SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64692; File No. SR–NYSEArca–2011–37]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rules 5.30 and 5.32 To Permit the Exchange To List Flexible Exchange Options on Index and Equity Securities That Are Eligible for Non-FLEX Options Trading, and That Have Non-FLEX Options on Such Index and Equity Securities Listed and Traded on at Least One National Securities Exchange, Even if the Exchange Does Not List Such Non-FLEX Options

June 16, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 3, 2011, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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

The Exchange proposes to amend Rules 5.30 and 5.32 to permit the Exchange to list Flexible Exchange Options (''FLEX Options'') on index and equity securities that are eligible for Non-FLEX Options trading, and that have Non-FLEX Options on such index and equity securities listed and traded on at least one national securities exchange, even if the Exchange does not list such Non-FLEX Options. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

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 self-regulatory organization 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

The Exchange is proposing to amend Rule 5.30 Applicability, Definitions, and References, and Rule 5.32, Terms of FLEX Options, to delete obsolete references and to permit trading of FLEX Options series in securities whose Non-FLEX Options are listed and traded on a national securities exchange(s), based on a recently adopted rule change of the Chicago Board Options Exchange (''CBOE'').[4]

Rules 5.30(a)(1) and 5.32(e)(1) currently permit FLEX Index Options on only four specific indexes, none of which are currently listed or traded on the Exchange. In addition, Rule 5.30(a)(2) currently permits FLEX Options on only one Exchange-Traded Fund Share (''ETF''). The Commission originally only approved trading of FLEX Options on a limited number of index products,[5] prior to approval of generic listing standards for index options, and the Exchange adopted rule text in a rule filing that restricted FLEX options to only one ETF, despite other general rule language in that rule filing that permitted FLEX options on any ETF.[6] In 2004, the Exchange had, in fact, deleted the references to specific indexes and to a specific ETF in the rules noted above,[7] but inadvertently reinstated the deleted text in a contemporaneous filing.[8] Subsequent listing of options on other index products did not include updating the relevant rule text in Rules 5.30 or 5.32.

The deletion of the restrictive language in Rules 5.30 and 5.32 will be accompanied by the adoption of new rule text, by which the Exchange is proposing to adopt a rule change similar to a rule change recently adopted by the CBOE to allow FLEX Equity Options[9] on any security that meets the standards of NYSE Arca Rule 5.3, and that has Non-FLEX Options on such security listed and traded on at least one options exchange, regardless of whether the Exchange trades such Non-FLEX Options.

Similarly, the CBOE rule change also adopted a provision to allow FLEX Index Options on any index that meets its listing standards. NYSE Arca proposes to adopt a similar provision that would permit FLEX Index Options on any index that meets the standards of Rule 5.12 or 5.13, and that has Non-FLEX Options on such index listed and traded on at least one options exchange, even if the Exchange does not list and trade such Non-FLEX Options.

As an alternative to the over-the-counter marketplace and other national security exchanges, the Exchange proposes in this rule filing to increase the spectrum of indexes and equity securities that are eligible for FLEX Options trading on the Exchange, even if the Exchange does not list Non-FLEX Options on such indexes or equity securities. In this regard, the Exchange does not list options on every NMS stock or index that is eligible for options trading, even if permitted to do so according to its listing standards, but recognizes that market participants may want access to options on such indexes and equity securities, subject to the certainty and safeguards that a regulated and standardized marketplace provides.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that its proposal to permit the Exchange to list FLEX Options on indexes and equity securities that are eligible for

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 60585 (August 28, 2009), 74 FR 46257 (September 8, 2009). Unlike CBOE's rule, we have clarified that our proposed rule would only permit the trading of FLEX Options on securities whose Non-Flex Options are listed and traded on at least one options exchange.

[5] *See* Securities Exchange Act Release No. 34364 (July 13, 1994), 59 FR 36813 (July 19, 1994).

[6] *See* Exchange Act Release No. 34–44025 (February 28, 2001), 66 FR 13986 (March 8, 2001). In particular, as part of this rule filing, the Exchange adopted the following rule text in Rule 8.102(f)(1), ''FLEX Equity Option transactions are limited to transactions in options on underlying securities or Exchange-Traded Fund Shares that have been approved by the Exchange in accordance with Rule 3.6.'' Rule 8.102 was subsequently renumbered as Rule 5.32.

