SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66861; File No. SR-Phlx-2012-28)

April 26, 2012

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Granting Approval of a Proposed Rule Change Relating to the Listing and Trading of MSCI EAFE Index Options

I. Introduction

On March 1, 2012, NASDAQ OMX PHLX LLC ("Exchange" or "Phlx") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend certain of its rules to provide for the listing and trading of options on the MSCI EAFE Index. The proposed rule change was published for comment in the Federal Register on March 15, 2012.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description

The proposed rule change would amend Phlx Rules 1079 (FLEX Index, Equity and Currency Options), 1009A (Designation of the Index) and 1101A (Terms of Option Contracts) to permit the Exchange to list and trade P.M. cash-settled, European-style options, including FLEX[4] options and LEAPS,[5] on the MSCI EAFE (Europe, Australasia, and the Far East) Index, which is

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

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 66569 (March 9, 2012), 77 FR 15409 ("Notice").

4 FLEX options are flexible exchange-traded index, equity, or currency option contracts that provide investors the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX index options may have expiration dates within five years. See Exchange Rules 1079 and 1101A.

5 LEAPS or Long Term Equity Anticipation Securities are long term options that generally expire from twelve to thirty-nine months from the time they are listed.

described below. The proposal would also create new Phlx Rule 1109A, entitled "MSCI EAFE Index," which would provide additional detailed information pertaining to the index as required by the licensor including, but not limited to, liability and other representations on the part of MSCI Inc. ("MSCI"), which maintains the index.

As described by the Exchange, the MSCI EAFE Index is a free float-adjusted market capitalization index consisting of large and midcap components from countries classified by MSCI as developed (excluding the U.S. and Canada), and is designed to measure the equity market performance of developed markets (excluding the U.S. and Canada). The index consists of component securities from markets in the following 22 areas: Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hong Kong, Ireland, Israel, Italy, Japan, the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, and the United Kingdom.

As further described by the Exchange, the MSCI EAFE Index is calculated in U.S. Dollars on a real time basis from the open of the first market on which the components are traded to the close of the last market on which the components are traded. The level of the index reflects the free float-adjusted market value of the component stocks relative to a particular base date, and the methodology used to calculate the value of the index is similar to the methodology used to calculate the value of other well-known market-capitalization weighted indexes.[6] As of December 31, 1969, when the MSCI EAFE Index was launched, its base index value was 100. On June 1, 2011, the index value was 1727.187.[7]

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6 Details regarding the methodology for calculating the MSCI EAFE Index can be found in the Notice, supra note 3, and at http://www.msci.com/eqb/methodology/meth_docs/MSCI_May11_GIMIMethod.pdf.

7 According to the Exchange, static data regarding the MSCI EAFE Index is distributed daily to clients through MSCI as well as through major quotation vendors, including

The MSCI EAFE Index is monitored and maintained by MSCI. According to the Exchange, adjustments to the MSCI EAFE Index are made on a daily basis with respect to corporate events and dividends. The index is generally updated on a quarterly basis to reflect amendments to shares outstanding and free float. Full index reviews are conducted on a semi-annual basis for purposes of rebalancing the index.

Options on the MSCI EAFE Index, as introduced by the proposed rule change, would be European-style and P.M. cash-settled. The settlement value for expiring options would be based on the closing prices of the component stocks on the last trading day prior to expiration. The expiration date would be the Saturday following the third Friday of the expiration month. The Options Clearing Corporation would be the issuer and guarantor.

Phlx Rule 1009A(d) provides that the Exchange may trade options on a broad-based index[8] pursuant to Rule 19b-4(e) under the Act, when certain conditions are satisfied.[9] The MSCI EAFE Index is a broad-based index. However, it does not meet all the conditions of Rule 1009A(d). The proposed rule change would establish listing standards that are specific to MSCI EAFE Index options, to be set forth in new Rule 1009A(h).

