

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73474; File No. SR-Phlx-2014-69]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Extension of FLEX Option No Minimum Value Size Pilot Program

October 30, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 24, 2014, NASDAQ OMX PHLX LLC (“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 is filing with the Commission a proposal to amend Phlx Rule 1079 (FLEX Index, Equity and Currency Options) to extend a pilot program that eliminates minimum value sizes for FLEX index options and FLEX equity options (together known as “FLEX Options”).³

The text of the amended Exchange rule is set forth immediately below.

Additions are *italicized* and deletions are [bracketed].

Rules of the Exchange

Options Rules

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Rule 1079. FLEX Index, Equity and Currency Options

A Requesting Member shall obtain quotes and execute trades in certain non-listed FLEX options at the specialist post of the non-FLEX option on the Exchange. The term “FLEX option” means a FLEX option contract that is

traded subject to this Rule. Although FLEX options are generally subject to the rules in this section, to the extent that the provisions of this Rule are inconsistent with other applicable Exchange rules, this Rule takes precedence with respect to FLEX options.

(a)–(f) No Change.

* * * *Commentary:* _____

.01 Notwithstanding subparagraphs (a)(8)(A)(i) and (a)(8)(A)(ii) above, for a pilot period ending the earlier of ~~October 31, 2014~~ *February 28, 2015*, or the date on which the pilot is approved on a permanent basis, there shall be no minimum value size requirements for FLEX options.

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The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaqomxphlx.cchwallstreet.com>, 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 proposed rule change is to amend Phlx Rule 1079 (FLEX Index, Equity and Currency Options) to extend a pilot program that eliminates minimum value sizes for FLEX Options (the “Pilot Program” or “Pilot”).

Rule 1079 deals with the process of listing and trading FLEX equity, index, and currency options on the Exchange. 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 a Request-for-Quote (“RFQ”) is submitted (except as provided in Commentary .01 to Rule 1079): (i) \$10 million underlying equivalent value, respecting FLEX

market index options, and \$5 million underlying equivalent value respecting FLEX industry index options;⁴ (ii) the lesser of 250 contracts or the number of contracts overlying \$1 million in the underlying securities, with respect to FLEX equity options (together the “minimum value size”).⁵

Presently, Commentary .01 to Rule 1079 states that by virtue of the Pilot Program ending October 31, 2014, or the date on which the pilot is approved on a permanent basis, there shall be no minimum value size requirements for FLEX Options as noted in subsections (a)(8)(A)(i) and (a)(8)(A)(ii) of Rule 1079.⁶

The Exchange now proposes to extend the Pilot Program for a pilot period ending the earlier of February 28, 2015, or the date on which the Pilot is approved on a permanent basis.⁷

The Exchange believes that there is sufficient investor interest and demand in the Pilot Program to warrant an extension. The Exchange believes that the Pilot Program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Extension of the Pilot Program would continue to 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.⁸

In support of the proposed extension of the Pilot Program, the Exchange has under separate cover submitted to the Commission a Pilot Program Report

⁴ 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).

⁵ Subsection (a)(8)(A) also provides a third alternative: (iii) 50 contracts in the case of FLEX currency options. However, this alternative is not part of the Pilot Program.

⁶ See Securities Exchange Act Release No. 67094 (June 1, 2012), 77 FR 33796 (June 7, 2012) (SR-Phlx-2012-76) (notice of filing and immediate effectiveness of proposal to extend Pilot Program). The Pilot Program was instituted in 2010. See Securities Exchange Act Release No. 62900 (September 13, 2010), 75 FR 57098 (September 17, 2010) (SR-Phlx-2010-123) (notice of filing and immediate effectiveness of proposal to institute Pilot Program).

⁷ 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.

⁸ The Exchange has not experienced any adverse market effects with respect to the Pilot Program.

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 pilot program discussed herein does not encompass FLEX currency options.