[7] *See* Securities Exchange Act Release No. 49340 (February 27, 2004), 69 FR 10804 (March 8, 2004) (Notice of Filing and Immediate Effectiveness of PCX–2004–06).

[8] *See* Securities Exchange Act Release No. 49718 (May 17, 2004), 69 FR 29611 (May 24, 2004) (Order Approving PCX–2004–08).

[9] The Commission notes that options on ETFs, as discussed above, are considered FLEX Equity Options under NYSE Arca's rules. *See* NYSE Arca Rule 5.30(b)(5).

[10] 15 U.S.C. 78f(b).

Non-FLEX Options trading and whose Non-FLEX Options are listed and traded on at least one national securities exchange, even if the Exchange does not list such Non-FLEX Options, would provide market participants with additional means to manage their risk exposures and carry out their investment objectives with listed options. In this regard, the Exchange's proposal would increase competition in the FLEX Options market. In addition, the Exchange's proposal is consistent with investor protection and the public interest in that it is limited to FLEX Options on securities that would be eligible to have, and in fact have, Non-FLEX Options listed and traded on them. The criteria for such underlying securities has been carefully crafted over the years to ensure that only appropriate securities have standardized options listed on them (*e.g.,* securities with sufficient trading volume and shareholders).

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 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

No written comments were solicited or received with respect to the proposed rule change.

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

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, 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[11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[13] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[14] 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 requested that the Commission waive the 30-day operative delay so that the Exchange could immediately list FLEX Options on indexes and equity securities that are eligible for non-FLEX Options trading, and that have non-FLEX Options on such index and equity securities listed and traded on at least one national securities exchange, even if the Exchange does not list non-FLEX Options on such indexes and equity securities. In support of the waiver, the Exchange believes that its proposal is consistent with CBOE's rules, which were previously published for public comment, and would allow the Exchange to immediately compete with other exchanges for the trading of such FLEX Options.

The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. In making this determination, the Commission notes that NYSE Arca's proposed rule change is substantially similar to CBOE's FLEX rules, which also permit CBOE to list FLEX options on securities that are eligible for non-FLEX options trading, even if CBOE does not list non-FLEX options on such securities.[15] The Commission notes that the CBOE's proposal was subject to full notice and comment, and the Commission received no comments on CBOE's rule proposal. Further, the Commission notes that NYSE Arca's proposal adds clarification to the rules, noting expressly that its rules would only permit the trading of FLEX Options on securities whose non-FLEX Options are listed and traded on at least one national securities exchange. This provision will help to ensure that adequate exchange requirements are met for trading these products and that the FLEX market will provide an alternative to certain investors that want to customize specified options terms not available in the standardized market. In addition to the factors noted above, the Commission also believes that waiver of the operative delay will allow the NYSE Arca to immediately compete with other exchanges for the trading of such FLEX options, thereby providing investors another venue on which to trade these products. For these reasons, the Commission designates, consistent with the protection of investors and the public interest, that the proposed rule change become operative immediately upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the 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 e-mail to *rule-comments@sec.gov*. Please include File No. SR–NYSEArca–2011–37 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 No. SR–NYSEArca–2011–37. 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 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

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). Pursuant to Rule 19b–4(f)(6)(iii) under the Act, the Exchange is required 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 Commission notes that the Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] *See supra* note 4.

[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. 15 U.S.C. 78c(f).

Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such 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 No. SR–NYSEArca–2011–37 and should be submitted on or before July 13, 2011.

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

Elizabeth M. Murphy,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64688; File No. SR–Phlx–2011–56]

Self-Regulatory Organizations; The NASDAQ OMX PHLX LLC; Order Granting Approval of Proposed Rule Change Establishing a Qualified Contingent Cross Order for Execution on the Floor of the Exchange

June 16, 2011.

I. Introduction

On May 4, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') 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 establish a qualified contingent cross order for execution on the floor of the Exchange (''Floor QCC Order''). The proposed rule change was published in the **Federal Register** on May 12, 2011.[3] The Commission received one comment letter on the proposal.[4] Phlx submitted a comment response letter on June 3, 2011.[5] This order grants approval of the proposed rule change.

II. Description of the Proposal

Phlx proposes to amend Rule 1064 to establish a Floor QCC Order type.[6]

As proposed, the Floor QCC Order would be required to: (i) Be for at least 1,000 contracts, (ii) meet the six requirements of Phlx Rule 1080(o)(3),[7] (iii) be executed at a price at or between the National Best Bid and Offer (''NBBO''); and (iv) be rejected if a Customer order is resting on the Exchange book at the same price. Specifically, proposed Phlx Rule 1064(e) would provide that Floor QCC Orders may be immediately executed upon entry into the system by an Options Floor Brokers and without exposure if no Customer Orders[8] exist on the Exchange's order book at the same price.

