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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76593; File No. SR-Phlx-2015-94]

December 8, 2015

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change to Make Permanent the Pilot Program Eliminating Minimum Value Sizes For Opening Transactions in New Series of FLEX Options

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 November 25, 2015, 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, II, and III, 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 amend [sic] Phlx Rule 1079 (FLEX Index, Equity and Currency Options) to make permanent a pilot program that eliminates minimum value sizes for opening transactions in new series of FLEX index options and FLEX equity options (together known as “FLEX Options”).³

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 FX Options. The pilot program discussed herein does not encompass FLEX currency options.

The text of the proposed rule change is available on the Exchange's Website 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 make permanent a pilot program that eliminates minimum value sizes for opening transactions in new series of FLEX Options (the "Pilot Program" or "Pilot"), and to indicate that the minimum size of a request for quote ("RFQ") is one contract. The Exchange is requesting the Commission to permanently approve the Pilot Program. The Exchange believes that the Pilot Program has been successful and well received by its membership and the investing public for the period that it has been in operation as a pilot program.⁴

⁴ The Pilot Program was instituted in 2010 and last extended in 2015. See Securities Exchange Act Release Nos. 62900 (September 13, 2010), 75 FR 57098 (September 17, 2010) (SR-Phlx-2010-123) (notice of filing and immediate effectiveness of proposal instituting Pilot Program); and 75794 (August 31, 2015), 80 FR 53606 (September 4, 2015) (SR-Phlx-2015-74) (notice of filing and immediate effectiveness extending Pilot Program through January 31, 2016).

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 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;⁵ (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”).⁶

Presently, Commentary .01 to Rule 1079 states that by virtue of the Pilot Program ending January 31, 2016, 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. The Exchange now proposes to make the Pilot Program permanent.⁷ To accomplish this change, the Exchange is proposing to eliminate the rule text describing the Pilot Program, which is contained in Commentary .01 to Rule 1079. The Exchange is proposing to indicate that the minimum value size requirements for a RFQ for FLEX Options as noted in

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 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 and therefore is not changed by this proposal.

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 2016 could be established during the Pilot. If the Pilot Program were not made permanent or 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.

subsections (a)(8)(A)(i) and (a)(8)(A)(ii) of Rule 1079 is one contract for all FLEX Options. Thus, as a result of the proposed change to make the Pilot Program permanent, subsections (a)(8)(A)(i) and (a)(8)(A)(ii) of Rule 1079 would state, in pertinent part, that if there is no open interest when an RFQ is submitted then the minimum size of an RFQ is: (i) One contract in the case of FLEX market index options, and one contract in the case of FLEX industry index options; and (ii) One contract in the case of FLEX equity options.⁸

In support of approving the Pilot Program on a permanent basis, and as required by the Pilot Program's approval order, the Exchange is submitting to the Commission a Pilot Program report ("Report"), which is a public report detailing the Exchange's experience with the Pilot.⁹ The Report covers only opening transactions in new series, as per the Pilot. Specifically, the Exchange is providing the Commission with a Report that 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).¹⁰

The Exchange believes that there is sufficient investor interest and demand in the Pilot Program to warrant its permanent approval and indicate one contract as the minimum size of an RFQ for all opening transactions in new series of FLEX equity Options and FLEX index

⁸ In proposing to make the Pilot Program permanent, the Exchange is simply indicating that if there is no open interest when an RFQ is submitted then the minimum size of an RFQ will be one contract for FLEX market index options, FLEX industry index options, and FLEX equity options.

⁹ A copy of the Report is attached as Exhibit 3.

¹⁰ The Report thus discusses only those FLEX option transactions that happened because the Pilot was in place.

Options. The Exchange believes that, for the period that the Pilot Program has been in operation, it has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange has not experienced any adverse market effects with respect to the Pilot Program.