(“Report”) that provides an analysis of the Pilot Program covering the period during which the Pilot has been in effect. This Report includes: (i) Data and analysis on the open interest and trading volume in (a) FLEX equity options that have an opening transaction with a minimum size of 0 to 249 contracts and less than \$1 million in underlying value; (b) FLEX index options that have an 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 has been submitted to the Commission and the Exchange has requested confidential treatment under the Freedom of Information Act.⁹

2. Statutory Basis

The Exchange’s proposal is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act¹¹ 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. Specifically, the Exchange believes that the proposed extension of the Pilot Program, which eliminates the minimum value size applicable to opening transactions in new series of FLEX Options, would provide greater opportunities for investors to manage risk through the use of FLEX Options. The Exchange notes that it has not experienced any adverse market effects with respect to the Pilot Program.

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. To the contrary, the proposal would give traders and investors the opportunity to more effectively tailor their trading,

investing and hedging through FLEX options traded on the Exchange. Prior to the Pilot, options that represented opening transactions in new series that could not meet a minimum value size could not trade via FLEX on the Exchange, but rather had to trade OTC. Extension of the Pilot enables such options to continue to trade on the Exchange.

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 proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the Exchange may seamlessly continue its Pilot Program without interruption. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.¹⁶ The Commission notes that waiving the 30-day operative delay would prevent the expiration of the Pilot Program on October 31, 2014, prior to the extension of the pilot program becoming operative. Therefore, the

Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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 email to rule-comments@sec.gov. Please include File Number SR-Phlx-2014-69 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.
- All submissions should refer to File Number SR-Phlx-2014-69. This file number should be included on the subject line if email 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 Web site 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

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization 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 Exchange has satisfied this requirement.

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁹ 5 U.S.C. section 552. The Exchange notes that it expects to file a proposal for permanent approval of the Pilot Program. With this proposal, the Exchange will submit a Report that is publicly available. In the event the Pilot Program is not permanently approved by February 28, 2015, the Exchange will submit an additional Report covering the extended Pilot period.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

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-2014-69 and should be submitted on or before November 26, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Brent J. Fields,
Secretary.

[FR Doc. 2014-26232 Filed 11-4-14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73473; File No. SR-BATS-2014-037]

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Granting Approval of a Proposed Rule Change To Establish an Opening Process for Non-BATS-Listed Securities

October 30, 2014.

I. Introduction

On September 3, 2014, BATS Exchange, Inc. (the "Exchange" or "BATS") 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 add new BATS Rule ("Rule") 11.24, entitled "Opening Process for Non-BATS-Listed Securities," and to make several corresponding changes, in order to modify the manner in which the Exchange opens trading for non-BATS-listed securities at the beginning of the day and after trading halts. The proposed rule change was published for comment in the *Federal Register* on September 19, 2014.³ The Commission did not receive any comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange has proposed to implement a process for opening trading in non-BATS-listed securities at the beginning of Regular Trading Hours⁴ and re-opening trading in such securities following a trading halt.

Currently, the Exchange accepts orders in non-BATS-listed securities during the Pre-Opening Session,⁵ and any such orders are immediately eligible for execution. Orders that are on the BATS Book⁶ at the beginning of Regular Trading Hours remain on the BATS Book, subject to the User's instructions, and trading continues into Regular Trading Hours without any transition period. Upon a halt, the Exchange currently cancels all orders on the BATS Book, except Eligible Auction Orders,⁷ and does not accept any orders until the halt is lifted. The time-in-force of Regular Hours Only ("RHO")⁸ that the Exchange currently offers is not available for non-BATS-listed securities (it is only available for BATS-listed securities).

Under the proposal, the Exchange would amend its rules to allow orders in non-BATS-listed securities to be designated RHO, and would accept and queue any such orders during the Pre-Opening Session for execution at the midpoint of the NBBO⁹ shortly after the beginning of Regular Trading Hours (the "Opening Process").¹⁰ The Exchange also has proposed to implement a similar process for re-opening trading after a halt, suspension, or pause (collectively, a "Halt"), under which a User's orders would remain on the BATS Book unless the User has designated that they be cancelled upon a Halt (the "Re-Opening Process").

