

ETFs, and clarifying OCC's ability to accelerate maturity dates of stock futures or expiration dates of stock options in events other than cash-out merger events and eliminating obsolete rules or references. The proposed rule change is not inconsistent with any rules of OCC, including any that are proposed to be amended.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change would impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments relating to the proposed rule change have not been solicited or received. OCC will notify the Commission of any written comments received by OCC.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be 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](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2012-08 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-OCC-2012-08. 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 Section, 100 F Street NE., Washington, DC 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of OCC and on OCC's Web site at [http://www.theocc.com/components/docs/legal/rules\\_and\\_bylaws/sr\\_occ\\_12\\_08.pdf](http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_12_08.pdf). 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-OCC-2012-08 and should be submitted on or before June 28, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

Kevin M. O'Neill,

Deputy Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-67094; File No. SR-Phlx-2012-76]

**Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend its FLEX No Minimum Value Pilot Program**

June 1, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 30, 2012, NASDAQ OMX PHLX LLC

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

("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 Exchange has designated the proposed rule change as constituting a rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. 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").<sup>4</sup>

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).<sup>5</sup>

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.

**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.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> 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.

<sup>5</sup> 17 CFR 240.19b-4(f)(6)(iii).

*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;<sup>6</sup> (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").<sup>7</sup>

Presently, Commentary .01 to Rule 1079 states that by virtue of the Pilot Program ending May 31, 2012, there shall be no minimum value size requirements for FLEX Options as noted in subsections (a)(8)(A)(i) and (a)(8)(A)(ii) above.<sup>8</sup>

The Exchange now proposes to extend the Pilot Program for a period ending March 29, 2013.<sup>9</sup>

<sup>6</sup> 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).

<sup>7</sup> 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.

<sup>8</sup> See Securities Exchange Act Release No. 66711 (April 2, 2012), 77 FR 20867 (April 6, 2012) (SR-Phlx-2012-44) (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).

<sup>9</sup> 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 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.<sup>10</sup>

In support of the proposed extension of the Pilot Program, the Exchange has under separate cover submitted to the Commission a Pilot Program Report ("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 on a confidential basis.

If, in the future, the Exchange proposes an additional extension of the Pilot Program, or should the Exchange propose to make the Pilot Program permanent, the Exchange will submit a Report covering the period June 1, 2012, through November 30, 2012, and including the details referenced in the prior paragraph. The Exchange will also provide the nominal dollar value of each trade. The Report would be submitted to the Commission on or before January 5, 2013, unless the Commission agrees otherwise, and would be provided on a confidential basis.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>12</sup> in particular, in that it is designed to prevent fraudulent and manipulative

<sup>10</sup> The Exchange has not experienced any adverse market effects with respect to the Pilot Program.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

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 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.

*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 Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>15</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>16</sup> permits the Commission to 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

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 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 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.

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

operative delay so that the proposal may become operative immediately upon filing. The Commission notes that waiving the 30-day operative delay would prevent the expiration of the Pilot Program on May 31, 2012, prior to the extension to March 29, 2013 taking effect, and believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>17</sup> Therefore, the Commission 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 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2012-76 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-2012-76. 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 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-2012-76 and should be submitted on or before June 28, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67093; File No. SR-BATS-2012-018]

#### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BATS Rules Related to the Operation of BATS Post Only Orders and Match Trade Prevention Functionality

June 1, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 23, 2012, BATS Exchange, Inc. ("Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. 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 Rule 11.9, entitled "Orders and Modifiers", and Rule 21.1, entitled "Definitions", to modify the operation of BATS Post Only orders for the BATS equity securities trading platform ("BATS Equities") and the BATS equity options trading platform ("BATS Options"), respectively. The Exchange is also proposing changes to its match trade prevention functionality described in Rules 11.9 and 21.1.

#### 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 parts of such statements.

##### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### 1. Purpose

The Exchange proposes to modify the functionality associated with its existing BATS Post Only Order, which is an order that an entering User<sup>5</sup> intends to be posted to the Exchange's order book and thus will not remove liquidity or route away from the Exchange. In addition to modifying the Exchange's handling of BATS Post Only Orders, the Exchange proposes a minor, unrelated modification to allow an additional option for users of the match trade prevention functionality offered by the Exchange. The Exchange proposes each of these changes for both BATS Equities and BATS Options.

##### BATS Post Only Orders

Under the Exchange's current rules for BATS Equities, when the Exchange receives a BATS Post Only order that would lock or cross an order displayed by the Exchange, because the Exchange

<sup>17</sup> 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).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>5</sup> As defined in BATS Rule 1.5(cc), a User is "any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3."