

XF Physical Copper Trust pursuant to NYSE Arca Equities Rule 8.201. The proposed rule change was published for comment in the **Federal Register** on April 20, 2012.<sup>3</sup> The Commission received one comment letter regarding the proposal.<sup>4</sup>

Section 19(b)(2) of the Act<sup>5</sup> provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day from the publication of notice of filing of this proposed rule change is June 4, 2012. The Commission is extending the 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on this proposed rule change. In particular, extension of time will ensure the Commission has sufficient time to consider the Exchange's proposal in light of, among other things, the Letter. The extension of time also will allow the Commission sufficient time to consider any responses to the Letter.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> designates July 19, 2012, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, this proposed rule change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67078; File No. SR-CBOE-2012-051]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to FLEX Options

May 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 23, 2012, Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") 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 the 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) thereunder.<sup>4</sup> 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 proposing to provide for additional time to implement new system enhancements for trading Flexible Exchange Options ("FLEX Options")<sup>5</sup> that were the subject of another rule change filing that was recently approved. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's

<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).

<sup>5</sup> FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX Options can be FLEX Index Options or FLEX Equity Options. In addition, other products are permitted to be traded pursuant to the FLEX trading procedures. For example, credit options are eligible for trading as FLEX Options pursuant to the FLEX rules in Chapters XXIVA and XXIVB. See CBOE Rules 24A.1(e) and (f), 24A.4(b)(1) and (c)(1), 24B.1(f) and (g), 24B.4(b)(1) and (c)(1), and 28.17. The rules governing the trading of FLEX Options on the FLEX Request for Quote ("RFQ") System platform (which is limited to open outcry trading only) are contained in Chapter XXIVA. The rules governing the trading of FLEX Options on the FLEX Hybrid Trading System platform (which combines both open outcry and electronic trading) are contained in Chapter XXIVB. The Exchange notes that, currently, all FLEX Options are traded on the FLEX Hybrid Trading System platform.

Office of the Secretary, 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 those 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

On February 7, 2012, the Exchange received approval of a rule change filing, SR-CBOE-2011-122, which amended certain rules pertaining to the electronic trading of FLEX Options on the Exchange's FLEX Hybrid Trading System platform (the "FLEX System" or "System").<sup>6</sup> In that filing, the Exchange indicated that it is in the process of enhancing the FLEX System in order to further integrate it with the Exchange's existing technology platform utilized for Non-FLEX trading. In conjunction with the enhancement, the filing made some modifications to the existing electronic trading processes utilized on the FLEX System platform. The filing made other amendments to eliminate certain European-Capped style settlement and currency provisions with the FLEX rules that pertain to both electronic and open outcry trading. The filing also indicated that the Exchange planned to announce to its Trading Permit Holders ("TPHs") via Regulatory Circular an implementation schedule for transitioning from the existing technology platform to the new technology platform once the rollout schedule is finalized. The filing indicated that the Exchange intended to begin implementation by no later than March 30, 2012, with the specific implementation schedule to be announced via Regulatory Circular, as stated above. The Exchange intended to transition a few classes at a time and anticipated full implementation within approximately one to three weeks of the initial transition. Finally, in the event

<sup>6</sup> Securities Exchange Act No. 66348 (February 7, 2012), 77 FR 8304 (February 14, 2012) (SR-CBOE-2011-122 Approval Order).

<sup>3</sup> See Securities Exchange Act Release No. 66816 (April 16, 2012), 77 FR 23772 ("Notice").

<sup>4</sup> See letter from Vandenberg & Feliu, LLP, received May 9, 2012 ("Letter"). The Letter is available at <http://www.sec.gov/comments/sr-nysearca-2012-28/nysearca201228.shtml>.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(31).

that implementation did not begin by March 30, 2012, the Exchange represented that it would file a proposed rule change to establish the revised time period.

The Exchange thereafter submitted another rule change filing, SR-CBOE-2012-033, which provided in relevant part for additional time to implement the new system enhancements for trading FLEX Options.<sup>7</sup> In particular, rather than March 30, 2012, that rule change filing revised the implementation schedule such that the Exchange would begin implementation by no later than April 30, 2012, with the specific implementation schedule to be announced via Regulatory Circular. The Exchange still intended to transition a few classes at a time and anticipated full implementation within approximately one to three weeks of the initial transition.

