

necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes the proposal is pro-competitive. First, the proposal would enable the Exchange to provide market participants with an opportunity to execute their strategies wholly on their preferred market, namely the Exchange. And second, the proposal would diminish the potential for foregone market opportunities on the Exchange caused by the need to use a more advantageous (that is, interval-precise) platform than STOs currently allow.

*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**

Within 45 days of the publication date of this notice in the **Federal Register** or within such longer period (1) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (2) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove such proposed rule change; or
- (B) Institute proceedings to determine whether the proposed rule change should be 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. In addition, the Commission specifically requests comment on the following:

- As outlined in detail above in Item II.A.1, Phlx has proposed that the interval between strike prices on STOs shall be \$0.50 or greater where the strike price is less than \$75 and \$1 or greater where the strike price is between \$75 and \$150. The International Securities Exchange, LLC ("ISE") has proposed a similar rule change to its short term option series program (the "ISE STOS Program") that would allow trading at \$0.50 strike price intervals for option classes that trade in \$1 increments and are in the ISE STOS Program.<sup>25</sup> Do commenters have any views regarding implementation of both the ISE Proposal

and the instant proposal, if approved, that the Commission should take into consideration? If so, please provide detail.

- Both Phlx and ISE included within their respective filings a discussion of the anticipated impact of its proposal on capacity and liquidity.<sup>26</sup> Do commenters have views on whether, and if so how, implementation of both the ISE Proposal and the instant proposal, if approved, would impact liquidity or capacity that the Commission should take into consideration? If so, please provide detail.

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 Number SR-Phlx-2012-78 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-2012-78. 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 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 10:00 a.m. and 3:00 p.m. The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov>. 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-2012-78 and should be submitted on or before August 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-17713 Filed 7-19-12; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-67443; File No. SR-OCC-2012-11]

**Self-Regulatory Organizations; Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to the Auction Process Under Options Clearing Corporation Rule 1104**

July 16, 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 July 3, 2012, The Options Clearing Corporation ("OCC") 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 primarily by OCC. 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**

Among other things, the proposed rule change would add an interpretation .02 to Rule 1104 to provide a further general description of such a private auction process by which OCC may liquidate all or any part of a suspended Clearing Member's accounts.

**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

<sup>25</sup> See Securities Release No. 67083 (May 31, 2012), 77 FR 33543 (June 6, 2012) (SR-ISE-2012-33) (the "ISE Proposal").

<sup>26</sup> See ISE Proposal, *id.*, at 33545; *supra*, pp. 8, 10.

<sup>27</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 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 self-regulatory organization 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*

In a recent rule change, OCC proposed and the Commission approved provisions to OCC Rule 1104 and Rule 1106 to specifically provide that, in addition to all other permitted means of liquidating positions and collateral in the accounts of a suspended Clearing Member, OCC may, at its discretion, liquidate such positions and collateral through a private auction process.<sup>3</sup> The purpose of the current proposed rule change is to add an interpretation .02 to Rule 1104 to provide a further general description of such a private auction process by which OCC may liquidate all or any part of a suspended Clearing Member's accounts. The proposed interpretation would set forth the basic parameters of such an auction, including the process for creating a standing pool of pre-qualified potential bidders, criteria for fixing the number of bidders to participate in any particular auction and the method of selection of such bidders. Such criteria are intended to ensure an orderly and robust auction and to ensure that auction bidders are financially able to make payment for and assume the obligations of the collateral and positions they are acquiring and able to manage the risk thereof and/or trade out of the positions without creating unnecessary further risk to the Corporation. Interpretations cross-referencing interpretation .02 to Rule 1104 would be added following Rules 1106, 1107, 2210, and 2210A, and the latter three rules are proposed to be amended to provide that the auction process is applicable to assets and obligations arising from exercised and assigned options and matured, physically-settled futures and to assets and obligations arising from the close-out of stock loan and borrow positions as well.

Each private auction will be a "sealed bid" auction in which pre-qualified bidders selected by OCC will submit confidential bids such that no bidder will know the bid information of any of the other bidders. The pool of prequalified potential bidders in any auction would consist of all Clearing Members who are interested in participation and willing to execute the required documentation. Participation in the pre-qualified bidder pool by certain non-Clearing Members would also be solicited. Should the Corporation determine to hold a private auction, the Corporation will review the pool of pre-qualified auction bidders and would seek to invite a fixed number of bidders for the auction based on objective criteria that the Corporation believes would optimize the effectiveness of the auction process. OCC believes that fixing the size of the desired bidder group at a number that is either too large or too small could have an adverse impact on the effectiveness and competitiveness of the auction process. A group that is too small would not provide adequate competition among bidders, while setting the target size for the group of bidders at too large a number would discourage participation because of fear that the composition of the portfolios to be bid on would be leaked beyond the bidder group, allowing non-bidders to trade ahead of the auction to the disadvantage of bidders in the auction. Attempting to organize too large a group of bidders would also cause potentially costly delay in the auction process. OCC would most likely use its secure ENCORE system or telephone contact to invite selected pre-qualified bidders to submit bids in the private auction. No invited bidder would be obligated to bid in the private auction.

