

assembled in the form and at the place that the financial intermediary, or its agent, reasonably requests to facilitate the financial intermediary's sending of the 19(a) Notice to each beneficial owner of the Fund's shares; and (c) upon the request of any financial intermediary, or its agent, that receives copies of the 19(a) Notice, will pay the financial intermediary, or its agent, the reasonable expenses of sending the 19(a) Notice to such beneficial owners.

5. Additional Board Determinations for Funds Whose Common Shares Trade at a Premium.

If:

(a) The Fund's common shares have traded on the Exchange that they primarily trade on at the time in question at an average premium to NAV equal to or greater than 10%, as determined on the basis of the average of the discount or premium to NAV of the Fund's common shares as of the close of each trading day over a 12-week rolling period (each such 12-week rolling period ending on the last trading day of each week); and

(b) The Fund's annualized distribution rate for such 12-week rolling period, expressed as a percentage of NAV as of the ending date of such 12-week rolling period, is greater than the Fund's average annual total return in relation to the change in NAV over the 2-year period ending on the last day of such 12-week rolling period; then:

(i) At the earlier of the next regularly scheduled meeting or within four months of the last day of such 12-week rolling period, the Board including a majority of the Independent Trustees:

(1) Will request and evaluate, and the Fund's Adviser will furnish, such information as may be reasonably necessary to make an informed determination of whether the Plan should be continued or continued after amendment;

(2) Will determine whether continuation, or continuation after amendment, of the Plan is consistent with the Fund's investment objective(s) and policies and in the best interests of the Fund and its shareholders, after considering the information in condition 5(b)(i)(1) above; including, without limitation:

(A) Whether the Plan is accomplishing its purpose(s);

(B) The reasonably foreseeable material effects of the Plan on the Fund's long-term total return in relation to the market price and NAV of the Fund's common shares; and

(C) The Fund's current distribution rate, as described in condition 5(b) above, compared with the Fund's average annual taxable income or total

return over the 2-year period, as described in condition 5(b), or such longer period as the Board deems appropriate; and

(3) Based upon that determination, will approve or disapprove the continuation, or continuation after amendment, of the Plan; and

(ii) The Board will record the information considered by it including its consideration of the factors listed in condition 5(b)(i)(2) above and the basis for its approval or disapproval of the continuation, or continuation after amendment, of the Plan in its meeting minutes, which must be made and preserved for a period of not less than six years from the date of such meeting, the first two years in an easily accessible place.

6. Public Offerings. The Fund will not make a public offering of the Fund's common shares other than:

(a) A rights offering below NAV to holders of the Fund's common shares;

(b) An offering in connection with a dividend reinvestment plan, merger, consolidation, acquisition, spin off or reorganization of the Fund; or

(c) An offering other than an offering described in conditions 6(a) and 6(b) above, provided that, with respect to such other offering:

(i) The Fund's annualized distribution rate for the six months ending on the last day of the month ended immediately prior to the most recent distribution record date,⁴ expressed as a percentage of NAV as of such date, is no more than 1 percentage point greater than the Fund's average annual total return for the 5-year period ending on such date;⁵ and

(ii) The transmittal letter accompanying any registration statement filed with the Commission in connection with such offering discloses that the Fund has received an order under section 19(b) to permit it to make periodic distributions of long-term capital gains with respect to its common shares as frequently as twelve times each year, and as frequently as distributions are specified by or determined in accordance with the terms of any outstanding preferred shares that such Fund may issue.

7. Amendments to Rule 19b-1.

The requested order will expire on the effective date of any amendment to rule 19b-1 that provides relief permitting certain closed-end investment

⁴ If the Fund has been in operation fewer than six months, the measured period will begin immediately following the Fund's first public offering.