The purpose of this instant rule change filing is to again provide for additional time to implement the new system enhancements for trading FLEX Options. While the Exchange did begin the initial rollout of the enhancements on April 24, 2012, the Exchange will not have the full implementation completed within the approximated three week transaction period. However, the Exchange believes that full implementation will be completed within the next several weeks. Therefore, the Exchange is submitting this rule change filing to advise that it anticipates the rollout of the new system enhancements will be fully implemented by June 29, 2012. Consistent with the prior rule change filings, the Exchange will announce the specific implementation schedule via Regulatory Circular and, in the event the implementation is not completed by June 29, 2012, the Exchange represents that it will file another proposed rule change to establish the revised time period.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act<sup>8</sup> in general and furthers the objectives of Section 6(b)(5) of the Act<sup>9</sup> in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and

open market and a national market system, and protect investors and the public interest. In particular, the Exchange believes that the use of FLEX Options provides CBOE TPHs and investors with additional tools to trade customized options in an exchange environment<sup>10</sup> and greater opportunities to manage risk. The Exchange believes that the enhancements to the FLEX System adopted under rule change filing SR-CBOE-2011-122 should serve to further those objectives and encourage use of FLEX Options by enhancing and simplifying the existing processes and integrating the FLEX System with the Exchange's existing technology platform for Non-FLEX trading, which should make the FLEX System more efficient and effective and easier for users to understand. The Exchange believes that the provision for additional time to rollout the system enhancements will allow the Exchange to implement the enhancements in a fair and orderly manner.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition that is 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*

The Exchange neither solicited nor received comments on the proposal.

## 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 Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> 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, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.<sup>13</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>14</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>15</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will allow CBOE to revise its implementation schedule for the new system enhancements. The new schedule will provide adequate time for a fair and orderly implementation of the enhancements. Therefore, the Commission designates the proposal operative upon filing.<sup>16</sup>

At any time within 60 days of the filing of such 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:

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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.

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>16</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>7</sup> Securities Exchange Act Release No. 66769 (April 6, 2012), 77 FR 22012 (April 12, 2012) (SR-CBOE-2012-033 Notice of Filing and Immediate Effectiveness). Besides extending the implementation schedule, the rule change filing also contained certain amendments to the rules for trading FLEX Options.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> FLEX Options provide TPHs and investors 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. The Exchange believes that making these changes will make the FLEX Hybrid Trading System an even more attractive alternative when market participants consider whether to execute their customized options in an exchange environment or in the OTC market. CBOE believes market participants benefit from being able to trade 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 due to the role of The Options Clearing Corporation as issuer and guarantor of FLEX Options.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

*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-CBOE-2012-051 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-CBOE-2012-051. 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-CBOE-2012-051 and should be submitted on or before June 26, 2012.

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

**Kevin M. O'Neill,**  
Deputy Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-67076; File No. SR-NASDAQ-2012-062]

**Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Modify Its Corporate Governance Rules**

May 30, 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 17, 2012, The NASDAQ Stock Market LLC ("Nasdaq") 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 Nasdaq. 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 the Substance of the Proposed Rule Change**

Nasdaq proposes to modify the exception that allows a non-independent director to serve on a listed company's audit committee, compensation committee or nominations committee under exceptional and limited circumstances. The text of the proposed rule change is available on Nasdaq's Web site at <http://www.nasdaq.cchwallstreet.com>, at Nasdaq's principal office, and at the Commission's Public Reference Room. Nasdaq will implement the proposed rule change upon approval.

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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**

Nasdaq's rules generally require that a listed company's audit, compensation and nominations committees consist of "independent directors," as defined in Listing Rule 5605(a)(2).<sup>3</sup> Under this definition, a company's board must determine affirmatively that a director does not have any relationship which, in the opinion of the board, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. In addition, there are certain categories of directors who cannot be considered independent, such as a director who is currently, or was during the prior three years, employed by the company, or a director who is a family member<sup>4</sup> of an individual who is, or at any time during the past three years was, employed as an executive officer<sup>5</sup> by the company.<sup>6</sup> A director is not barred from being independent if he or she has a family member employed by the company, provided that the family member is not an executive officer of the company.

Nasdaq's rules also include an exception (the "Exception") to permit a listed company, under exceptional and limited circumstances and with proper disclosure, to allow one non-independent director to serve on the audit, compensation or nominations committee for up to two years.<sup>7</sup> The Exception, which is used infrequently by Nasdaq-listed companies,<sup>8</sup> was first adopted for audit committees in December 1999,<sup>9</sup> when the audit committee requirements were significantly enhanced following the release of the report of the Blue Ribbon

<sup>3</sup> See Nasdaq Listing Rules 5605(c)(2), 5605(d)(2)(B) and 5605(e)(1)(B).

<sup>4</sup> "Family Member" is defined as "a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home." Nasdaq Listing Rule 5605(a)(2).

<sup>5</sup> "Executive Officer" is defined as an officer "covered in Rule 16a-1(f) under the [Exchange] Act." Nasdaq Listing Rule 5605(a)(1).

<sup>6</sup> See Nasdaq Listing Rules 5605(a)(2)(A) and 5605(a)(2)(C).

<sup>7</sup> See Nasdaq Listing Rules 5605(c)(2)(B), 5605(d)(3) and 5605(e)(3).

<sup>8</sup> On December 31, 2011, nine companies were using the Exception: Six companies for the audit committee only, two companies for the nominations committee only and one company for both the nominations and compensation committees. In the two-year period from January 1, 2010 to December 31, 2011, 37 companies used the Exception for one or more of their committees.

<sup>9</sup> See Securities Exchange Act Release No. 42231 (December 14, 1999), 64 FR 71523 (December 21, 1999).

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

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

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