

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-BX-2010-059 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-BX-2010-059. 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 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 publicly available. All submissions should refer to File Number SR-BX-2010-059 and should be submitted on or before June 2, 2011.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2

Amendment No. 2 revised the proposed rule change, as modified by Amendment No. 1, to, among other things: (1) Explain the process of reviewing companies for initial listing, including conducting background checks on companies and associated individuals, and the use of third-party

investigative firms; (2) clarify the Exchange's discretionary authority to deny listing to or delist companies based on regulatory concerns; (3) add provisions relating to the internal structure and experience of those charged with oversight of the listing program; (4) describe market oversight activities for BX Venture Market-listed securities; (5) detail the use of market center identifiers to distinguish companies listed on the BX Venture Market; (6) add restrictions on ticker symbol length; and (7) clarify the consolidation of BX Venture Market data with over-the-counter information for the same securities. These amendments clarify aspects of the proposal, are responsive to commenters' concerns about investor protection and brand confusion, and strengthen the listing standards of the BX Venture Market. Accordingly, the Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,²⁴⁴ for approving the proposed rule change, as modified by Amendment No. 2, prior to the 30th day after the date of publication of notice in the **Federal Register**.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁴⁵ that the proposed rule change (SR-BX-2010-059), as modified by Amendment Nos. 1 and 2, be, and hereby is, approved on an accelerated basis.

It is further ordered that operation of the BX Venture Market is conditioned on the satisfaction of the requirements below:

A. Market Data Display. BX must update its global market data policy document and must enter into amended data distribution agreements to require data vendors to prominently identify the listing market for BX Venture Market-listed securities before the market begins operations. In addition, BX must represent in a letter to the staff in the Commission's Division of Trading and Markets that such policy document and agreements have been amended and that the provisions in such documents that require data vendors to prominently identify or display the listing market for BX-listed securities will be effective with respect to all vendors that distribute BX-listed securities data at the time the BX Venture Market begins operations.

B. Regulatory Services Agreement. Before the BX Venture Market begins operations, BX and FINRA must enter into a regulatory services agreement

relating to regulatory activities to be conducted by FINRA as described above.

C. Examination by the Commission. BX must have, and represent in a letter to the staff in the Commission's Office of Compliance Inspections and Examinations that it and FINRA have, adequate regulatory procedures and programs in place to effectively regulate the BX Venture Market and its listing program, and adequate procedures and programs in place to effectively process trades and maintain the confidentiality, integrity, and availability of the Exchange's systems, before the BX Venture Market begins operations.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴⁶

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2011-11610 Filed 5-11-11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64414; File No. SR-CBOE-2011-045]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the CBOE Stock Exchange Fees Schedule

May 5, 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 29, 2011, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") 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 proposes to amend the CBOE Stock Exchange ("CBSX") Fees Schedule. 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.

²⁴⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²⁴⁴ 15 U.S.C. 78s(b)(2).

²⁴⁵ 15 U.S.C. 78s(b)(2).

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

This filing proposes to make changes to the CBSX Fees Schedule. The first change is to eliminate the symbol "Q" from the stocks listed in footnote 3 which are subject to certain transaction fees. The symbol "Q" is being deleted because the stock is no longer available for trading on CBSX.

The Exchange also proposes to eliminate transaction fees and rebates for NBBO Step-Up Trades. Such trades were only available through CBSX's "flash" process. The Commission approved the deletion of CBSX's "flash" rule on April 6, 2011.³ As such, the Exchange proposes to delete these now-obsolete fees from the Fees Schedule.

CBSX further proposes to modify the transaction fees for a cross trade that is the stock component of a qualified contingent trade. Currently, the fee is \$.0010 per share, with a maximum rate of \$20 per trade. The Exchange proposes increasing the fee to \$.0012 per share and increasing the maximum rate to \$25 per trade. CBSX proposes these increases in order to better recoup costs associated with such trades.

These changes will take effect on May 2, 2011.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),⁴ in general, and furthers the objectives of Section 6(b)(4)⁵ of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among persons using Exchange

facilities. CBSX proposes eliminating obsolete references to the symbol "Q" and the fees that were only applicable to the now-nonexistent "flash" process from its Fees Schedule in order to avoid investor confusion. The evasion of confusion is consistent with the objectives of Section 6(b)(5)⁶ of the Act of ensuring that the rules of the Exchange are designed to perfect the mechanism of a free and open market and to protect investors and the public interest. CBSX proposes increasing transaction fees for a cross trade that is the stock component of a qualified contingent trade to provide for the equitable allocation of such fees in accordance with Section 6(b)(4)⁷ of the Act. The fee will be same regardless of user, therefore ensuring that such fees are allocated equitably and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.⁸

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 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

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A) of the Act⁹ and subparagraph (f)(2) of Rule 19b-4¹⁰ thereunder. 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.

⁶ 15 U.S.C. 78f(b)(5).

⁷ See *supra* note 5.

⁸ This sentence was revised at the request of the Exchange. See e-mail from Jeff Dritz, Attorney, CBOE, to Steve Kuan, Special Counsel, Division of Trading and Markets, Commission, on May 5, 2011.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(2).