⁵ If the Fund has been in operation fewer than five years, the measured period will begin immediately following the Fund's first public offering.

companies to make periodic distributions of long-term capital gains with respect to their outstanding common shares as frequently as twelve times each year.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012-10569 Filed 5-1-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

LocatePlus Holdings Corporation; Order of Suspension of Trading

April 30, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of LocatePlus Holdings Corporation ("LocatePlus") because it has not filed any periodic reports since the period ended March 31, 2011.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company, and any equity securities of any entity purporting to succeed to this issuer. Therefore, it is ordered, pursuant to Section 12(k) of the Exchange Act, that trading in the securities of the above-listed company, and any equity securities of any entity purporting to succeed to this issuer, is suspended for the period from 9:30 a.m. EDT on April 30, 2012, through 11:59 p.m. EDT on May 11, 2012.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2012-10671 Filed 4-30-12; 4:15 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66861; File No. SR-Phlx-2012-28]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Granting Approval of a Proposed Rule Change Relating to the Listing and Trading of MSCI EAFE Index Options

April 26, 2012.

I. Introduction

On March 1, 2012, NASDAQ OMX PHLX LLC ("Exchange" or "Phlx") 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 amend certain of its rules to provide for the listing and trading of options on the MSCI EAFE Index. The proposed rule change was published for comment in the **Federal Register** on March 15, 2012.³ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description

The proposed rule change would amend Phlx Rules 1079 (FLEX Index, Equity and Currency Options), 1009A (Designation of the Index) and 1101A (Terms of Option Contracts) to permit the Exchange to list and trade P.M. cash-settled, European-style options, including FLEX⁴ options and LEAPS,⁵ on the MSCI EAFE (Europe, Australasia, and the Far East) Index, which is described below. The proposal would also create new Phlx Rule 1109A, entitled “MSCI EAFE Index,” which would provide additional detailed information pertaining to the index as required by the licensor including, but not limited to, liability and other representations on the part of MSCI Inc. (“MSCI”), which maintains the index.

As described by the Exchange, the MSCI EAFE Index is a free float-adjusted market capitalization index consisting of large and midcap components from countries classified by MSCI as developed (excluding the U.S. and Canada), and is designed to measure the equity market performance of developed markets (excluding the U.S. and Canada). The index consists of component securities from markets in the following 22 areas: Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hong Kong, Ireland, Israel, Italy, Japan, the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, and the United Kingdom.

As further described by the Exchange, the MSCI EAFE Index is calculated in

U.S. Dollars on a real time basis from the open of the first market on which the components are traded to the close of the last market on which the components are traded. The level of the index reflects the free float-adjusted market value of the component stocks relative to a particular base date, and the methodology used to calculate the value of the index is similar to the methodology used to calculate the value of other well-known market-capitalization weighted indexes.⁶ As of December 31, 1969, when the MSCI EAFE Index was launched, its base index value was 100. On June 1, 2011, the index value was 1727.187.⁷

The MSCI EAFE Index is monitored and maintained by MSCI. According to the Exchange, adjustments to the MSCI EAFE Index are made on a daily basis with respect to corporate events and dividends. The index is generally updated on a quarterly basis to reflect amendments to shares outstanding and free float. Full index reviews are conducted on a semi-annual basis for purposes of rebalancing the index.

Options on the MSCI EAFE Index, as introduced by the proposed rule change, would be European-style and P.M. cash-settled. The settlement value for expiring options would be based on the closing prices of the component stocks on the last trading day prior to expiration. The expiration date would be the Saturday following the third Friday of the expiration month. The Options Clearing Corporation would be the issuer and guarantor.

Phlx Rule 1009A(d) provides that the Exchange may trade options on a broad-based index⁸ pursuant to Rule 19b-4(e) under the Act, when certain conditions are satisfied.⁹ The MSCI EAFE Index is a broad-based index. However, it does not meet all the conditions of Rule 1009A(d). The proposed rule change

would establish listing standards that are specific to MSCI EAFE Index options, to be set forth in new Rule 1009A(h).

