

sections. Section II of the Exchange's Fee Schedule currently states that it includes options overlying equities, ETFs, HOLDRS,<sup>5</sup> BKX,<sup>6</sup> RUT,<sup>7</sup> RMN,<sup>8</sup> MNX<sup>9</sup> and NDX.<sup>10</sup> Section III of the Exchange's Fee Schedule currently states that it includes options overlying currencies, equities, ETFs, indexes and HOLDRS not listed on another exchange. The Exchange is proposing to add ETNS to both Sections II and III and assess the same rates that are currently assessed ETFs and other equity options today.

The Exchange is not proposing to amend any fees.<sup>11</sup> The Exchange would apply the same rates that apply to ETFs today to ETNs. A similar proposal was filed by the Chicago Board Options Exchange, Incorporated ("CBOE") to apply the ETF rates to ETNs and include references to ETNs in the fee schedule.<sup>12</sup>

The Exchange is also proposing to make conforming amendments to the Table of Contents and Section IV, titled PIXL Pricing, of the Fee Schedule.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>14</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that it is reasonable to add ETNs specifically to Sections II and III because it would codify the Exchange's existing practice of assessing fees for ETN options in a manner similar to ETF options. This proposal would add clarity to the Exchange's Fee Schedule.

The Exchange believes that it is equitable because the fees in Sections II and III would be uniformly applied to

all market participants transacting equity options in symbols other than those listed in Section I of the Fee Schedule.

### 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>15</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 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-2011-38 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-2011-38. 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 should refer to File Number SR-Phlx-2011-38 and should be submitted on or before April 26, 2011.

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

Cathy H. Ahn,  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64151; File No. SR-Phlx-2011-40]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Rebates and Fees for Adding and Removing Liquidity in Select Symbols

March 30, 2011.

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 March 24, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities

<sup>5</sup> HOLDRS are Holding Company Depository Receipts.

<sup>6</sup> BKX represents the KBW Bank Index.

<sup>7</sup> RUT represents the options on the Russell 2000® Index (the "Full Value Russell Index" or "RUT").

<sup>8</sup> RMN represents options on the one-tenth value Russell 2000® Index<sup>6</sup> (the "Reduced Value Russell Index" or "RMN").

<sup>9</sup> MNX represents options on the one-tenth value of the Nasdaq 100 Index traded under the symbol MNX ("MNX").

<sup>10</sup> NDX represents options on the Nasdaq 100 Index<sup>10</sup> traded under the symbol NDX ("NDX").

<sup>11</sup> This fee proposal would not impact any equity options transacted in any of the symbols which are listed in Section I of the Exchange's Fee Schedule titled "Rebates and Fees for Adding and Removing Liquidity in Select Symbols."

<sup>12</sup> See Securities Exchange Act Release No. 62579 (July 28, 2010), 75 FR 47329 (August 5, 2010) (SR-CBOE-2010-068).

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4).

<sup>15</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.

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 Section I of the Exchange’s Fee Schedule titled “Rebates and Fees for Adding and Removing Liquidity in Select Symbols,” specifically to amend the Select Symbols.<sup>3</sup>

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on April 1, 2011.

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 Statutory Basis for, the Proposed Rule Change**

##### **1. Purpose**

The purpose of the proposed rule change is to amend the list of Select Symbols in Section I of the Exchange’s Fee Schedule, titled “Rebates and Fees for Adding and Removing Liquidity in Select Symbols” in order to attract additional order flow to the Exchange.

The Exchange displays a list of Select Symbols in its Fee Schedule at Section I, “Rebates and Fees for Adding and Removing Liquidity in Select Symbols,”

that are subject to the rebates and fees in that section. Among those symbols is ON Semiconductor Corp (“ONNN”), which the Exchange is proposing to remove from the list of Select Symbols. The Exchange is also proposing to add Silver Wheaton Corp. (“SLW”) to the list of Select Symbols in Section I.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on April 1, 2011.

##### **2. Statutory Basis**

The Exchange believes that its proposal to amend its Fee 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 and other persons using its facilities.

The Exchange believes that it is reasonable to remove ONNN from its list of Select Symbols and add SLW to its list of Select Symbols to attract additional order flow to the Exchange. The Exchange anticipates that the addition of SLW to Section I of the Fee Schedule would attract market participants to transact equity options at the Exchange because of the available rebates. In addition, the Exchange believes that applying the fees in Section II to ONNN, including the opportunity to receive payment for order flow, would also attract order flow to the Exchange.

The Exchange believes that it is equitable to amend the list of Select Symbols by removing ONNN and adding SLW because the list of Select Symbols would apply uniformly to all categories of participants in the same manner. All market participants who trade the Select Symbols would be subject to the rebates and fees in Section I of the Fee Schedule. Also, all market participants would be uniformly subject to the fees in Section II.