Floor QCC Orders would be electronically entered by an Options Floor Broker on the floor of the Exchange using the Floor Broker Management System (''FBMS'') and the orders would then be executed electronically. Only Options Floor Brokers would be permitted to enter Floor QCC Orders. In addition, under proposed Rule 1064(e)(2), Options Floor Brokers would be prohibited from entering Floor QCC Orders for their own accounts, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion. The Exchange notes that the restrictions set forth in proposed Rule 1064(e)(2) do not limit in any way the obligation of Options Floor Brokers and other Exchange members to comply with Section 11(a) or the rules thereunder.[9]

Additionally, the Exchange proposes to modify subsections (a), (b), and (c) of Rule 1064 to establish that the requirements applicable to Floor QCC Orders that are set forth in new subsection (e) are distinct from those applicable to the orders described in such subsections.

III. Comment Letter

One commenter raised an objection to the proposal.[10] The commenter questioned the ability of a floor-based exchange to verify that there is not a customer order on the book at the price as a Floor QCC Order at the time of execution.[11] The commenter argued that in an electronic trading environment, an exchange's systems can automatically determine if there is a customer order on the book before a Floor QCC Order is executed.[12] The commenter stated that how this function would be performed on a floor-based exchange should be clarified, as well as what the time of execution would be for a floor-based trade.[13] The commenter argued that ''[a]llowing a QCC to be implemented in a non-automated environment without a systemic check of whether there is a customer order on the book at the time of execution would effectively eliminate the protections guaranteed in an all electronic trading environment, thus returning [the exchanges] to the unequal competitive environment from which the ISE's QCC proposal originated.''[14]

In its letter, Phlx responded to the issues raised in the ISE Letter and explained that, even when Floor QCC Orders are entered by the Options Floor Broker, they are submitted electronically to the Phlx order book where a systemic check would be performed to determine whether a customer order is resting on the book at

[17] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 64415 (May 5, 2011), 76 FR 27732 (''Notice'').

[4] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Michael J. Simon, Secretary, International Securities Exchange (''ISE''), dated May 27, 2011 (''ISE Letter'').

[5] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Jeffrey S. Davis, Vice President and Deputy General Counsel, Phlx, dated June 3, 2011 (''Phlx Response Letter'').

[6] Phlx established an electronic QCC Order set forth in PHLX Rule 1080(o). *See* Securities Exchange Act Release No. 64249 (April 7, 2011), 76 FR 20773 (April 13, 2011) (SR–Phlx–2011–047).

[7] Phlx Rule 1080(o)(3) defines a qualified contingent cross trade substantively identical to the Commission's definition in the QCT Release. A qualified contingent cross trade must meet the following conditions: (i) At least one component must be an NMS stock, as defined in Rule 600 of Regulation NMS, 17 CFR 242.600; (ii) all components must be effected with a product or price contingency that either has been agreed to by all the respective counterparties or arranged for by a broker-dealer as principal or agent; (iii) the execution of one component must be contingent upon the execution of all other components at or near the same time; (iv) the specific relationship between the component orders (*e.g.,* the spread between the prices of the component orders) is determined by the time the contingent order is placed; (v) the component orders must bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or cancelled; and (vi) the transaction must be fully hedged (without regard to any prior existing position) as a result of other components of the contingent trade. The Commission has granted an exemption for QCTs that meet certain requirements from Rule 611(a) of Regulation NMS, 17 CFR 242.611(a) (''QCT Exemption''). *See* Securities Exchange Act Release No. 57620 (April 4, 2008), 73 FR 19271 (April 9, 2008) (''QCT Release,'' which supersedes a release initially granting the QCT exemption, Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006) (''Original QCT Release'')).

[8] Phlx would reject Floor QCC Orders that attempt to execute when any Customer Orders are resting on the Exchange limit order book at the same price.

[9] Proposed Rule 1064(e)(2) would also require Options Floor Brokers to maintain books and records demonstrating that no Floor QCC Order was entered by an Options Floor Broker in such a prohibited account.

[10] *See* note 4, *supra.*

[11] *See* ISE Letter.

[12] *Id.*

[13] *Id.*

[14] *Id.*