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 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, as amended, 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–BX–2010–009 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–2010–009. 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–BX–2010–009 and should be submitted on or before March 17, 2010.

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

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3640 Filed 2–23–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61530; File No. SR–CBOE–2010–014]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Settlement Payment Obligation

February 17, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 3, 2010, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. CBOE has filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(3) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

CBOE is filing this proposed rule change with the Commission under Section 19(b) of the Act in connection with a matter that is concerned solely with the administration of the Exchange.[5]

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

In its filing with the Commission, CBOE 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 CBOE 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange agreed to make a Payment described below pursuant to the Stipulation of Settlement ("Stipulation") into which the Exchange entered on August 20, 2008, with The Board of Trade of the City of Chicago, Inc. ("Board of Trade" or "CBOT"), its parent company CME Group, Inc. ("CME Group"), and a class of persons (collectively, the "CBOT Parties").[6] The Stipulation resolves a lawsuit ("CBOT Lawsuit") brought by the CBOT Parties against the Exchange and its Board of Directors ("CBOE Board").[7] The Court of Chancery of the State of Delaware (the "Delaware Court") approved the Stipulation on June 3, 2009 in a Memorandum Opinion ("Opinion") and entered its Order of Final Approval and Final Judgment on July 29, 2009.[8] On December 2, 2009, the Delaware Supreme Court approved the dismissal of all appeals of the Order of Final Approval and Final Judgment. The dismissal constitutes the final judicial approval of the Stipulation.

The Exchange is filing this proposed rule change in connection with its obligation to make the Payment pursuant to the Stipulation. The

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(3).

[5] 15 U.S.C. 78s(b).

[6] The Stipulation can be found at (*http://www.cboe.org/Legal/pdf/StipulationofSettlement.pdf*). The Stipulation was amended on September 30, 2008 to change, among other things, an eligibility date to participate in the settlement. This first amendment can be found at (*http://www.cboe.org/Legal/pdf/AmendmenttoStipulationofSettlement.pdf*). The Stipulation also was amended on October 6, 2008 to change, among other things, the settlement period. This second amendment can be found at (*http://www.cboe.org/Legal/pdf/SecondAmendment.pdf*).

[7] *CME Group Inc. et al.* v. *CBOE Inc. et al.*, Civil Action No. 2369–VCN (Filed Aug. 23, 2006).

[8] *CME Group Inc. et al.* v. *CBOE Inc. et al.*, Civil Action No. 2369–VCN (Memorandum Opinion dated June 3, 2009). This Opinion can be found at (*http://www.cboe.org/Legal/pdf/_0603134855_001.pdf*).

Exchange has concluded that the Payment is part of the business decision it made to resolve the CBOT Lawsuit, and that its act of making the Payment therefore is concerned solely with the administration of the Exchange. Even though CBOE believes that this rule filing does not implicate its responsibilities as a self-regulatory organization ("SRO"), and thus is not required to be submitted as a proposed rule change, the Exchange is filing it with the SEC out of an abundance of caution because CBOE agreed in the Stipulation to use its best efforts to obtain any necessary SEC approval to make the Payment. CBOE has subsequently concluded that the proposed rule change can be filed under Section 19(b)(3)(A)(iii) of the Exchange Act[9] and Rule 19b–4(f)(3)[10] thereunder because the proposed rule change is concerned solely with the administration of the Exchange. Accordingly, the proposed rule change will take effect upon its filing with the SEC. CBOE has concluded that this rule filing satisfies the conditions for making the payment that are contained in the Stipulation.

(i) Background on the CBOT Lawsuit

As described in the Stipulation, CBOE was established and initially funded by the Board of Trade. As a result, in 1972, the Board of Trade included a right in Article Fifth(b) ("Article Fifth(b)") of CBOE's Certificate of Incorporation—known as the "Exercise Right"—that allows a Board of Trade "member" to become a member of CBOE without separately paying for that membership. Board of Trade members who became CBOE members pursuant to Article Fifth(b) were known as "Exerciser Members." Under CBOE rules, only an individual can become an Exerciser Member.

In response to CBOE's plans to demutualize, the Board of Trade, which had already demutualized, its parent CBOT Holdings, Inc. ("CBOT Holdings"), and two individuals representing a class of certain Board of Trade members filed the CBOT Lawsuit on August 23, 2006. In that lawsuit, the plaintiffs sought, among other things, a declaratory judgment that CBOE was required, by Article Fifth(b) and an agreement interpreting Article Fifth(b), to treat Exerciser Members of CBOE the same in the demutualization as CBOE members who paid for their memberships ("CBOE Seat Owners").

