

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62900; File No. SR-Phlx-2010-123)

September 13, 2010

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish a New FLEX Options Pilot Program

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 2, 2010, NASDAQ OMX PHLX LLC (“Phlx” or the “Exchange”) filed with the Securities and Exchange Commission (the “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 is filing with the Commission a proposal to replace the 150 contract FLEX minimum value pilot program with a new pilot program that eliminates minimum value sizes for equity-traded FLEX index options and FLEX equity options (together known as “FLEX Options”).³ The text of the proposed rule change is available on the Exchange’s Website at

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In addition to FLEX Options, FLEX currency options are also traded on the Exchange. These flexible index, equity, and currency options provide investors the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices; and may have expiration dates within five years. See Rule 1079. FLEX currency options traded on the Exchange are also known as FLEX World Currency Options (“WCO”) or Foreign Currency Options (“FCO”). The new pilot program proposed in this filing does not encompass currency options.

<http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, 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 this filing is to amend Commentary .01 to Rule 1079 to replace the 150 contract FLEX minimum value pilot program with a new pilot program that eliminates minimum value sizes for FLEX Options for an opening transaction (“Pilot Program” or “Pilot”). The Pilot Program would end on March 28, 2011.

The rule changes proposed by the Exchange are similar to those in use by Chicago Board Options Exchange, Incorporated (“CBOE”) and NYSE Amex LLC (“NYSE Amex”).⁴

⁴ See Securities Exchange Act Release No. 61439 (January 28, 2010), 75 FR 5831 (February 4, 2010) (SR-CBOE-2009-087) (order approving no minimum value pilot). NYSE Amex based its no minimum value pilot on the CBOE pilot. See Securities Exchange Act Release No. 62084 (May 12, 2010), 75 FR 28091 (May 19, 2010) (SR-NYSEAmex-2010-40) (notice of filing and immediate effectiveness).

Rule 1079 deals with the process of listing and trading FLEX options on the Exchange. Rule 1079 states that the term "FLEX option" means a FLEX option contract that is traded subject to this rule. Rule 1079 permits the Exchange to list FLEX options on: any index upon which options currently trade on the Exchange; any security which is options-eligible pursuant to Rule 1009; or any foreign currency which is options-eligible pursuant to Rule 1009 and which underlies non-FLEX U.S. dollar-settled foreign currency options that are trading on the Exchange. Rule 1079 discusses, among other things: opening FLEX options trading through the Request-for-Quote ("RFQ") process; quotes responsive to RFQs; trading parameters and procedures; and position and exercise limits for FLEX options.

Rule 1079(a)(8)(A) currently sets the minimum opening transaction value size in the case of a FLEX Option in a newly established (opening) series if there is no open interest in the particular series when an RFQ is submitted: (i) \$10 million underlying equivalent value, respecting FLEX market index options, and \$5 million underlying equivalent value respecting FLEX industry index options;⁵ (ii) except as provided in Commentary .01, the lesser of 250 contracts or the number of contracts overlying \$1 million in the underlying securities, with respect to FLEX equity options; and (iii) 50 contracts in the case of FLEX currency options.⁶

Presently, under an existing pilot program in Commentary .01 to Rule 1079, the Exchange has reduced the minimum value size requirement of subparagraph (a)(8)(A)(ii)

⁵ Market index options and industry index options are broad-based index options and narrow-based index options, respectively. See Rule 1000A(b)(11) and (12).

⁶ The Exchange notes that CBOE has similar provisions in CBOE Rules 24A.4(a)(4)(ii)(A) and 24B.4(a)(5)(ii)(A). Unlike Phlx, however, CBOE does not trade currency options and does not discuss them in the noted CBOE rule sections.

for an opening FLEX Equity transaction to the lesser of 150 contracts (previously 250 contracts) or the number of contracts overlying \$1 million in underlying securities (“150 minimum value pilot program”).⁷ The Exchange proposes to replace the existing 150 minimum value pilot program with a new Pilot Program in Commentary .01 that eliminates the minimum value size requirements for FLEX Options.⁸

