

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77153; File No. SR-Phlx-2016-19]

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

February 17, 2016.

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 February 2, 2016, 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 the 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 opening transactions in new series of FLEX index options and FLEX equity options (together known as “FLEX Options”).<sup>3</sup>

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

Additions are *in italics* and deletions are [bracketed].

#### Rules of the Exchange

##### Options Rules

\* \* \* \* \*

#### 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 [January 31] March 15, 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.

\* \* \* \* \*

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 opening transactions in new series of FLEX Options (the “Pilot Program” or “Pilot”). The Exchange has submitted a separate filing for permanent approval of the Pilot Program;<sup>4</sup> and is submitting this extension proposal so the Pilot Program continues while the Commission considers such permanent approval.

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>5</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>6</sup>

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.<sup>7</sup>

The Exchange now proposes to extend the Pilot Program for a pilot period ending the earlier of March 15, 2016, or the date on which the Pilot is approved on a permanent basis.<sup>8</sup>

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

<sup>5</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>6</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>7</sup> See Securities Exchange Act Release No. 75794 (August 31, 2015), 80 FR 53606 (September 4, 2015) (SR-Phlx-2015-74) (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>8</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 2017 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.

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

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

<sup>3</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 FX Options. The pilot program discussed herein does not encompass FLEX currency options.

<sup>4</sup> See Securities Exchange Act Release No. 76593 (December 8, 2015), 80 FR 77399 (December 14, 2015) (SR-Phlx-2015-94) (notice of amended proposal to make the Pilot Program permanent) (the “permanent approval filing”).

the counter (“OTC”) market where similar size restrictions do not apply.<sup>9</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 as Exhibit 3 to the Exchange’s permanent approval filing, and a subsequent Report with updated data, which the Exchange intends to make public, was also submitted to the Commission under separate cover.<sup>10</sup>

## 2. Statutory Basis

The Exchange’s 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 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.

<sup>9</sup> The Exchange has not experienced any adverse market effects with respect to the Pilot Program.

<sup>10</sup> In the event the Pilot Program is not permanently approved by March 15, 2016, the Exchange will submit an additional Report covering the extended Pilot period.

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

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

## 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 foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) 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 asked the Commission to waive the 30-day operative delay so that the Exchange may seamlessly continue its Pilot Program. The Commission believes that waiving the 30-day operative delay is consistent with the protection of

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) 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.

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

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

investors and the public interest.<sup>16</sup> The Commission notes that waiving the 30-day operative delay would enable the Pilot Program to continue as of the date of the filing of this proposed rule change. 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 necessary or appropriate in the public interest, for the protection of investors, or 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2016-19 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-2016-19. 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

<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).

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 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 Number SR-Phlx-2016-19, and should be submitted on or before March 15, 2016.

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

**Robert W. Errett,**  
*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77159; File No. SR-BATS-2015-105]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change to Rule 14.11(i), Managed Fund Shares, To List and Trade the Shares of the Elkhorn S&P GSCI Dynamic Roll Commodity ETF of Elkhorn ETF Trust

February 17, 2016.

On December 18, 2015, BATS Exchange, Inc. ("BATS") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to list and trade the shares of the Elkhorn S&P GSCI Dynamic Roll Commodity ETF of Elkhorn ETF Trust under BATS Rule 14.11(i). The proposed rule change was published for comment in the *Federal Register* on January 4, 2016.<sup>3</sup> The Commission has not received any comments on the proposal.

Section 19(b)(2) of the Act<sup>4</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 after publication of the notice for this proposed rule change is February 18, 2016. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> designates April 1, 2016, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-BATS-2015-105).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77165; File Nos. SR-BSECC-2015-002; SR-SCCP-2015-02; SR-BX-2015-085; SR-NASDAQ-2015-160; SR-Phlx-2015-113]

### Self-Regulatory Organizations; Boston Stock Exchange Clearing Corporation; Stock Clearing Corporation of Philadelphia; NASDAQ OMX BX, Inc.; The NASDAQ Stock Market LLC; NASDAQ OMX PHLX LLC; Order Approving Proposed Rule Changes, as Modified by Amendments Thereto, To Amend the By-Laws of NASDAQ, Inc.

February 17, 2016.

#### I. Introduction

On December 21, 2015, each of the Boston Stock Exchange Clearing Corporation ("BSECC"), Stock Clearing Corporation of Philadelphia ("SCCP"), NASDAQ OMX BX, Inc. ("BX"), The NASDAQ Stock Market LLC ("NASDAQ"), and NASDAQ OMX PHLX LLC ("Phlx" and, together with

BSECC, SCCP, BX, and NASDAQ, the "SROs"), filed with the Securities and Exchange Commission ("Commission"), 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> proposed rule changes with respect to the By-Laws ("By-Laws") of NASDAQ, Inc. ("Company"), the parent company of the SROs. The proposed rule changes would revise certain requirements regarding Director<sup>3</sup> qualifications and Director disqualification procedures for the Company's Board of Directors ("Board"). On December 29, 2015, each SRO filed Amendment No. 1 to its respective proposal.<sup>4</sup> On December 30, 2015, Phlx filed Amendment No. 2 to its proposal.<sup>5</sup> The proposed rule changes, as modified by the amendments thereto, were published for comment in the *Federal Register* on January 7, 2016.<sup>6</sup> The Commission did not receive any comment letters on the proposals. This order approves the proposed rule changes, as modified by the respective amendments thereto.

#### II. Description of the Proposal

The Company proposes to amend certain provisions of the By-Laws that relate to the qualification of Directors.

First, the Company proposes to amend Section 4.3 of the By-Laws (Qualifications), which sets forth the compositional requirements of the Board. Currently, Section 4.3 requires that the number of Non-Industry Directors<sup>7</sup> on the Board equal or exceed

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

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

<sup>3</sup> "Director" means a member of the Company's Board of Directors. See Article I(j) of the By-Laws.

<sup>4</sup> Amendment No. 1 for each of the proposals amended and replaced the original filing in its entirety. In Amendment No. 1, each SRO, among other things, clarified the operation of the current and proposed provisions of the By-Laws and how the proposed rule change would operate in conjunction with the Listing Rules (as herein defined) of NASDAQ.

<sup>5</sup> On December 30, 2015, Phlx withdrew Amendment No. 1 for technical reasons and, subsequently, filed Amendment No. 2. Amendment No. 2 amended and replaced the original filing in its entirety.

<sup>6</sup> Securities Exchange Act Release Nos. 76806 (December 31, 2015), 81 FR 838 (SR-BSCC-2015-002); 76807 (December 31, 2015), 81 FR 828 (SR-SCCP-2015-02); 76808 (December 31, 2015), 81 FR 831 (SR-BX-2015-085); 76809 (December 31, 2015), 81 FR 817 (SR-NASDAQ-2015-160); 76810 (December 31, 2015), 81 FR 841 (SR-Phlx-2015-113) (collectively, "Notices").

<sup>7</sup> Under the By-Laws, "Non-Industry Director" or "Non-Industry committee member" means a Director (excluding any Staff Director) or committee member who is (1) a Public Director or Public committee member; (2) an Issuer Director or Issuer committee member; or (3) any other individual who would not be an Industry Director or Industry committee member. See Article I(q) of the By-Laws.

<sup>17</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> See Securities Exchange Act Release No. 76776 (Dec. 28, 2015), 80 FR 120.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> *Id.*

<sup>6</sup> 17 CFR 200.30-3(a)(31).