At the conclusion of a private auction, OCC will, in its discretion, select the best bid submitted for the auctioned portfolio based on the totality of the circumstances.<sup>4</sup> For example, where an auction portfolio has a negative net asset value, negative bids may be submitted which indicate how much OCC would be required to pay a bidder to assume the auction portfolio, and the lowest rather than the highest bid may therefore be the best bid. Other factors such as any condition attached to a bid may influence the choice of best bid.

Finally, in order to increase legal certainty under potentially applicable provisions of the Uniform Commercial

Code, the proposed interpretations would require Clearing Members to acknowledge that the private auction process is a commercially reasonable method of liquidating a suspended Clearing Member's accounts and that notice of a private auction to a suspended Clearing Member is not required under the auction process.

OCC believes that the proposed changes to OCC's Rules are consistent with the purposes and requirements of Section 17A of the Act, because they are designed to assure the safeguarding of securities and funds which are in the custody or control of OCC by providing appropriate procedures for the auctioning of positions and collateral of a suspended clearing member. The changes are intended to facilitate the performance of OCC's obligations with respect to the prompt and accurate clearance and settlement of securities transactions and the protection of securities investors and the public interest. The proposed rule change is not inconsistent with the By-Laws and Rules of OCC, including any proposed to be amended.

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

OCC does not believe that the proposed 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 proposed rule change and none have been received.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be 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.

<sup>3</sup> See Exchange Act Release No. 65654 (October 28, 2011), 76 FR 68236 (November 3, 2011) (SR-OCC-2011-08) (Order Approving Proposed Rule Change, as Modified by Amendment No. 1, to Provide Specific Authority to Use an Auction Process As One of the Means to Liquidate a Defaulting Clearing Member's Accounts).

<sup>4</sup> The Staff notes for clarity that OCC has no specific procedures to announce auctions or their results other than notices to the winning bidders and losing bidders as specified in proposed Rule 1104(e).

Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commissions 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 Number SR-OCC-2012-11 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-2012-11. 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 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 Section, 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 filings will also be available for inspection and copying at the principal office of OCC and on OCC's Web site at [http://www.optionsclearing.com/components/docs/legal/rules\\_and\\_bylaws/sr\\_occ\\_12\\_11.pdf](http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_12_11.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-2012-11 and should be submitted on or before August 10, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-17664 Filed 7-19-12; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-67444; File No. SR-NYSEMKT-2012-20]**

### **Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 134—Equities To Shorten the Time Frame for Assigning the Contra Party to Unresolved Account Balances in the Exchange's Online Comparison System**

July 16, 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 July 5, 2012, NYSE MKT LLC ("Exchange" or "NYSE MKT") 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 134—Equities to shorten the time frame for assigning the contra party to unresolved account balances in the Exchange's Online Comparison System. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), 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 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 Statutory Basis for, the Proposed Rule Change*

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

The Exchange proposes to amend Exchange Rule 134(e)(iii)—Equities (Differences and Omissions-Cleared Transactions) to shorten the time frame for assigning a designated market maker ("DMM") unit as the contra party for any unresolved omnibus account balances in the Exchange's Online Comparison System ("OCS").

##### **Background**

The Exchange operates its OCS to assist in trade settlement. OCS conducts comparison processing, which includes matching initial trade submissions, correction processing, omnibus processing and questioned trade ("QT") resolution for trades that take place on the Exchange. The OCS system is used by Exchange members and member organizations in their roles as clearing firms, brokers and DMM units for Exchange trade executions. OCS is linked internally to Exchange trading systems and externally to The National Securities Clearing Corporation.<sup>3</sup>

To facilitate the comparison process, the Exchange utilizes omnibus account designations to record trade data.<sup>4</sup> Using omnibus account designations allows for universal contras for one trade side, reducing the number of different data elements that have to be independently recorded into a broker's hand-held device or written on a Floor report for a trade.

In May 2009, the Exchange amended Rule 134—Equities to enable it to assign, on the second business day after the trade date ("T+2"), any open balance in any of the omnibus accounts it uses to compare trades to either a DMM Unit or the member organization that has been identified as the clearing firm for one side of an unresolved trade.<sup>5</sup> Specifically, the Exchange added new subsection (e)(iii) to Rule 134—

<sup>3</sup> National Securities Clearing Corporation ("NSCC") is a clearing agency registered with the Commission under Section 17A of the Securities Exchange Act of 1934. NSCC provides centralized clearance and settlement services for equity security trades for U.S. broker-dealers.

<sup>4</sup> An "omnibus account" is an account in which the transactions of multiple individual participants are combined.

<sup>5</sup> See Securities Exchange Act Release No. 59997 (May 28, 2009), 74 FR 28086 (June 12, 2009) (SR-NYSEAmex-2009-20).

<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

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