Specifically, proposed Rule 1009A(h)(i) would provide that the Exchange may trade options on the MSCI EAFE Index if each of the following conditions is satisfied:

Bloomberg L.P. ("Bloomberg"), FactSet Research Systems, Inc. ("FactSet") and Thomson Reuters ("Reuters"). Real time data is distributed at least every 15 seconds, using MSCI's real-time calculation engine, to Reuters, Bloomberg, SIX Telekurs and FactSet.

8 A broad-based index is defined in Exchange Rule 1000A(b)(11) as an index designed to be representative of a stock market as a whole or of a range of companies in unrelated industries.

9 This provision is an exception to Exchange Rule 1009A(a), which provides generally that the listing of a class of index options on a new underlying index will be treated by the Exchange as a proposed rule change subject to filing with and approved by the Commission under Section 19(b) of the Act.

(1) The index is broad-based;

(2) Options on the index are designated as P.M.-settled index options;

(3) The index is capitalization-weighted, price-weighted, modified capitalization-weighted or equal dollar-weighted;

(4) The index consists of 500 or more component securities;

(5) All the component securities of the index have a market capitalization of greater than $100 million;

(6) No single component security accounts for more than 15% of the weight of the index, and the five highest weighted component securities in the index do not, in the aggregate, account for more than 50% of the weight of the index;

(7) Non-U.S. component securities (stocks or ADRs) that are not subject to comprehensive surveillance agreements do not, in the aggregate, represent more than 20% of the weight of the index;

(8) The current index value is widely disseminated at least once every 15 seconds by one or more major market data vendors during the time options on the index are traded on the Exchange;

(9) The Exchange reasonably believes it has adequate system capacity to support the trading of options on the index, based on a calculation of the Exchange's current Independent System Capacity Advisor (ISCA) allocation and the number of new messages per second expected to be generated by options on such index; and

(10) The Exchange has written procedures in place for the surveillance of trading of options on the index.

After the initial listing of options on the MSCI EAFE Index under the above conditions, the following maintenance standards, as set forth in proposed Rule 1009A(h)(ii), would apply: the requirements set forth in proposed Rule 1009A(h)(i)(1), (2), (3), (4), (7), (8), (9), and (10) must continue to be satisfied. The requirements set forth in proposed Rule 1009A(h)(i)(5) and (6) must be satisfied only as of the first day of January and July in each year. In addition, the total number of component securities in the index could not increase or decrease by more than 35% from the number of component securities in the index at the time of its initial listing.

The Exchange proposed to apply position limits of 25,000 contracts on the same side of the market to options on the MSCI EAFE Index.[10] All position limit hedge exemptions would apply. In addition, the Exchange proposed to amend Rule 1079(d)(1) to note that, with respect to FLEX options on the MSCI EAFE Index, the same number of contracts, 25,000, would apply with respect to the position limit. The Exchange also proposed to apply existing index option margin requirements for the purchase and sale of options on the MSCI EAFE Index.[11]

Further, as proposed, Exchange rules that apply to the trading of options on broad-based indexes also would apply to options on the MSCI EAFE Index.[12] The trading of these options would also be subject to, among other provisions, Exchange rules governing margin requirements and trading halt procedures for index options.[13]

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10 The exercise limit would also be 25,000 contracts as per Exchange Rule 1002A.

11 See Exchange Rule 721. For additional proposed requirements for options on the MSCI EAFE Index, including strike price intervals, minimum tick size, and series openings, see Notice, supra note 3.

12 See generally Exchange Rules 1000A through 1108A (Rules Applicable to Trading of Options on Indices) and Exchange Rules 1000 through 1094 (Rules Applicable to Trading of Options on Stocks, Exchange-Traded Fund Shares and Foreign Currencies).

13 See Exchange Rules 721 (Proper and Adequate Margin) and 1047A (Trading Rotations, Halts or Reopenings).

Finally, the Exchange proposed to add Rule 1109A, entitled “MSCI EAFE Index,” to provide additional detailed information pertaining to the index as required by the licensor, including, but not limited to, liability and other representations on the part of MSCI.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[15] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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.