On October 17, 2006, CBOT Holdings and Chicago Mercantile Exchange Holdings, Inc., now known as CME Group, announced a transaction whereby CME Group would merge with CBOT Holdings, and CME Group would survive the merger (the "CME Transaction"), with the Board of Trade becoming a wholly-owned subsidiary of CME Group after the CME Transaction. In response to that announcement, CBOE filed an interpretation of Article Fifth(b) with the Commission on December 12, 2006 pursuant to Section 19(b) of the Exchange Act.[11] In that rule filing (the "Eligibility Rule Filing"), CBOE sought the Commission's approval of its interpretation of Article Fifth(b) that, upon consummation of the CME Transaction, no persons any longer would qualify as "members" of the Board of Trade as that term is used in Article Fifth(b) and that, as a result, no person would be eligible to be an Exerciser Member of CBOE.[12]

On June 6, 2007, CME Group and CBOT Holdings announced that the vote to approve the CME Transaction would take place on July 9, 2007 and that, if approved, the CME Transaction would be consummated immediately thereafter. To address the impact of the CME Transaction on the membership status of Exerciser Members, the CBOE filed Interpretation and Policy .01 of CBOE Rule 3.19 (the "Continued Membership Interpretation") with the SEC on July 2, 2007.[13] The Continued Membership Interpretation, which was effective upon filing, provided that persons who were Exerciser Members in good standing before the consummation of the CME Transaction would temporarily retain their CBOE membership status until the SEC ruled on the Eligibility Rule Filing (persons who temporarily retained their CBOE membership status pursuant to the Continued Membership Interpretation and the Transition Rule Filing (as defined below) are referred to as "CBOE Temporary Members," and the rights they hold are referred to as "Temporary Memberships").[14] On July 9, 2007, the shareholders of CME Group and CBOT Holdings and members of the Board of Trade voted to approve the CME Transaction. The CME Transaction was consummated on July 12, 2007, and the Board of Trade became a wholly-owned subsidiary of CME Group.[15]

On September 10, 2007, CBOE filed Interpretation and Policy .02 of CBOE Rule 3.19 (the "Transition Rule Filing") with the SEC.[16] The Transition Rule Filing, which was effective upon filing, provided that the membership status of CBOE Temporary Members would continue after the SEC approved the Eligibility Rule Filing until, among other things, the consummation of a transaction pursuant to which either CBOE was converted into a stock corporation or memberships in CBOE were converted into stock. Pursuant to the Continued Membership Interpretation and the Transition Rule Filing, all CBOE Temporary Members were required to pay access fees ("Access Fees") to CBOE to have continued trading access to the Exchange.

On January 15, 2008, the SEC approved the interpretation in the Eligibility Rule Filing that no person qualifies to become or remain an Exerciser Member of CBOE pursuant to Article Fifth(b) following the CME Transaction.[17] On March 14, 2008, certain CBOT Parties filed a Petition for Review in the United States Court of Appeals for the District of Columbia Circuit, Case No. 08–1116, seeking review of the SEC order approving the Eligibility Rule Filing (the "Federal Appeal"). The Federal Appeal was dismissed on December 4, 2009, following the termination of the CBOT Lawsuit.

As noted above, CBOE entered into the Stipulation with the CBOT Parties on August 20, 2008 to settle the CBOT Lawsuit. The Stipulation was approved by the CBOE membership on September 17, 2008, and was approved by the Delaware Court on June 3, 2009. The Stipulation, among other things, provides for the payment of consideration to the members of the settlement class.

The Stipulation provides that subject to Commission approval, part of that consideration would be a payment ("Payment") to class members who also qualified as CBOE Temporary Members and who beneficially owned the three parts necessary to be an Exerciser Member on July 11, 2007 ("Eligible

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(3).

[11] 15 U.S.C. 78s(b).

[12] *See* Securities Exchange Act Release No. 55190 (Jan. 29, 2007), 72 FR 5472 (Feb. 6, 2007) (notice of filing of SR–CBOE–2006–106).

[13] *See* Securities Exchange Act Release No. 56016 (Jul. 5, 2007), 72 FR 38106 (Jul. 12, 2007) (notice of filing and immediate effectiveness of SR–CBOE–2007–77).

[14] In order to be an Exerciser Member immediately prior to the CME Transaction, a CBOT "member" needed to hold (i) one B–1 Membership, (ii) one Exercise Right Privilege, and (iii) 27,338 shares of CBOT Common Stock.

[15] As part of the CME Transaction, the 27,338 shares of CBOT Common Stock were converted into 10,251.75 shares of CME Group Common Stock.