If, in the future, the Exchange proposes an extension of the new Pilot Program that establishes no minimum size, or should the Exchange propose to make the new Pilot Program permanent, the Exchange will submit, along with any filing proposing such amendments to the Pilot, a Pilot Program report that would provide an analysis of the Pilot Program covering the period during which the Pilot was in effect. This report would include: (i) data and analysis on the open interest and trading volume in (a) FLEX equity options with opening transaction with a minimum size of 0 to 249 contracts and less than \$1 million in underlying value; (b) FLEX index options with opening transaction with a minimum opening size of less than \$10 million in underlying equivalent value; and (ii) analysis of the types of investors that initiated opening FLEX Options transactions (i.e., institutional, high net worth, or retail). The report would be submitted to the Commission at least two months prior to the expiration date of the Pilot Program and would be provided on a confidential basis.

⁷ See Securities Exchange Act Release Nos. 57824 (May 15, 2008), 73 FR 29805 (May 22, 2008) (SR-Phlx-2008-35)(notice of filing and immediate effectiveness establishing the 150 minimum value pilot program); and 60627 (September 4, 2009), 74 FR 47032 (September 14, 2009) (SR-Phlx-2009-78)(notice of filing and immediate effectiveness extending the 150 minimum value pilot program).

⁸ The Exchange is not aware of any significant compliance or enforcement issues pursuant to the 150 minimum value pilot program.

The Exchange notes that any positions established under this Pilot would not be impacted by the expiration of the Pilot. For example, a 10-contract FLEX equity option opening position that overlies less than \$1 million in the underlying security and expires in January 2015 could be established during the Pilot. If the Pilot Program were not extended, the position would continue to exist and any further trading in the series would be subject to the minimum value size requirements for continued trading in that series.

The Exchange believes that the proposed Pilot Program would provide greater opportunities for traders and investors to manage risk through the use of FLEX Options, including investors that may otherwise trade in the unregulated over the counter (“OTC”) market where similar size restrictions do not apply.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁰ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by eliminating a minimum size for FLEX transactions, which the Exchange believes would provide greater opportunities for traders and investors to manage risk through the use of FLEX Options.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

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

Because the foregoing proposed rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹³ However, Rule 19b-4(f)(6)¹⁴ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Phlx has requested that the Commission waive the 30-day operative delay.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). When filing a proposed rule change pursuant to Rule 19b-4(f)(6) under the Act, an exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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. The Commission notes that the Exchange has satisfied this requirement.

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ Id.

The Commission has considered Phlx's request to waive the 30-day operative delay. Because, however, the Commission does not believe, practically speaking, that a pilot should retroactively commence, the Commission is only waiving the operative delay as of the date of this notice for the reasons discussed below.¹⁵ The Commission believes that waiving the 30-day operative delay to allow the commencement of the pilot as of the date of issuance of this notice of the proposed rule change is consistent with the protection of investors and the public interest. The Commission notes that the proposed rule change is substantially similar to a pilot that was previously approved by the Commission and is currently in existence for CBOE,¹⁶ and to a pilot program that is currently in existence on NYSE Amex.¹⁷ The Commission notes that these pilots were subject to full notice and comment in the Federal Register. The Commission received no comments on the NYSE Amex proposal, and only received comments that supported the CBOE proposal.¹⁸ Further, the Exchange's proposal does not raise any new or novel issues that were not already considered in connection with the CBOE and NYSE Amex proposals. For these reasons, consistent with investor protection and the public interest, the Commission designates this pilot to be operative upon the date of issuance of this notice.¹⁹

¹⁵ The Commission also notes that waiving the operative date as of the date of this notice is consistent with approval of CBOE's pilot, which allowed implementation as of the date of the Commission's approval order, and Amex's pilot, where the pilot was operative upon the date of issue of the notice.

¹⁶ See supra note 4.

¹⁷ Id.

¹⁸ Id.

¹⁹ For the purposes only of waiving the operative date 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).

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.

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-Phlx-2010-123 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-2010-123. 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 website 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 10:00 a.m. and 3:00 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-2010-123 and should be submitted on or before [insert date 21 days after publication in the Federal Register].

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

Florence E. Harmon
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).