The Commission believes that the listing and trading of options on the MSCI EAFE Index will broaden trading and hedging opportunities for investors by creating a new options instrument based on an index designed to measure the equity market performance of developed markets (excluding the U.S. and Canada). Because the MSCI EAFE Index is a broad-based index comprised of actively-traded, well-capitalized stocks, the trading of options on the MSCI EAFE Index does not raise unique regulatory concerns. The Commission believes that the listing standards, which are created specifically and exclusively for the MSCI EAFE Index, are consistent with the Act, for the reasons discussed below.

The Commission notes that proposed Rule 1009A(h) would require that the MSCI EAFE

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[14] In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

Index consist of 500 or more component securities. The component securities of the MSCI EAFE Index are listed and traded on 22 different markets. Further, for options on the MSCI EAFE Index to trade, each of the minimum of 500 component securities would need to have a market capitalization of greater than $100 million. Moreover, the Commission notes that, according to the Exchange, the MSCI EAFE Index is comprised of more than 900 components, all of which must meet the market capitalization requirement to permit an option on the index to begin trading.

The Commission notes that the proposed listing standards for options on the MSCI EAFE Index would not permit any single security to comprise more than 15% of the weight of the index, and would not permit a group of five securities to comprise more than 50% of the weight of the index. The Commission believes that, in view of the number of countries represented in the index and the requirement on the number of securities in the index and the market capitalization, this concentration standard is consistent with the Act. Further, the Exchange stated that, of the more than 900 components that comprise the MSCI EAFE Index, no single component comprises more than 5% of the index.

The Exchange has represented that it has an adequate surveillance program in place for options on the MSCI EAFE Index, and intends to apply the same procedures for surveillance that it applies to its other index options. The Exchange also is a member of the Intermarket Surveillance Group and an affiliate member of the International Organization of Securities Commissions, and has entered into various Information Sharing Agreements and/or Memoranda of Understandings with various stock exchanges. The Commission notes that, consistent with the Exchange’s generic listing standards for broad-based index options, non-U.S. component securities of the MSCI EAFE Index that are not subject to comprehensive surveillance agreements will not, in the aggregate, represent more than 20% of the weight of the index.

In addition, the Commission notes that the proposed listing standards require the current value of the MSCI EAFE Index to be widely disseminated at least once every 15 seconds by one or more major market data vendors during the time options on the index are traded on the Exchange. Further, the standards require that the Exchange reasonably believe it has adequate system capacity to support the trading of options on the MSCI EAFE Index. The Exchange stated that these requirements will be met.

As a national securities exchange, the Exchange is required, under Section 6(b)(1) of the Act,[16] to enforce compliance by its members, and persons associated with its members, with the provisions of the Act, Commission rules and regulations thereunder, and its own rules. In this regard, the Commission notes that Exchange rules that apply to the trading of options on broad-based indexes would apply to options on the MSCI EAFE Index.[17] In addition, the Exchange has stated that options on the MSCI EAFE Index would be subject to the same rules that govern all Exchange index options, including rules that are designed to protect public customer trading.[18]

The Commission further believes that the Exchange's proposed position and exercise limits, strike price intervals, minimum tick size, series openings, and other aspects of the proposed rule change are appropriate and consistent with the Act.

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16 15 U.S.C. 78f(b)(1).

17 See generally Exchange Rules 1000A through 1108A (Rules Applicable to Trading of Options on Indices) and Exchange Rules 1000 through 1094 (Rules Applicable to Trading of Options on Stocks, Exchange-Traded Fund Shares and Foreign Currencies).

18 See Notice, supra note 3 and Exchange Rules 1024-1029. See also supra notes 12 and 13.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR-Phlx-2012-28) be, and hereby is, approved.

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

Kevin M. O'Neill
Deputy Secretary

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19 15 U.S.C. 78s(b)(2).

20 17 CFR 200.30-3(a)(12).