

products would submit transactions in eligible futures products to the account for clearance.

OCC is amending its current By-Laws and Rules governing internal cross-margining to create rules similar to the rules of the long-standing cross-margining program between OCC and CME, for example, for affiliated clearing members. In the case of the cross-margining programs between OCC and other DCOs, there are two accounts at the clearing level—one at each of the participating clearing organizations. In the internal cross-margining program, there is no need for two separate accounts, which would in any event be margined together and for which the affiliated clearing members would in any event be jointly and severally liable as they are for the two accounts in the case of the OCC–CME program.

Article VI, Section 25(b) of OCC's By-Laws currently requires clearing members to obtain a "Market Professional's Agreement for Internal Cross-Margining" from each market professional whose positions are included in an Internal Non-Proprietary Cross-Margining Account. OCC will use a modified form of this agreement for the account held jointly by a pair of affiliated clearing members.<sup>6</sup> OCC does not intend to require current participants in the internal cross-margining program to obtain reexecuted agreements in updated form because the modifications are clarifications only and not substantive changes.

As in the case of the existing internal cross-margining program, the Internal Non-Proprietary Cross-Margining Account would be treated as a segregated futures account under Section 4d of the CEA and, in accordance with Appendix B to Part 190 of the CFTC's regulations, would be separately segregated from the regular segregated futures account that an OCC clearing member may maintain under Article VI, Section 3(f) of OCC's By-Laws. In order to expand the internal cross-margining program to include accounts carried by pairs of affiliated

clearing members, OCC has requested that the CFTC either issue a new or amended order under Section 4d of the CEA.<sup>7</sup>

### III. Comment Letters

The Commission received one comment letter opposing the proposed rule change<sup>8</sup> and one comment letter in favor of the proposed rule change.<sup>9</sup> OCC responded to the letter in opposition to the proposal.<sup>10</sup> The commenter opposing OCC's proposal stated that there was "no universal advantage to commingled monies or other valued properties" and that he "visualize[d] the possibility of from [sic] frequent disagreements between the Dual Registrants and OCC." In its response, OCC disagreed and stated that cross-margining programs "are consistent with clearing agency responsibilities under Section 17A of the Securities Exchange Act of 1934 and are highly beneficial to the clearing organizations, its clearing members and the public."<sup>11</sup> OCC also stated in its response that the internal cross-margining program is limited to OCC clearing members and that participation in the program is completely voluntary. OCC response also indicated that it was not aware of any disagreements between dual registrants and OCC over the many years that the various cross-margining agreements have been in operation.

The commenter in support of OCC's proposed rule change stated he supported the proposal because it "would harmonize the manner in which OCC conducts its internal cross-margining program with the manner in which existing cross-margining programs between OCC and other derivatives clearing organizations (e.g., the Chicago Mercantile Exchange) are conducted."<sup>12</sup>

### IV. Discussion

Section 17A(b)(3)(F) of the Act<sup>13</sup> requires, among other things, that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. Since it granted approval of the first

cross-margining program in 1988,<sup>14</sup> the Commission has found that cross-margining programs are consistent with clearing agency responsibilities under Section 17A of the Act<sup>15</sup> and highly beneficial to the clearing organization, its clearing members, and the public. The Commission has found that cross-margining programs enhance clearing member and systemic liquidity both in times of normal market conditions and in times of stress. They result in lower initial margin deposits, which can reduce the risk that a clearing member will become insolvent in a distressed market and the risk of a ripple effect of multiple insolvencies caused by the demise of a major market participant.<sup>16</sup>

### V. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>17</sup> and the rules and regulations thereunder.

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> that the proposed rule change (File No. SR–OCC–2011–03) be, and hereby is, approved.<sup>19</sup>

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011–15850 Filed 6–23–11; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64705; File No. SR–Phlx–2011–83]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to a Remote Specialist Fee

June 20, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>14</sup> Securities Exchange Act Release No. 34–26153 (October 3, 1988), 53 FR 39567 (October 7, 1988).

<sup>15</sup> 15 U.S.C. 78q–1.

<sup>16</sup> Securities Exchange Act Release No. 34–32708 (August 2, 1993), 58 FR 42586 (August 10, 1993).

<sup>17</sup> 15 U.S.C. 78q–1.

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>20</sup> 17 CFR 200.30–3(a)(12).

<sup>6</sup> The proposed form of the agreement, titled "Market Professional's Agreement for Internal Cross-Margining (Affiliated Clearing Members)" is attached as Exhibit 5A to the proposed rule change filing. The existing "Market Professional's Agreement for Internal Cross-Margining" applicable to the internal cross-margining program for single clearing members has been renamed "Market Professional's Agreement for Internal Cross-Margining (Single Clearing Member)" and is attached as Exhibit 5B to the proposed rule change filing. In addition to modifying the title to the form of the agreement applicable to single clearing members, a sentence has been added at the end of paragraph seven of that agreement to conform it to the corresponding provision in the form of the agreement for affiliated clearing members.