Specifically, proposed Rule 1009A(h)(i) would provide that the Exchange may trade options on the MSCI EAFE Index if each of the following conditions is satisfied:

- (1) The index is broad-based;
- (2) Options on the index are designated as P.M.-settled index options;
- (3) The index is capitalization-weighted, price-weighted, modified capitalization-weighted or equal dollar-weighted;
- (4) The index consists of 500 or more component securities;
- (5) All the component securities of the index have a market capitalization of greater than \$100 million;
- (6) No single component security accounts for more than 15% of the weight of the index, and the five highest weighted component securities in the index do not, in the aggregate, account for more than 50% of the weight of the index;
- (7) Non-U.S. component securities (stocks or ADRs) that are not subject to comprehensive surveillance agreements do not, in the aggregate, represent more than 20% of the weight of the index;
- (8) The current index value is widely disseminated at least once every 15 seconds by one or more major market data vendors during the time options on the index are traded on the Exchange;
- (9) The Exchange reasonably believes it has adequate system capacity to support the trading of options on the index, based on a calculation of the Exchange’s current Independent System Capacity Advisor (ISCA) allocation and the number of new messages per second expected to be generated by options on such index; and
- (10) The Exchange has written procedures in place for the surveillance of trading of options on the index.

After the initial listing of options on the MSCI EAFE Index under the above conditions, the following maintenance standards, as set forth in proposed Rule 1009A(h)(ii), would apply: The requirements set forth in proposed Rule 1009A(h)(i)(1), (2), (3), (4), (7), (8), (9), and (10) must continue to be satisfied. The requirements set forth in proposed Rule 1009A(h)(i)(5) and (6) must be satisfied only as of the first day of January and July in each year. In addition, the total number of component securities in the index could not increase or decrease by more than 35% from the number of component securities in the index at the time of its initial listing.

⁶ Details regarding the methodology for calculating the MSCI EAFE Index can be found in the Notice, *supra* note 3, and at http://www.msci.com/eqb/methodology/meth_docs/MSCI_May11_GIMIMethod.pdf.

⁷ According to the Exchange, static data regarding the MSCI EAFE Index is distributed daily to clients through MSCI as well as through major quotation vendors, including Bloomberg L.P. (“Bloomberg”), FactSet Research Systems, Inc. (“FactSet”) and Thomson Reuters (“Reuters”). Real time data is distributed at least every 15 seconds, using MSCI’s real-time calculation engine, to Reuters, Bloomberg, SIX Telekurs and FactSet.

⁸ A broad-based index is defined in Exchange Rule 1000A(b)(11) as an index designed to be representative of a stock market as a whole or of a range of companies in unrelated industries.

⁹ This provision is an exception to Exchange Rule 1009A(a), which provides generally that the listing of a class of index options on a new underlying index will be treated by the Exchange as a proposed rule change subject to filing with and approved by the Commission under Section 19(b) of the Act.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 66569 (March 9, 2012), 77 FR 15409 (“Notice”).

⁴ FLEX options are flexible exchange-traded index, equity, or currency option contracts that provide investors the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX index options may have expiration dates within five years. See Exchange Rules 1079 and 1101A.

⁵ LEAPS or Long Term Equity Anticipation Securities are long term options that generally expire from twelve to thirty-nine months from the time they are listed.

The Exchange proposed to apply position limits of 25,000 contracts on the same side of the market to options on the MSCI EAFE Index.¹⁰ All position limit hedge exemptions would apply. In addition, the Exchange proposed to amend Rule 1079(d)(1) to note that, with respect to FLEX options on the MSCI EAFE Index, the same number of contracts, 25,000, would apply with respect to the position limit. The Exchange also proposed to apply existing index option margin requirements for the purchase and sale of options on the MSCI EAFE Index.¹¹

Further, as proposed, Exchange rules that apply to the trading of options on broad-based indexes also would apply to options on the MSCI EAFE Index.¹² The trading of these options would also be subject to, among other provisions, Exchange rules governing margin requirements and trading halt procedures for index options.¹³

Finally, the Exchange proposed to add Rule 1109A, entitled "MSCI EAFE Index," to provide additional detailed information pertaining to the index as required by the licensor, including, but not limited to, liability and other representations on the part of MSCI.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁴ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁵ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and

open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that the listing and trading of options on the MSCI EAFE Index will broaden trading and hedging opportunities for investors by creating a new options instrument based on an index designed to measure the equity market performance of developed markets (excluding the U.S. and Canada). Because the MSCI EAFE Index is a broad-based index comprised of actively-traded, well-capitalized stocks, the trading of options on the MSCI EAFE Index does not raise unique regulatory concerns. The Commission believes that the listing standards, which are created specifically and exclusively for the MSCI EAFE Index, are consistent with the Act, for the reasons discussed below.

