

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60679; File No. SR-Phlx-2009-81)

September 16, 2009

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to FLEX Option Expirations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4² thereunder, notice is hereby given that on September 15, 2009, 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 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 Phlx Rule 1079 (FLEX Index, Equity and Currency Options) regarding permissible expiration dates for FLEX options.³

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ FLEX options are flexible exchange-traded options contracts that overly index, equity, and currency securities. FLEX options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX options may have long expiration dates within five years for FLEX index options and three years for FLEX equity options and FLEX currency options. See Rule 1079.

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 modify the permissible expiration dates for FLEX options in Phlx Rule 1079.

Under current Rule 1079, FLEX options may not expire on any business day that falls on, or within two business days of an expiration day for any non- FLEX option on the same underlying security (an “Expiration Friday”).⁴ However, subject to aggregation requirements for cash settled options, the current FLEX rules do permit the expiration of FLEX options on the same day that non-FLEX quarterly index options (“QIX” or “Quarterly Options”) expire.⁵

⁴ For example, under current Rule 1079, a FLEX option could expire on the Tuesday before Expiration Friday, but could not expire on the Wednesday or Thursday before Expiration Friday. Similarly, a FLEX option could expire on the Wednesday after Expiration Friday, but could not expire on the Monday or Tuesday after Expiration Friday. This restriction is hereinafter referred to as the “three business day” expiration restriction.

⁵ See Rule 1079(a)(6)(A).

The Exchange is now proposing to eliminate the expiration date restriction so that FLEX options may expire on any given business day.⁶ Although the expiration date restrictions would be eliminated, the Exchange notes that all other requirements for FLEX options in Rule 1079 would continue to apply. FLEX options remain subject to position limits under Rule 1079(d) and exercise limits under Rule 1079(e). Moreover the margin requirements in Rule 721 continue to apply and the Exchange has the authority, pursuant to Rule 1079(d)(2), to impose additional margin requirements as deemed advisable.

The Exchange is also proposing an aggregation requirement under Rule 1079(d) for position limit purposes. Specifically, for as long as the options positions remain open, positions in FLEX options that expire on Expiration Friday shall be aggregated with positions in non-FLEX options on the same underlying (e.g., the underlying security in the case of a FLEX equity option, and the underlying index in the case of a FLEX index option) (referred to as “comparable non-FLEX options”). Such FLEX options and comparable non-FLEX options would be subject to the position and exercise limits that are applicable to the non-FLEX options.⁷

⁶ Proposed Rule 1079(a)(6) states that the expiration date for FLEX options is: any month, business day and year within five years for FLEX index options and within three years for FLEX currency options, except that (i) a FLEX index option that expires on or within two business days prior or subsequent to a third Friday-of-the-month expiration day for a non-FLEX option (except quarterly expiring index options) or underlying currency may only have an exercise settlement value on the expiration date determined by reference to the reported level of the index as derived from the opening prices of the component securities (“a.m. settlement”) and (ii) all FLEX currency options will expire at 11:59 p.m. eastern time on their designated expiration date.

⁷ Position and equity limits for non-FLEX equity, currency, and index options are governed by Rules 1001, 1002, 1001A, and 1002A.

In addition, in the case of FLEX index options only, the proposed rule change provides that FLEX index options expiring on or within two business days of an Expiration Friday may not have an exercise settlement value on the expiration date determined by reference to the closing price of the index or specified averages. Therefore, the exercise settlement value on such expiration dates may only be determined by a.m. settlement values. These limitations on exercise settlement value calculations are intended to serve as a safeguard against potential adverse effects that might be associated with triple witching.⁸