The Exchange believes that eliminating the minimum value size requirements for opening transactions in new FLEX series on a permanent basis is important and necessary to the Exchange's efforts to create a product and market that provide its membership and investors interested in FLEX-type options 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. By making the Pilot Program permanent, market participants would continue to have greater flexibility in determining whether to execute their customized options in an exchange environment or in the OTC market. The Exchange believes that market participants would benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to, the following: (i) enhanced efficiency in initiating and closing out positions; (ii) increased market transparency; and (iii) heightened contra-party creditworthiness due to the role of The Options Clearing Corporation ("OCC") as issuer and guarantor of FLEX Options. The Exchange also believes that the Pilot Program is wholly consistent with comments by then Secretary of the Treasury Timothy F. Geithner, to the U.S. Senate. In particular, Secretary Geithner has stated that:

Market efficiency and price transparency should be improved in derivatives markets by requiring the clearing of standardized contracts through regulated [central counterparties] and by moving the standardized part of these markets onto regulated

exchanges and regulated transparent electronic trade execution systems for OTC derivatives and by requiring development of a system for timely reporting of trades and prompt dissemination of prices and other trade information. Furthermore, regulated financial institutions should be encouraged to make greater use of regulated exchange-traded derivatives. Competition between appropriately regulated OTC derivatives markets and regulated exchanges will make both sets of markets more efficient and thereby better serve end-users of derivatives.¹¹

The Exchange believes that the elimination of the minimum value size requirements for opening FLEX transactions in new FLEX series on a permanent basis would provide FLEX-participating members with greater flexibility in structuring the terms of FLEX Options that best comports with their and their customers' particular needs. In this regard, the Exchange notes that the minimum value size requirements for opening FLEX transactions in new FLEX series were originally put in place to limit participation in FLEX Options to sophisticated, high net worth investors rather than retail investors. However, the Exchange believes that the restriction is no longer necessary and is overly restrictive. The Exchange has also not experienced any adverse market effects with respect to the Pilot Program eliminating the minimum value size requirements for opening FLEX transactions in new FLEX series. Again, based on the Exchange's experience to date and throughout the Pilot Program period, the minimum value size requirements are at times too large to accommodate the needs of members and their customers – who may be institutional, high net worth, or retail – that currently participate in the OTC market. In this regard, the Exchange notes that, prior to establishing the Pilot Program, exchanges that allow FLEX options have received numerous requests from broker-dealers representing

¹¹ See letter from Secretary Geithner to the Honorable Harry Reid, United States Senate (May 13, 2009), located at <http://www.financialstability.gov/docs/OTClletter.pdf>.

institutional, high net worth and retail investors indicating that the minimum value size requirements for opening transactions in new FLEX series prevented them from bringing transactions that are already taking place in the OTC market to an exchange environment.

The Exchange believes that eliminating the minimum value size requirements for opening transactions in new FLEX series on a permanent basis would further broaden the base of investors that use FLEX Options to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options, where similar size restrictions do not apply. The Exchange also believes that this may open up FLEX Options to more retail investors. The Exchange does not believe that this raises any unique regulatory concerns because existing safeguards – such as certain position limit, exercise limit, and reporting requirements – continue to apply.¹² In addition, the Exchange notes that FLEX Options are subject to the options disclosure document (“ODD”) requirements of Rule 9b-1 under the Act.¹³ No broker or dealer can accept an order from a customer to purchase or sell an option contract relating to an options class that is the subject of a definitive ODD (including FLEX Options), or approve the customer’s account for the trading of such an option, unless the broker or dealer furnishes or has furnished to the customer a copy of the definitive ODD. The ODD contains a description, special features, and special risks of FLEX Options. Lastly, similar to any other options, FLEX Options are subject to supervision and suitability requirements, such as in Rule 1025 (Supervision of Accounts) and Rule 1026 (Suitability).

In proposing the Pilot Program itself and in now proposing to make it permanent, the Exchange is cognizant of the need for market participants to have substantial options transaction

¹² Certain position limit, aggregation and exercise limit requirements continue to apply to FLEX Options in accordance with Rule 1001 (Position Limits) and Rule 1002 (Exercise Limits).

¹³ 17 CFR 240.9b-1.

capacity and flexibility to hedge their substantial investment portfolios, on the one hand, and the potential for adverse effects that the minimum value size restrictions were originally designed to address, on the other. However, the Exchange has not experienced any adverse market effects with respect to the Pilot Program. The Exchange is also cognizant of the OTC market, in which similar restrictions on minimum value size do not apply. In light of these considerations and Secretary Geithner's comments on moving the standardized parts of OTC contracts onto regulated exchanges, the Exchange believes that making the Pilot Program permanent is appropriate and reasonable and will provide market participants with additional flexibility in determining whether to execute their customized options in an exchange environment or in the OTC market. The Exchange believes that market participants benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to, enhanced efficiency in initiating and closing out positions, increased market transparency, and heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of FLEX Options.

