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Via Electronic Mail

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090
rule-comments@sec.gov

Re: Comment Letter to SR-Phlx-2011-143¹

Dear Ms. Murphy:

Chicago Board Options Exchange, Incorporated ("CBOE") hereby submits comments on the proposed rule change by NASDAQ OMX PHLX LLC ("Phlx") to modify the criteria for listing options on an underlying covered security. Specifically, Phlx proposes to modify Phlx Rule 1009, Commentary .01(4)(i) to permit the listing of an option on an underlying covered security that has a market price of at least \$3 per share on the business day immediately preceding the date on which Phlx submits a certificate to The Options Clearing Corporation ("OCC") for listing and trading.² Of note, Phlx does not intend to amend any other initial criteria for listing options on any underlying security in Phlx Rule 1009 and accompanying Commentary.

Overall, CBOE supports the objective of the Phlx filing, which is to permit the listing of options on covered securities to occur sooner. However, as is described in more detail below, CBOE questions how this proposed amendment can be implemented in connection with the other initial listing criteria; in particular, the "holders" requirement.

CBOE and Phlx have identical initial listing criteria for underlying covered securities³, which include the following:

- Minimum of 7 million shares of the underlying security must be owned by persons other than those required to report their stock holdings under Section 16(a) of the Securities Exchange of 1934 ("34 Act");
- Minimum 2,000 holders of the underlying security;
- The issuer must be in compliance with any applicable requirements of the '34 Act;

¹ See Securities Exchange Act Release No. 65706 (November 8, 2011), 76 FR 70520 (November 14, 2011) (noticing SR-Phlx-2011-143).

² Pursuant to the Options Listing Procedure Plan ("OLPP"), when an exchange certifies a new class for listing, the option class must be eligible on the date the selected option class was initially certified for listing and trading by the selecting exchange. A copy of the OLPP may be accessed as: <http://www.theocc.com/clearing/industry-services/olpp.jsp>.

³ See Interpretation and Policy .01 to CBOE Rule 5.3 and Commentary .01 to Phlx Rule 1009.

- Trading volume (in all markets in which the underlying security is traded) has been at least 2.4 million share in the preceding twelve months; and
- The underlying covered security must have a closing market price of \$3 per share for the five consecutive business days preceding the date on which the listing exchange submitted a listing certificate to the OCC.

Phlx states in its filing,

In the proposed amendment, the market price will still be measured by the closing price reported in the primary market in which the underlying covered security is traded; however, the measurement will be the price on the business day immediately preceding the submission of the listing certificate, instead of the prior five consecutive business days.

* * * * *

For example, if an initial public offering occurs at 11 a.m. on Monday, the earliest date the Exchange could submit its listing certificate to OCC would be on Tuesday by 12:01 a.m. (Chicago time), with the market price determined by the closing price on Monday.

Using the example of the initial public offering ("IPO"), CBOE is unsure how the 2,000 holders requirement will be confirmed on the day after an IPO. Stock trades clear within three business days (T+3) of their trade date and when an exchange submits a new class certificate to the OCC, the underlying security must be eligible for options trading on the day the certification is submitted. CBOE believes that it will be impossible to certify that a class is eligible for listing on the business day after an IPO has occurred since the IPO shares will not have cleared, and hence the number of holders will not be known until T+3.

Again, CBOE appreciates the objective of the Phlx filing and generally supports efforts to bring options on new classes to the marketplace quicker. However, because of the manner in which stocks clear, *e.g.*, T+3, CBOE believes that it will be impossible to know with certainty that an IPO class satisfies the holders criterion within the timeframe proposed in the Phlx filing. Should you require any further information, please do not hesitate to contact the undersigned.

Sincerely,



Jenny L. Klebes

cc: Yue Ding
David Liu
Heather Seidel