<sup>7</sup> OCC will not implement the internal cross-margining program for affiliated clearing members until after such time that the CFTC has issued an order or amended order under Section 4d of the CEA as discussed above.

<sup>8</sup> Letter from Gene Thomas, *supra* note 3.

<sup>9</sup> Letter from Andrew Margolin, *supra* note 3.

<sup>10</sup> Letter from OCC, *supra* note 3.

<sup>11</sup> *Id* at 1.

<sup>12</sup> See BofA Letter at 2.

<sup>13</sup> 15 U.S.C. 78q–1(b)(3)(F).

(“Act”)<sup>1</sup>, and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on June 13, 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 proposes to adopt a new fee entitled “Remote Specialist Fee.”

While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on July 2, 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 recoup costs associated with maintaining a remote specialist post on the Exchange’s trading floor.

The Exchange recently amended Rule 501, Specialist Appointment, and Rule 1020, Registration and Functions of Options Specialists, to allow qualified Exchange members to act as off-floor specialists in one or more options classes (“Remote Specialist”).<sup>3</sup> In

conjunction with recent amendments, the Exchange will staff and administer a physical location or post on the trading floor to provide on-floor market participants with a physical location to trade in options classes allocated to a Remote Specialist. This physical location on the Exchange’s trading floor will require Exchange operations and regulatory staff to be present at this post. As such, the Exchange would incur additional operational and regulatory costs to maintain this post and seeks to defray such costs by assessing a Remote Specialist Fee.

The Exchange is proposing to assess Remote Specialists a monthly fee of \$50 per option allocation.<sup>4</sup> The Exchange would cap the fee at \$4,500 per month. The Exchange notes that the \$4,500 proposed cap is equivalent to the Specialist Post Fee<sup>5</sup> which is currently assessed on on-floor Specialists.<sup>6</sup>

While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on July 2, 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>7</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>8</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that this Remote Specialist Fee is reasonable because it seeks to recoup costs that are incurred by the Exchange for maintaining a defined physical location

or post on the Exchange’s trading floor to facilitate interaction amongst market participants located on the Exchange’s physical trading floor. The Exchange also believes the proposal is reasonable because the Exchange proposes to cap the Remote Specialist Fee at \$4,500 per month, which is equal to the maximum fees the Exchange assesses on-floor Specialists for the Specialist Post Fee.

The Exchange believes that the proposed Remote Specialist Fee is equitable because it would be uniformly applied to all Remote Specialists.

#### **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>9</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–2011–83 on the subject line.

Phlx–2011–79). A Remote Specialist is an options specialist in one or more classes that may not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Rule 501.

<sup>4</sup> Pursuant to Rule 507, Application for Approval as an SQT or RSQT and Assignment in Options, a Remote Specialist must meet certain requirements to be approved as an RSQT. Rule 507(b)(i) describes the process for the assignment of options. See Exchange Rule 507. An RSQT is defined in Exchange Rule 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

<sup>5</sup> The Exchange assesses a Specialist Post fee of \$1,125 per month for a quarter post and \$4,500 per month for a full post with a maximum of \$4,500 per month. See Exchange’s Fee Schedule. The Specialist posts are designed to facilitate Specialist interaction with the trading crowd. See Securities Exchange Act Release No. 59852 (April 30, 2009), 74 FR 21424 (May 7, 2009) (SR–Phlx–2009–39).

<sup>6</sup> Specialists are members who are registered as options specialists pursuant to Rule 1020(a). See Exchange Rule 1020.

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

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<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. 64591 (June 8, 2011), 76 FR 33383 (June 2, 2011) (SR–

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

## 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–2011–83. 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–2011–83 and should be submitted on or before July 15, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011–15776 Filed 6–23–11; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64707; File No. 600–23]

**Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Order Approving an Extension of Temporary Registration as a Clearing Agency**

June 20, 2011.

The Securities and Exchange Commission (“Commission”) is publishing this notice and order to solicit comments from interested persons and to extend the Fixed Income Clearing Corporation’s (“FICC”) temporary registration as a clearing agency through June 30, 2013.<sup>1</sup>

On February 2, 1987, pursuant to Sections 17A(b) and 19(a) of the Securities Exchange Act of 1934 (“Act”) <sup>2</sup> and Rule 17Ab2–1 promulgated thereunder,<sup>3</sup> the Commission granted the MBS Clearing Corporation (“MBSCC”) registration as a clearing agency on a temporary basis for a period of eighteen months.<sup>4</sup> The Commission subsequently extended MBSCC’s registration through June 30, 2003.<sup>5</sup>

On May 24, 1988, pursuant to Sections 17A(b) and 19(a) of the Act<sup>6</sup> and Rule 17Ab2–1 promulgated thereunder,<sup>7</sup> the Commission granted the Government Securities Clearing Corporation (“GSCC”) registration as a clearing agency on a temporary basis for a period of three years.<sup>8</sup> The Commission subsequently extended GSCC’s registration through June 30, 2003.<sup>9</sup>

<sup>1</sup> FICC is the successor to MBS Clearing Corporation and Government Securities Clearing Corporation.