In conjunction with the elimination of the expiration date restriction, the proposed rule change also states that, provided the options on an underlying security or index are otherwise eligible for FLEX trading, FLEX options will be permitted in puts and calls that do not have the same exercise style, same expiration date and same exercise price as non-FLEX options that are already available for trading on the same underlying security or index. The proposed rule change also provides that FLEX options will be permitted before (but not after) the options are listed for trading as non-FLEX options. Once and if an option series is listed for trading as a non-FLEX option series, then: (i) all existing open positions established under the FLEX trading procedures shall be fully fungible with transactions in the respective non-FLEX options series, and (ii) any further trading

⁸ Contracts for stock index futures, stock index options, and stock options all expire on the same days occurring on the third Friday of March, June, September, and December (which is referred to as “triple witching”). Currency options expire on the same days. The Exchange’s proposed limitations on p.m. exercise settlement values and exercise settlement values based on a specified average would apply during triple witching expirations, as well as on all other Expiration Fridays.

in the series would be as non-FLEX options subject to the Exchange's non-FLEX trading procedures and rules.

For example, a FLEX trader could establish a FLEX options position in a European-style, a.m. settled MNX 210 call option series with an expiration of August 19, 2011 (which will be an Expiration Friday). In such instance, once and if the non-FLEX, European-style, a.m. settled MNX 210 call option series that expires on August 19, 2011 is listed for trading, the established FLEX option position would be fully fungible with transactions in the non-FLEX option series. Any further trading in the series would be as non-FLEX options subject to non-FLEX option trading procedures.

The Exchange will report any undue effects or unanticipated consequences that may occur due to the elimination of the three business day expiration restriction (blackout period).

The Exchange believes that expanding the eligible dates for FLEX expirations is important and necessary to the Exchange's efforts to create a product and market that provides market participants on the Exchange including investors interested in FLEX – type options with an improved but comparable alternative to the over-the-counter (“OTC”) market in customized options, which can take on contract characteristics similar to FLEX options but are not subject to the same restrictions (such as the three business day expiration restriction or the p.m. settlement restriction).⁹ By expanding the eligible expiration dates for FLEX options, market participants will now have greater flexibility in determining whether to execute their customized options in an exchange environment

⁹ The Exchange represents that it has appropriate surveillances in place to monitor transactions in FLEX options.

or in the OTC market. The Exchange believes that market participants benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to, the following: (1) enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness because of the role of The Options Clearing Corporation (“OCC”) as issuer and guarantor of FLEX options.¹⁰

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹² in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by providing additional opportunities to trade customized FLEX options in an exchange environment.

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.

¹⁰ The Exchange also proposes technical changes in Rule 1079 such as, for example, a definitional cross-reference in subsection (a)(2); updating language to reflect the proper trading system name and deletion of an obsolete reference to AUTOM in (b); deletion of a reference to settlement currency in respect of index options because they settle in U.S. dollars in (b)(1); deletion of position limits for products that no longer trade on the Exchange in (d)(1); and deletion of an obsolete rule references (sic) in (d)(2).

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴ Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,¹⁵ the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷

Under Rule 19b-4(f)(6) of the Act,¹⁸ a proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ The Exchange has fulfilled this five day requirement.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ Id.

consistent with the protection of investors and the public interest.

The Exchange has requested that the Commission waive the 30-day operative date. The Exchange notes that the proposed rule change is based on the rules of another self-regulatory organization and raises no new policy issues.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and thus designates the proposal as operative upon filing.¹⁹ The Commission notes that the Exchange's proposal is based on a similar proposed rule change adopted by the Chicago Board Options Exchange.²⁰ That proposal was subject to full notice and comment and no comments were received. Based on this, the Commission believes that it is appropriate to designate the proposal operative upon filing.

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:

¹⁹ For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f). See also 17 CFR 200.30-3(a)(59).

²⁰ Securities Exchange Act Release No. 59417 (February 18, 2009), 74 FR 8591 (February 25, 2009) (SR-CBOE-2008-115).

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-Phlx-2009-81 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-2009-81. 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 inspection and copying in the Commission's Public Reference Room. 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-2009-81 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Florence E. Harmon
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).