#### **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 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-2011-40 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-2011-40. 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 website (<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

<sup>3</sup> The term “Select Symbols” refers to the symbols which are subject to the Rebates and Fees for Adding and Removing Liquidity in Section I of the Exchange’s Fee Schedule.

<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).

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 website 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 should refer to File Number SR-Phlx-2011-40 and should be submitted on or before April 26, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64152; File No. SR-CFE-2011-001]

### Self-Regulatory Organizations; CBOE Futures Exchange, LLC; Notice of a Proposed Rule Change To Amend Certain Rules Relating to Listing and Trading Security Futures

March 30, 2011.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on March 18, 2011, CBOE Futures Exchange, LLC ("CFE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in Items I, II, and III below, which Items have been prepared by CFE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. CFE also filed this proposed rule change concurrently with the Commodity Futures Trading Commission ("CFTC"). CFE filed a written certification with the CFTC under Section 5c(c) of the Commodity Exchange Act ("CEA")<sup>2</sup> on March 18, 2011.

#### I. Self-Regulatory Organization's Description of the Proposed Rule Change

The Exchange proposes to amend certain rules relating to the listing and trading of security futures on the Exchange. The changes are being proposed to conform certain CFE rules to current parallel rules of OneChicago, LLC ("OCX"). The text of the proposed rule change is available on the Exchange's Web site at <http://www.cfe.cboe.com>, on the Commission's Web site at <http://www.sec.gov>, 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, CFE 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. CFE 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 this proposed rule is to amend certain rules governing the listing and trading of security futures on the Exchange. The changes are being made to conform certain CFE rules to current parallel rules of OCX.

###### Regulatory Halt Amendments

CFE is proposing to amend Rule 417 by adding provisions for regulatory halts. OCX made a similar rule change to make clear that a "regulatory halt" applies not only to the suspending of all trading in equity securities on the underlying national securities exchange but also to a trading pause on an individual underlying equity security that has been imposed by the rules of the national securities exchange.<sup>3</sup> CFE is also proposing to amend CFE Policy and Procedure III by adding a cross-reference to Rule 417 and setting forth the ability of the help desk to bust any trade in a Single Stock Future or in a

Narrow-Based Index Future that occurs after the time a regulatory halt is instituted and before trading has been resumed in the affected Single Stock Future or Narrow-Based Index Future.

###### Change Quoting Requirements for Market Makers

CFE is proposing to amend Rule 517 and CFE Policy and Procedure VII to change the quoting requirements for Market Makers. Presently, a market maker, when providing quotations, quotes with a maximum bid/ask spread of no more than the greater of \$0.20 (the "20 Cent Spread") of 150 percent of the bid/ask spread in the primary market for the security underlying the Security Future. The proposed rule change will raise the 20 Cent Spread to \$5. This change will be affected by amending subparagraph (n) to Rule 517 and subparagraph C to CFE Policy and Procedure VII. OCX made a similar rule change raising its 20 Cent Spread to \$5, which was nearly identical to one approved by the SEC for security options.<sup>4</sup>

###### Maintenance Standard Amendments

First, CFE is proposing to amend CFE Policy and Procedure VIII by eliminating the \$3 market price maintenance standard. This change will be affected by deleting subparagraph B.1.(v) to CFE Policy and Procedure VIII. OCX made a similar rule change eliminating the \$3 market price per share requirement, which was nearly identical to one approved by the SEC for security options.<sup>5</sup>

Second, CFE is proposing to eliminate the prohibition against opening trading in a Single Stock Future with a new delivery month unless the issuer of the underlying satisfies applicable Exchange Act reporting requirements, or corrects any failure within 30 days after the date the report was due to be filed. This change will be affected by deleting subparagraph B.2.(i) to CFE Policy and Procedure VIII. OCX made a similar rule change eliminating this maintenance requirement, which was nearly identical to one approved by the SEC for security options.<sup>6</sup>

<sup>4</sup> See Securities Exchange Act Release No. 60143 (June 19, 2009), 74 FR 30345 (June 25, 2009) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Widening the Bid/Ask Spread for Quoting Market-Makers) (SR-OC-2009-02).

<sup>5</sup> See Securities Exchange Act Release No. 59744 (April 9, 2009), 74 FR 17706 (April 16, 2009) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Eliminating the \$3 Market Price Maintenance Standard) (SR-OC-2009-01).

<sup>6</sup> See Securities Exchange Act Release No. 54454 (September 15, 2006), 71 FR 5539 (September 22, 2006) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Listing

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(7).

<sup>2</sup> 7 U.S.C. 7a-2(c).

<sup>3</sup> See Securities Exchange Act Release No. 62582 (July 28, 2010), 75 FR 47039 (August 4, 2010) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by OneChicago, Amending Rule 419(a), Regulatory Halts) (SR-OC-2010-03).