[16] *See* Securities Exchange Act Release No. 56458 (Sept. 18, 2007), 72 FR 54309 (Sept. 24, 2007) (notice of filing and immediate effectiveness of SR–CBOE–2007–107).

[17] *See* Securities Exchange Act Release No. 57159 (Jan. 15, 2008), 73 FR 3769 (Jan. 22, 2008) (order approving SR–CBOE–2006–106).

CBOE Temporary Members").[18] The Payment to each such Eligible CBOE Temporary Member would equal the total amount of Access Fees paid to CBOE by such Eligible CBOE Temporary Member during the period from June 1, 2008 to the date CBOE demutualizes ("CBOE Demutualization Date") or the date CBOE is restructured in a different manner ("CBOE Conversion Event Date").[19] The Payment would be measured exclusively in respect of Access Fees that were paid in respect of CBOE Temporary Membership(s) held because the Eligible CBOE Temporary Member beneficially owned the three parts necessary to be an Exerciser Member on July 11, 2007. Under the Stipulation, the Payment would be paid by CBOE within five business days of the later of (i) the CBOE Demutualization Date or the CBOE Conversion Event Date, and (ii) the SEC's order approving CBOE's request to make the Payment.

(ii) Discussion

Under paragraph 22 of CBOE's fee schedule, every CBOE Temporary Member is required to pay a monthly fee to CBOE to have access to the Exchange (*i.e.,* an Access Fee). This paragraph provides in part that this fee "is assessed to each person granted temporary CBOE membership status under CBOE Rule 3.19.02," and that this fee "is non-refundable."

CBOE is filing this proposed rule change to reflect its conclusion that the Payment is part of the business decision it made to resolve the CBOT Lawsuit, and that its act of making the Payment therefore is concerned solely with the administration of the Exchange.[20] In this regard, CBOE believes that while the Payment is measured by the Access Fees paid by Eligible CBOE Temporary Members, it should not be viewed as a refund or waiver of such fees. Rather, it should be viewed as part of the settlement consideration that CBOE made the business decision to pay, as reflected in the Stipulation, to resolve the CBOT Lawsuit. When the Payment is viewed in this manner, CBOE believes that its act of making the Payment is an action concerned solely with the administration of the Exchange. As noted above, CBOE is filing this interpretation out of an abundance of caution, even though CBOE believes that it does not implicate CBOE's obligations as an SRO.

As described above and in detail in the Delaware Court's Opinion, the settlement set forth in the Stipulation is the product of hard-fought negotiations between CBOE and the CBOT Parties. The litigation was commenced by the CBOT Parties in August 2006, but the dispute underlying the litigation—namely, the scope of the Exercise Right—has been subject to disagreements and disputes between CBOE and the CBOT almost since the inception of the Exercise Right in 1972. The settlement is intended to resolve once and for all the disputes over the Exercise Right. The court approved the settlement, including the Payment, finding it to be fair and reasonable.

In approving the Payment, as well as another portion of the total settlement consideration related to Access Fees (collectively with the Payment, the "Additional Payments"), the Delaware Court rejected objections by certain member organizations that the Additional Payments should also be paid to CBOE member organizations. Specifically, the Delaware Court stated that:

> If rights to Additional Payments were opened up to legal entities generally, the exposure of CBOE would increase materially. This is but one part of a much larger settlement negotiation process. In the context of the overall settlement and in recognition that many contested lines had to be drawn, the Court concludes that the conditions for qualifying for Additional Payments were established reasonably. In short, the objections of [those member organizations] to the fairness of the Settlement are overruled. (footnotes omitted)

Thus, the Delaware Court recognized that the Additional Payments, including the Payment, were the product of a highly-negotiated settlement.[21]

In addition to the Delaware Court's approval of the settlement, the CBOE membership voted to approve the settlement on September 17, 2008. Prior to that membership vote, CBOE provided the membership with electronic access to a copy of the Stipulation, as well as an information circular on August 20, 2008 that summarized key settlement terms.[22] This information circular outlined the total settlement consideration, and included a description of the Payment. Thus, CBOE believes that the membership was fully informed that the Payment was part of the settlement consideration that CBOE made the business decision to pay in order to resolve the CBOT Lawsuit. Accordingly, CBOE believes that the Payment should be viewed as such, rather than as a refund or waiver of Access Fees.

CBOE believes that its act of making the Payment does not implicate its responsibilities under Section 6(b)(4) of the Exchange Act, which requires CBOE's rules to "provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities."[23] In this regard, CBOE believes that its act of making the Payment should not viewed as a fee change subject to this provision. Instead, CBOE believes that its act of making the Payment should be viewed as an undertaking to give full effect to the business decision it made to resolve the CBOT Lawsuit.