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

<sup>3</sup> 17 CFR 240.17Ab2–1.

<sup>4</sup> Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218.

<sup>5</sup> Securities Exchange Act Release Nos. 25957 (August 2, 1988), 53 FR 29537; 27079 (July 31, 1989), 54 FR 34212; 28492 (September 28, 1990), 55 FR 41148; 29751 (September 27, 1991), 56 FR 50602; 31750 (January 21, 1993), 58 FR 6424; 33348 (December 15, 1993), 58 FR 68183; 35132 (December 21, 1994), 59 FR 67743; 37372 (June 26, 1996), 61 FR 35281; 38784 (June 27, 1997), 62 FR 36587; 39776 (March 20, 1998), 63 FR 14740; 41211 (March 24, 1999), 64 FR 15854; 42568 (March 23, 2000), 65 FR 16980; 44089 (March 21, 2001), 66 FR 16961; 44831 (September 21, 2001), 66 FR 49728; 45607 (March 20, 2002), 67 FR 14755; 46136 (June 27, 2002), 67 FR 44655.

<sup>6</sup> *Supra* note 2.

<sup>7</sup> *Supra* note 3.

<sup>8</sup> Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19839.

<sup>9</sup> Securities Exchange Act Release Nos. 25740 (May 24, 1988), 53 FR 19639; 29236 (May 24, 1991), 56 FR 24852; 32385 (June 3, 1993), 58 FR 32405; 35787 (May 31, 1995), 60 FR 30324; 36508 (November 27, 1995), 60 FR 61719; 37983 (November 25, 1996), 61 FR 64183; 38698 (May 30,

On January 1, 2003, MBSCC was merged into GSCC, and GSCC was renamed FICC.<sup>10</sup> The Commission subsequently extended FICC’s temporary registration through June 30, 2011.<sup>11</sup>

On April 11, 2011, FICC requested that the Commission extend FICC’s temporary registration until such time as the Commission is prepared to grant FICC permanent registration.<sup>12</sup>

On March 12, 2008, FICC filed a proposed rule change pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder to introduce central counterparty (“CCP”) and guarantee settlement services to its MBS Division.<sup>13</sup> Currently, FICC acts as the CCP and provides guarantee settlement services for its Government Securities Division members’ eligible U.S. Government securities transactions but does not act as the CCP or provide guarantee settlement services for its MBS Division members’ eligible mortgage-backed securities transactions.

Pursuant to this Notice and Order, the Commission is extending FICC’s temporary registration as a clearing agency in order that FICC may continue to operate as a registered clearing agency and may continue to provide uninterrupted clearing and settlement services to its users. The Commission will consider permanent registration of FICC at a future date after the Commission has acted upon FICC’s proposed rule change to introduce CCP and guarantee settlement services to its MBS Division.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

1997), 62 FR 30911; 39696 (February 24, 1998), 63 FR 10253; 41104 (February 24, 1999), 64 FR 10510; 41805 (August 27, 1999), 64 FR 48682; 42335 (January 12, 2000), 65 FR 3509; 43089 (July 28, 2000), 65 FR 48032; 43900 (January 29, 2001), 66 FR 8988; 44553 (July 13, 2001), 66 FR 37714; 45164 (December 18, 2001), 66 FR 66957; 46135 (June 27, 2002), 67 FR 44655.

<sup>10</sup> Securities Exchange Act Release No. 47015 (December 17, 2002), 67 FR 78531 (December 24, 2002) [File Nos. SR–GSCC–2002–07 and SR–MBSCC–2002–01].

<sup>11</sup> Securities Exchange Act Release Nos. 48116 (July 1, 2003), 68 FR 41031; 49940 (June 29, 2004), 69 FR 40695; 51911 (June 23, 2005), 70 FR 37878; 54056 (June 28, 2006), 71 FR 38193; 55920 (June 18, 2007), 72 FR 35270; 57949 (June 11, 2008), 73 FR 34808; 60189 (June 29, 2009), 74 FR 32198; and 62348 (June 22, 2010), 75 FR 36723.

<sup>12</sup> Letter from Nikki Poulos, Managing Director and General Counsel, FICC (April 11, 2011).

<sup>13</sup> The filed proposed rule change can be viewed at [http://www.dtcc.com/downloads/legal/rule\\_filings/2008/ficc/2008-01.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2008/ficc/2008-01.pdf). See also FICC White Paper: “A Central Counterparty For Mortgage-Backed Securities: Paving The Way” at <http://www.dtcc.com/downloads/leadership/whitepapers/ccp.pdf>.

<sup>10</sup> 17 CFR 200.30–3(a)(12).