Pursuant to this filing, the Exchange is proposing to adopt the existing Pilot Program on a permanent basis. Specifically, the Exchange proposes to eliminate in subsections (a)(8)(A)(i) and (a)(8)(A)(ii) of Rule 1079 references to different minimum sizes applicable to opening FLEX transactions in FLEX market index Options, FLEX industry index Options, and FLEX equity Options, and to indicate that the minimum size for all three such options will be one contract; and to eliminate the Pilot Program set forth in Commentary .01 to Rule 1079.¹⁴ The proposal to make the Pilot Program permanent and thereby eliminate the minimum value size

¹⁴ As noted, in the case of FLEX currency options, however, which are not in the Pilot Program, the minimum value would be 50 contracts. Subsection (a)(8)(A)(ii) to Rule 1079.

applicable to opening transactions in new FLEX series on the Exchange is similar to a rule change by the NYSE Arca and CBOE when adopting a similar pilot program on a permanent basis.¹⁵

For the foregoing reasons, the Exchange believes that the proposed changes to the minimum value size for opening transactions in new series of FLEX equity and index Options are reasonable and appropriate, promote just and equitable principles of trade, and facilitate transactions in securities while continuing to foster the public interest and investor protection, and therefore should be adopted on a permanent basis. The Exchange will continue to monitor the usage of FLEX Options and review whether changes need to be made to its Rules or the ODD to address any changes in retail FLEX Option participation or any other issues that may occur as a result of the elimination of the minimum value sizes on a permanent basis.

2. Statutory Basis

The Exchange's proposal is consistent with Section 6(b) of the Act¹⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁷ 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 permanent approval of the Pilot Program, which eliminates minimum value size requirements for opening

¹⁵ See Exchange Act Release No. 72537 (July 3, 2014), 79 FR 39442 (July 10, 2014) (SR-NYSEArca-2014-25) (order approving proposal to make permanent NYSE Arca's FLEX no minimum value pilot). See also Exchange Act Release No. 67624 (August 8, 2012), 77 FR 48580 (August 14, 2012) (SR-CBOE-2012-040) (order approving proposal to make permanent CBOE's FLEX no minimum value pilot).

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

FLEX transactions in new FLEX series, would provide greater opportunities for investors to manage risk through the use of FLEX Options. Further, the Exchange notes that it has not experienced any adverse effects from the operation of the Pilot Program. The Exchange believes that making the Pilot Program permanent does not raise any unique regulatory concerns.

The Exchange also believes that eliminating the minimum value size requirements for opening FLEX transactions in new FLEX series, thus affording all market participants with an equal opportunity to tailor opening FLEX transactions to meet their own investment objectives without being encumbered by a minimum contract size, will help to remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, affording market participants who trade FLEX Options the same investment tools available to their counterparts on the NYSE Arca and CBOE will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will help to remove impediments to a free and open market and a national market system. The Exchange believes that adopting rules similar to those approved for and in use at NYSE Arca and CBOE, as discussed, does not raise any unique regulatory concerns. Lastly, the Exchange also believes that the proposed rule change, which provides all market participants, including public investors, with additional opportunities to trade customized options in an exchange environment and subject to exchange based rules, is appropriate in the public interest and for the protection of investors.

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. Specifically,

the proposal is structured to offer the same enhancement to all market participants, regardless of account type, and will not impose a competitive burden on any participant. The Exchange believes that adopting similar FLEX rules to those of NYSE Arca and CBOE will allow the Exchange to more efficiently compete for FLEX Options orders. In addition, the Exchange believes that adopting the Pilot Program on a permanent basis will enable the Exchange to compete with the OTC market, in which similar restrictions on minimum value size do not apply.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date 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 proposal 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-2015-94 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-2015-94. 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 website (<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 such filing also will be available for inspection and copying at the principal offices 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-2015-94, and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

Brent J. Fields,
Secretary.

¹⁸ 17 CFR 200.30-3(a)(12).