Specifically, the Exchange has proposed to replace current Rule 11.23(a)(22) with proposed new Rule 11.9(b)(7), which would re-define RHO as a time-in-force modifier that applies to all securities, both BATS-listed and non-BATS-listed.¹¹ Prior to the beginning of Regular Trading Hours, Users¹² that wish to participate in the Opening Process for a non-BATS-listed security may enter orders to buy or sell

with a time in force of RHO.¹³ All orders that are marked as RHO may participate in the Opening Process except BATS Post Only Orders, Partial Post Only at Limit Orders, ISO orders not modified by Rule 11.24(a)(1) (as described below), and Minimum Quantity Orders.¹⁴ Limit orders with a Reserve Quantity could participate to the full extent of their displayed size and Reserve Quantity.¹⁵ Discretionary Orders could participate only up to their ranked price for buy orders or down to their ranked price for sell orders; the discretionary range of such orders would not be eligible for participation in the Opening Process.¹⁶ All Pegged Orders and Mid-Point Peg Orders would be eligible for execution in the Opening Process based on their pegged prices.¹⁷ Orders cancelled before the Opening Process and orders not designated RHO would not be eligible to participate in the Opening Process.¹⁸

Pursuant to proposed Rule 11.24(a)(1), during the period between 9:30 a.m. Eastern Time and the occurrence of the Opening Process, all non-RHO orders, subject to order instructions, and ISOs designated RHO may execute against eligible Pre-Opening Session contra-side interest resting in the BATS Book.¹⁹ The Exchange has proposed to convert any unexecuted portion of an ISO designated RHO entered during this period into a non-ISO and queue the order for participation in the Opening Process.²⁰

The Exchange has proposed to implement the Opening Process shortly after the beginning of Regular Trading Hours, at which point the Exchange would attempt to execute all orders eligible for the Opening Process in a particular non-BATS-listed security at the midpoint of the NBBO.²¹ All such orders would be processed in time sequence beginning with the order with the oldest time stamp, and would be matched until there is no remaining volume or there is an order imbalance.²² All MTP modifiers would be ignored

⁵ Pre-Opening Session is defined in Rule 1.5(r).

⁶ BATS Book is defined in Rule 1.5(e).

⁷ Eligible Auction Order is defined in Rule 11.23(a)(8).

⁸ Regular Hours Only is currently defined in Rule 11.23(a)(22) but, as described *infra*, the Exchange has proposed to replace Rule 11.23(a)(22) with proposed Rule 11.9(b)(7).

⁹ NBBO is defined in BATS Rule 1.5(o).

¹⁰ Only orders designated RHO would be queued for Opening Process participation when submitted during the Pre-Opening Session; orders not so designated would continue to be executable immediately upon entry during the Pre-Opening Session.

¹¹ See proposed Rule 11.9(b)(7). Proposed Rule 11.9(b)(7) also would specify that any remaining portion of market RHO order will be cancelled immediately following any auction in which it is not executed. *Id.* The Exchange also has proposed to delete the word "limit" from Rule 11.9(b) because a RHO order can be either a limit order or a market order. See proposed Rule 11.9(b).

¹² User is defined in Rule 1.5(cc).

¹³ See proposed Rule 11.24(a).

¹⁴ See proposed Rule 11.24(a)(2). For the definitions of BATS' order types, see Rule 11.9.

¹⁵ See proposed Rule 11.24(a)(2).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See proposed Rule 11.24(a).

¹⁹ See proposed Rule 11.24(a)(1).

²⁰ *Id.*

²¹ See proposed Rule 11.24(a)(3).

²² *Id.* According to the Exchange, time priority is more appropriate for the Opening Process than price-time priority because the price of the order is not particularly important to the Opening Process, so long as the order is priced at or more aggressively than the midpoint of the NBBO. As such, the Exchange believes that there is no reason to reward a more aggressive order with priority in the Opening Process. See Notice, *supra* note 3, 79 FR at 56422.

¹⁷ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 73093 (September 15, 2014), 79 FR 56421 ("Notice").

⁴ Regular Trading Hours is defined in Rule 1.5(w).