), which will include disseminated Exchange top-of-market data (including orders, quotes and trades), together with all information that is included in the Exchange's Specialized Order Feed ("SOF") as described more fully below.

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 make available without charge the TOPO Plus Orders data feed.

On June 5, 2009, the Exchange launched the Phlx XL II system, which was subject to a symbol-by-symbol rollout schedule that was completed on July 23, 2009 (the "rollout"). Currently, all options listed on the Exchange are traded on Phlx XL II. In conjunction with the launch and rollout of the Phlx XL II system, the Exchange developed the Top of Phlx Options data feed

("TOPO")<sup>4</sup> which provides to subscribers a direct data feed that includes the Exchange's best bid and offer position, with aggregate size, based on displayable order and quoting interest on the Phlx XL II system. The data contained in the TOPO data feed is identical to the data sent to the processor for the Options Price Regulatory Authority ("OPRA"), and the TOPO and OPRA data leave the Phlx XL II system at the same time.

In conjunction with the deployment of Phlx XL II, the Exchange represented that, within 90 days following the completion of the rollout,<sup>5</sup> it will offer a data feed (TOPO Plus Orders) to all market participants, which would include disseminated Exchange top-of-market data (including orders, quotes and trades) and all information that is included in SOF.

The SOF provides to its users real-time information to keep track of the single order book(s), single and complex orders, complex strategy and Live Auction for all symbols for which the user is configured. Users may be configured for one or more symbols. SOF provides real-time data for the entire book to its users. It is a compilation of limit order data resident in the Exchange's limit order book for options traded on the Exchange that the Exchange provides through a real-time data feed. The Exchange updates SOF information upon receipt of each displayed limit order. For every limit price, the SOF includes the aggregate order volume.

TOPO Plus Orders responds to the desire of some market participants for depth-of-book data. TOPO Plus Orders will provide top of book data to its users, together with the same data provided to SOF users. The Exchange represents that it will send this data to TOPO Plus Orders users no later than it will send such data to SOF users, and that it will make the data feed available to any market participant that wishes to subscribe to it.

The Exchange anticipates that it will eventually phase out SOF and make available TOPO to users that want only top of book data, and TOPO Plus Orders to users that want both top of book data and the real-time full limit order book data feed.

Initially, the Exchange will not charge fees for TOPO Plus. The Exchange contemplates that it will propose to charge fees for the use of TOPO Plus Orders. The Exchange will submit a

<sup>4</sup> See Securities Exchange Act Release No. 60459 (August 7, 2009), 74 FR 41466 (August 17, 2009) (SR-Phlx-2009-54).

<sup>5</sup> Specifically, by October 21, 2009.

<sup>9</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>3</sup> See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32).