The Commission notes that proposed Rule 1009A(h) would require that the MSCI EAFE Index consist of 500 or more component securities. The component securities of the MSCI EAFE Index are listed and traded on 22 different markets. Further, for options on the MSCI EAFE Index to trade, each of the minimum of 500 component securities would need to have a market capitalization of greater than \$100 million. Moreover, the Commission notes that, according to the Exchange, the MSCI EAFE Index is comprised of more than 900 components, all of which must meet the market capitalization requirement to permit an option on the index to begin trading.

The Commission notes that the proposed listing standards for options on the MSCI EAFE Index would not permit any single security to comprise more than 15% of the weight of the index, and would not permit a group of five securities to comprise more than 50% of the weight of the index. The Commission believes that, in view of the number of countries represented in the index and the requirement on the number of securities in the index and the market capitalization, this concentration standard is consistent with the Act. Further, the Exchange stated that, of the more than 900 components that comprise the MSCI EAFE Index, no single component comprises more than 5% of the index.

The Exchange has represented that it has an adequate surveillance program in place for options on the MSCI EAFE Index, and intends to apply the same procedures for surveillance that it applies to its other index options. The Exchange also is a member of the Intermarket Surveillance Group and an affiliate member of the International Organization of Securities Commissions,

and has entered into various Information Sharing Agreements and/or Memoranda of Understandings with various stock exchanges. The Commission notes that, consistent with the Exchange's generic listing standards for broad-based index options, non-U.S. component securities of the MSCI EAFE Index that are not subject to comprehensive surveillance agreements will not, in the aggregate, represent more than 20% of the weight of the index.

In addition, the Commission notes that the proposed listing standards require the current value of the MSCI EAFE Index to be widely disseminated at least once every 15 seconds by one or more major market data vendors during the time options on the index are traded on the Exchange. Further, the standards require that the Exchange reasonably believe it has adequate system capacity to support the trading of options on the MSCI EAFE Index. The Exchange stated that these requirements will be met.

As a national securities exchange, the Exchange is required, under Section 6(b)(1) of the Act,¹⁶ to enforce compliance by its members, and persons associated with its members, with the provisions of the Act, Commission rules and regulations thereunder, and its own rules. In this regard, the Commission notes that Exchange rules that apply to the trading of options on broad-based indexes would apply to options on the MSCI EAFE Index.¹⁷ In addition, the Exchange has stated that options on the MSCI EAFE Index would be subject to the same rules that govern all Exchange index options, including rules that are designed to protect public customer trading.¹⁸

The Commission further believes that the Exchange's proposed position and exercise limits, strike price intervals, minimum tick size, series openings, and other aspects of the proposed rule change are appropriate and consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁹ that the

¹⁰ 15 U.S.C. 78f(b)(1).

¹¹ See generally Exchange Rules 1000A through 1108A (Rules Applicable to Trading of Options on Indices) and Exchange Rules 1000 through 1094 (Rules Applicable to Trading of Options on Stocks, Exchange-Traded Fund Shares and Foreign Currencies).

¹² See Notice, *supra* note 3 and Exchange Rules 1024–1029. See also *supra* notes 12 and 13.

¹³ 15 U.S.C. 78s(b)(2).

¹⁰ The exercise limit would also be 25,000 contracts as per Exchange Rule 1002A.

¹¹ See Exchange Rule 721. For additional proposed requirements for options on the MSCI EAFE Index, including strike price intervals, minimum tick size, and series openings, see Notice, *supra* note 3.

¹² See generally Exchange Rules 1000A through 1108A (Rules Applicable to Trading of Options on Indices) and Exchange Rules 1000 through 1094 (Rules Applicable to Trading of Options on Stocks, Exchange-Traded Fund Shares and Foreign Currencies).

¹³ See Exchange Rules 721 (Proper and Adequate Margin) and 1047A (Trading Rotations, Halts or Reopenings).