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-CBOE-2011-045 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-2011-045. 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 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-2011-045 and should be submitted on or before June 2, 2011.

³ See Securities Exchange Act Release No. 64200 (April 6, 2011), 76 FR 20406 (April 12, 2011) (SR-CBOE-2011-036).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011-11583 Filed 5-11-11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64415; File No. SR-Phlx-2011-56]

Self-Regulatory Organizations; The NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change To Establish a Qualified Contingent Cross Order for Execution on the Floor of the Exchange

May 5, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4² thereunder, notice is hereby given that on May 4, 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, 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 is filing with the Commission a proposal to amend PHLX Rule 1064(e) to establish a Floor Qualified Contingent Cross Order (“Floor QCC Order”). The Floor QCC Order will facilitate the execution of stock/option Qualified Contingent Trades that satisfy the requirements of the trade through exemption in connection with Rule 611(d) of Regulation NMS (“QCT Trade Exemption”).³

The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, 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

On February 24, 2011, the Commission issued an order approving SR-ISE-2010-073, a proposal by the ISE to establish a Qualified Contingent Cross (“ISE QCC Proposal”). The ISE QCC Proposal was controversial, attracting opposition from multiple exchanges including PHLX. In its comment letter on the ISE QCC Proposal, PHLX asserted that the QCC Proposal deviated from “long-held principles in the options market by permitting the crossing of orders without requiring prior exposure” and that the ISE QCC Proposal failed adequately to protect customers with orders resting on the ISE limit order book.⁴

The Commission, in a thorough and thoughtful decision, concluded that the QCC Proposal—including the lack of prior order exposure—is consistent with the Act. With respect to order exposure, the Commission stated:

While the Commission believes that order exposure is generally beneficial to options markets in that it provides an incentive to options market makers to provide liquidity and therefore plays an important role in ensuring competition and price discovery in the options markets, it also has recognized that contingent trades can be “useful trading tools for investors and other market participants, particularly those who trade the securities of issuers involved in mergers, different classes of shares of the same issuer, convertible securities, and *equity derivatives such as options* [italics added]” and that “[t]hose who engage in contingent trades can benefit the market as a whole by studying the

relationships between the prices of such securities and executing contingent trades when they believe such relationships are out of line with what they believe to be fair value.” As such, the Commission stated that transactions that meet the specified requirements of the NMS QCT Exemption could be of benefit to the market as a whole, contributing to the efficient functioning of the securities markets and the price discovery process.⁵

The Approval Order succinctly sets forth the material elements of ISE’s Qualified Contingent Cross:

Thus, as modified, an ISE member effecting a trade pursuant to the NMS QCT Exemption could cross the options leg of the trade on ISE as a QCC Order immediately upon entry, without exposure, only if there are no Priority Customer orders on the Exchange’s limit order book at the same price and if the order: (i) Is for at least 1,000 contracts; (ii) meets the six requirements of the NMS QCT Exemption; and (iii) is executed at a price at or between the NBBO (“Modified QCC Order”). In the Notice, ISE stated that the modifications to the Original QCC Order (*i.e.*, to prevent the execution of a QCC if there is a Priority Customer on its book and to increase the minimum size of a QCC Order) remove the appearance that such orders are trading ahead of Priority Customer orders or that the QCC Order could be used to disadvantage retail customers (citations omitted).⁶

The Exchange believes that the Commission, having considered and addressed all arguments in favor and in opposition to the QCC, has established binding precedent under which other exchanges can establish a QCC Order that is also consistent with the Act.

In keeping with that precedent, PHLX hereby proposes to add PHLX Rule 1064(e) to establish a Floor QCC Order based on the precedent of ISE’s QCC Order.⁷ Specifically, PHLX proposes to amend Rule 1064 to provide that a PHLX member effectuating a trade on the floor of the Exchange pursuant to the Regulation NMS Qualified Contingent Trade Exemption to Rule 611(a) (“QCT Exemption”) can cross the options leg’s of the trade on PHLX as a Floor QCC Order immediately upon entry and without order exposure if no Customer Orders⁸ exist on the

⁵ Approval Order at p. 28 (citing to Regulation NMS QCT Exemption).

⁶ *Id.* at p. 18.

⁷ PHLX previously established an electronic QCC Order set forth in PHLX Rule 1080(o). See Securities Exchange Act Release No. 64249 (April 7, 2011), 76 FR 20773 (April 13, 2011) (SR-Phlx-2011-047).

⁸ PHLX will reject QCC Orders that attempt to execute when any Customer orders are resting on the Exchange limit order book at the same price. ISE QCC Orders will be cancelled only when they encounter resting orders of Priority Customers. The

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006); Securities Exchange Act Release No. 57620 (April 4, 2008), 73 FR 19271 (April 9, 2008).

⁴ See Letter, dated August 13, 2010, from Thomas Wittman, President, NASDAQ OMX PHLX to Elizabeth Murphy, Secretary, U.S. Securities and Exchange Commission.