

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68532; File No. SR-OCC-2012-25]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Schedule of Fees, Effective January 2, 2013, to Charge Non-Clearing Member Subscribers of Certain Non-Proprietary Data an Additional Monthly Fee to Accommodate Request for Such Data on a Real-Time Basis

**DATES:** December 21, 2012.

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 14, 2012, 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)(ii) of the Act,<sup>3</sup> and Rule 19b-4(f)(2)<sup>4</sup> thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this Notice to solicit comments on the proposed rule change from interested persons.

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

OCC is amending its Schedule of Fees, effective January 2, 2013, so that it may charge an additional monthly fee to non-clearing member subscribers ("Subscribers") of certain non-proprietary data that elect to receive such data on a real-time basis.

#### II. Self-Regulatory Organization's Statement of 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 rule change and discussed any comments it received on the 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 such statements.<sup>5</sup>

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

The purpose of this rule change is to amend OCC's Schedule of Fees so that OCC may charge non-clearing members a \$250 per month fee if they elect to subscribe to a service that provides real-time series information data. OCC provides a variety of options-related data to Subscribers including data reflecting the symbol, expiration date, strike price, listed exchanges, and activation/inactivation date of a particular option ("Series Information Data"). Currently, OCC distributes Series Information data to Subscribers through a batch process at the end of each OCC business day.

Subscribers to Series Information data have requested that such data be provided on a real-time basis throughout each OCC business day in order to better meet the needs of their customers (*i.e.*, options traders).

OCC determined that it can readily implement systems and processes to accommodate real-time feeds of Series Information data to Subscribers; however, implementation of such systems and processes will result in initial and ongoing costs incurred by OCC. To offset these costs, OCC plans to charge a \$250 per month fee to Subscribers receiving real-time Series Information data. OCC will continue to offer Series Information data through the existing end-of-day batch process for Subscribers not interested in subscribing to the real-time service at the rates of \$1,750.00 per month for non-distribution and \$3,000.00 per month for distribution, as currently set forth in the Schedule of Fees, and use such batch process as back-up to the real-time service should the real-time service become temporarily unavailable.

The rule change is consistent with Section 17A of the Act because it promotes prompt and accurate settlement of securities transactions by enhancing an existing service provided to non-clearing members. In addition, OCC believes the monthly fee increase is minimal and non-clearing members may elect not to receive the Series Information Data in real-time to avoid the fee increase. The proposed rule change is not inconsistent with any rules of OCC, including any other rules proposed to be amended.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe the rule change would 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 were not and are not intended to be solicited with respect to the rule change and none have been 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)<sup>6</sup> of the Act and Rule 19b-4(f)(2)<sup>7</sup> thereunder because it establishes or changes a due, fee, or other charge. OCC will delay the implementation of the rule change until it is deemed certified under CFTC Regulation § 40.6. At any time within 60 days of the filing of the 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.<sup>8</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-OCC-2012-25 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-OCC-2012-25. This file number should be included on the subject line if email 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

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

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

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

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

<sup>5</sup> The Commission has modified the text of the summaries prepared by OCC.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(C).

amendments, all written statements with respect to the rule change that are filed with the Commission, and all written communications relating to the 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 10:00 a.m. and 3:00 p.m. Copies of such filing 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/components/docs/legal/rules\\_and\\_bylaws/sr\\_occ\\_12\\_25.PDF](http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_12_25.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–2012–25 and should be submitted on or before January 22, 2013.

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

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68517; File No. SR–Phlx–2012–136]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to the Distribution of Auction Messages

December 21, 2012.

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 December 11, 2012, NASDAQ OMX PHLX LLC (“Phlx” or “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 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 Rule 1080(m) to provide for the distribution of auction messages for certain orders.

The Exchange proposes this amendment become operative on January 2, 2013.

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 Rule 1080 titled “Phlx XL and Phlx XL II,” which describes the Exchange's fully automated options trading system.<sup>3</sup> Specifically, the Exchange seeks to amend an aspect of the order handling rules related to routing orders to away markets in Rule 1080(m).

Currently, when the Exchange's disseminated bid or offer (“PBBO”) is inferior to the away best bid or offer (“ABBO”) the Phlx XL II system will

<sup>3</sup> This proposal refers to “PHLX XL<sup>®</sup>” as the Exchange's automated options trading system. 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.

route FIND <sup>4</sup> and SRCH <sup>5</sup> Orders with no other contingencies as specified in Rule 1080(m) and will place contracts designated as not available for routing (“DNR”) <sup>6</sup> on the Phlx book.

With respect to routable FIND and SRCH orders, today the Phlx XL II system has a Route Timer which provides for a system pause for a period not to exceed one second.<sup>7</sup> When the Route Timer is initiated, Phlx XL II participants and other market participants are provided an opportunity to interact with the FIND or SRCH order. During the Route Timer, the FIND or SRCH order is included in the PBBO at a price one MPV away from the ABBO. If, during the Route Timer, any new interest arrives opposite the FIND or SRCH order that is equal to or better than the ABBO price, the FIND or SRCH order will trade against such new interest at the ABBO price.<sup>8</sup>

At this time, the Exchange is proposing to expose orders by broadcasting a notification to all Phlx XL II participants and other market participants who have elected to receive such notifications<sup>9</sup> at the time that a FIND or SRCH order is received by Phlx

<sup>4</sup> A FIND order is an order that is routable upon receipt during open trading. Only a customer FIND order on the Phlx XL II book, whether it is received prior to the opening or it is a GTC FIND order from a prior day, may be routed as part of the Opening Process. Non-customer FIND orders are not eligible for routing during the Opening Process. Once the Opening Process is complete, any FIND order is either eligible to trade at the Phlx price or placed on the Phlx book either at its limit price or at a price that is one Minimum Price Variation (“MPV”) from the ABBO price if it would otherwise lock or cross the ABBO. Such FIND order will not be eligible for routing until the next time the option series is subject to a new Opening Process. See Rule 1080 (m)(iv)(B).

<sup>5</sup> A SRCH order is a customer order that is routable at any time. A SRCH order on the Phlx XL II book during the Opening Process (including a re-opening following a trading halt), whether it is received prior to the opening or it is a GTC SRCH order from a prior day, may be routed as part of the Opening Process. Once the Opening Process is complete, a SRCH order is eligible either to: (1) Trade at the Phlx price if that price is equal to or better than the ABBO or, if the ABBO is better than the Phlx price, orders have been routed to better priced markets for their full size; or (2) be routed to better priced markets if the ABBO price is the best price, and/or (3) be placed on the Phlx XL II book at its limit price if not participating in the Phlx opening at the opening price and not locking or crossing the ABBO. Once on the book, the SRCH order is eligible for routing if it is locked or crossed by an away market. See Rule 1080 (m)(C).

<sup>6</sup> A DNR order will never be routed outside of Phlx regardless of the prices displayed by away markets. See Rule 1080(m)(iv)(A). In addition, responses may not trade through the away market. See Rule 1084.

<sup>7</sup> See Rule 1080(m)(iv)(B) and (C).

<sup>8</sup> *Id.*

<sup>9</sup> The Exchange will broadcast the notifications as specified below in the filing. Only subscribers to certain data feeds will receive the notifications. The notification will identify the size and the side of the market in addition to the exposed price.

<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.