¹⁴ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁵ 15 U.S.C. 78f(b)(5).

proposed rule change (SR-Phlx-2012-28) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2012-10538 Filed 5-1-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66863; File No. SR-EDGA-2012-15]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees Associated With Receipt of the EDGA Book Feed

April 26, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 19, 2012, EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission ("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 the Substance of the Proposed Rule Change

The Exchange proposes to amend its fee schedule applicable to Members³ and non-Members of the Exchange to assess market data fees for internal and external distribution of the EDGA book feed ("EDGA Book Feed"). The text of the proposed rule change is available on the Exchange's Web site at www.directedge.com, at the Exchange's principal office, and at the Public Reference Room of the Commission.

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 self-regulatory organization 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR-EDGA-2011-19,⁴ the Exchange made available the EDGA Book Feed, a data feed that contains all orders for securities trading on the Exchange, including all displayed orders for listed securities trading on EDGA, order executions, order cancellations, order modifications, order identification numbers and administrative messages. The EDGA Book Feed offers real-time data, thereby allowing Member firms to more accurately price their orders based on EDGA's view of the depth of book information. It also provides Members an ability to track their own orders from order entry to execution. It is available in both unicast and multicast format. Upon the Exchange's initial offering of the EDGA Book Feed, such service was provided at no cost. In SR-EDGA-2011-19, the Exchange stated that "[s]hould EDGA determine to charge fees associated with the EDGA Book Feed, EDGA will submit a proposed rule change to the Commission in order to implement those fees."⁵ This proposal is designed to implement fees for the receipt of the EDGA Book Feed.

The proposed rule change to the EDGA fee schedule codifies such a fee associated with the receipt of the EDGA Book Feed. The Exchange, like other market centers and other data providers, intends to assess fees for entities that receive real-time market data directly or indirectly and act as either internal or external distributors, as discussed below. A "Distributor" of Exchange data is any entity that receives an EDGA Book Feed directly from the Exchange or indirectly through another entity and then distributes such data either internally (within that entity) ("Internal Distributor") or externally (outside that entity) ("External Distributor"). All Distributors shall execute a Market Data Vendor Agreement with Direct Edge, Inc., acting on behalf of the EDGA Exchange. The amount of the monthly fees would depend on whether the distributor is an "Internal Distributor"

or "External Distributor." Internal Distributors are proposed to be charged \$500 per month and External Distributors are proposed to be charged \$2,500 per month. The fee paid by an External Distributor includes the Internal Distributor Fee and thus allows an External Distributor to provide data both internally (i.e., to users within their own organization) and externally (to users outside their own organization).

Additionally, Distributors will only pay one distributor fee, regardless of the number of locations or users to which the feed is received or distributed. In addition, neither Distributors nor their end-users will be charged per-user device fees when used to receive the EDGA Book Feed nor will they be charged per-user display fees when used to present the EDGA Book Feed.

The Exchange proposes to implement this rule change on May 1, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act⁶ in general and furthers the objectives of Section 6(b)(4)⁷ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange makes all services and products subject to these fees available on a non-discriminatory basis to similarly situated recipients because the service is optional and fees charged for the EDGA Book Feed will be the same for both Members and non-Members. The fees are not unreasonably discriminatory and are equitably allocated. The fees for Members and non-Members are uniform except with respect to reasonable distinctions with respect to internal and external distribution.⁸ The Exchange proposes charging External Distributors more than Internal Distributors because of higher administrative costs associated with monitoring External Distributors ongoing reporting, as provided in the Direct Edge Data Vendor Agreement and

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

⁸ The Exchange notes that distinctions based on external versus internal distribution have been previously filed with the Commission by NASDAQ Exchange ("NASDAQ"), NASDAQ OMX BX ("BX"), and NASDAQ OMX PSX ("PSX"). See Nasdaq Rule 7019(b). See also Securities Exchange Act Release No. 62876 (September 9, 2010), 75 FR 56624 (September 16, 2010) (SR-PHLX-2010-120). See also Securities Exchange Act Release No. 62907 (September 14, 2010), 75 FR 57314 (September 20, 2010) (SR-NASDAQ-2010-110). See also Securities Exchange Act Release No. 63442 (December 6, 2010), 75 FR 77029 (December 10, 2010) (SR-BX-2010-081).

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

⁴ Securities Exchange Act Release No. 64792 (July 1, 2011), 76 FR 39959 (July 7, 2011) (SR-EDGA-2011-19).

⁵ *Id.*