



**Patrick J. Fay**  
Senior Vice President  
Member and Regulatory Services

Phone: 312 766-7925  
Fax: 312 786-7575  
fayp@cboe.com

January 5, 2010

Via Electronic Submission

Elizabeth M. Murphy  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: Comment Letter to SR-PHLX-2009-100

Dear Ms. Murphy:

Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) is submitting this comment letter with respect to the above captioned proposed rule change filed by Nasdaq-OMX-PHLX, Inc. (“PHLX”), which proposes to eliminate registered representative fees and establish an options regulatory fee (“ORF”). The Exchange wishes to make the following points with respect to the proposed rule change.

CBOE does not oppose efforts by other self-regulatory organizations (“SROs”) to adopt an ORF. The Exchange’s concerns with any effort to implement an ORF involve whether the specific ORF rate and resulting level of revenue collected by an SRO is appropriate given the SRO’s real regulatory costs. In connection with its rule filing to establish an ORF<sup>1</sup>, the Exchange confidentially provided to the SEC detailed information regarding the cost of the Exchange’s regulatory programs, current regulatory fee revenue and the revenue expected to be generated by the ORF. The Exchange expects that any SRO proposing to adopt an ORF will be required to provide the SEC with a similar cost analysis in support of its ORF proposal.

In addition, the Exchange made a statement in its rule filing that its total regulatory fee revenue (not including regulatory fine revenue) covers only a portion of its regulatory costs. CBOE’s ORF is charged to a subset of activity (customer-range transactions) and therefore revenue collected from the ORF is only a subset of the Exchange’s total regulatory revenue. A portion of dues and fees paid by CBOE members also help to pay the costs of regulation. The Exchange is concerned that customers not pay the entire cost of regulation and therefore requests that the Commission take this issue into consideration when reviewing any proposal to establish an ORF.

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<sup>1</sup> See Securities Exchange Act Release No. 58817 (October 20, 2008), 73 FR 63744 (October 27, 2008).

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The Exchange is heartened by the industry's move to ORF type fee structures. The Exchange believes this type of fee structure, based on trading volume and unlikely to be avoided by creative corporate structures, is fair, equitable, reasonable, and offers the least amount of administrative burden.

CBOE appreciates the opportunity to provide these comments. Should you require any further information, please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick J. Fay", is written over a printed name.

Patrick J. Fay

cc: Richard Holley III (SEC)  
Edward Joyce  
Timothy Thompson  
Joanne Moffic-Silver  
Lawrence Bresnahan