Similarly, CBOE believes that its act of making the Payment does not implicate its responsibilities under Sections 6(b)(5) and 6(b)(8) of the Exchange Act.[24] Section 6(b)(5) requires CBOE's rules "to promote just and equitable principles of trade" and to avoid "unfair discrimination between customers, issuers, brokers, or dealers,"

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[18] *See supra* note 14. The Payment is referred to in the Stipulation as the "Supplemental Fee Based Payment," and is described in paragraph 36G of the Stipulation.

[19] The Stipulation defines the "CBOE Demutualization Date" as "the date on which the CBOE Demutualization Transaction is effective," the "CBOE Demutualization Transaction" as the "the transaction in which the memberships held by CBOE Seat Owners will be converted into or exchanged for Class A Common Stock of the CBOE Demutualization Entity," and the "CBOE Demutualization Entity" as "CBOE Holdings, Inc., a Delaware stock corporation, or such other Delaware stock corporation, including CBOE, if applicable, the common stock of which is issued to CBOE Seat Owners and [certain members of the settlement class] in the CBOE Demutualization Transaction."

In addition, the Stipulation defines the "CBOE Conversion Event Date" as "the date on which a CBOE Conversion Event is effective," and the "CBOE Conversion Event" as "(i) any consolidation, combination or merger of CBOE with another entity, other than the CBOE Demutualization Transaction, regardless of which entity is the surviving entity, in connection with which CBOE Seat Owners shall be entitled to receive securities, cash, assets, rights or other property or things of value (or any combination thereof) in respect of their memberships, (ii) the sale, lease, transfer, license or other disposition, in a single transaction or series of transactions, of all or substantially all of the assets of CBOE, (iii) any liquidation, dissolution, or winding up of CBOE or (iv) any recapitalization, reorganization or other transaction or event, or series of transactions or events, other than the CBOE Demutualization Transaction, upon the effectiveness of which CBOE Seat Owners shall be entitled to receive securities, cash, assets, rights or other property or things of value (or any combination thereof) upon conversion, sale or other disposition of, or in exchange for, their memberships."

[20] As noted above, CBOE has determined to file the proposed rule change under Section 19(b)(3)(A)(iii) of the Exchange Act and Rule 19b–4(f)(3) thereunder because it is concerned solely with the administration of CBOE. 15 U.S.C. 78s(b)(3)(A)(iii) and 17 CFR 240.19b–4(f)(3).

[21] While the Delaware Court referred to these Additional Payments as "rebates" in its Opinion, we believe that these Additional Payments are more properly characterized as part of the business decision to settle the CBOT Lawsuit.

[22] *See* CBOE Information Circular IC08–143.

[23] 15 U.S.C. 78f(b)(4).

[24] 15 U.S.C. 78f(b)(5) and (b)(8).

and Section 6(b)(8) requires CBOE's rules to "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of" the Exchange Act.[25] CBOE believes that its act of making the Payment should not be viewed as treating an Eligible CBOE Temporary Member differently from a non-Eligible CBOE Temporary Member. Rather, CBOE believes that its act of making the Payment should be viewed as an undertaking to give full effect to the business decision it made to resolve the CBOT Lawsuit.

2. Statutory Basis

For the reasons described above, the Exchange believes that this proposed rule change is not inconsistent with its obligations under Section 6(b) of the Exchange Act.[26] In particular, CBOE believes that its act of making the Payment does not implicate its obligations under Sections 6(b)(4), 6(b)(5) and 6(b)(8) of the Exchange Act,[27] or other obligations it has under Section 6(b) of the Exchange Act.[28] Rather, CBOE believes that its act of making the Payment should be viewed as an undertaking to give full effect to the business decision it made to resolve the CBOT Lawsuit.

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 that is 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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [29] and subparagraph (f)(3) of Rule 19b–4 thereunder.[30] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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.

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–2010–014 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–2010–014. 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 self-regulatory organization. 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–2010–014 and should be submitted on or before March 17, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–3641 Filed 2–23–10; 8:45 am]

BILLING CODE 8011–01–P

[25] *Id.*

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(4), (b)(5) and (b)(8).

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78s(b)(3)(A)(iii).

[30] 17 CFR 240.19b–4(f)(3).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61529; File No. SR–Phlx–2010–17]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to the Options Regulatory Fee

February 17, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on February 4, 2010, NASDAQ OMX PHLX, Inc. ("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 amend its Options Regulatory Fee.

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, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.