

Section 6(b)(5) of the Act<sup>11</sup> by providing the Exchange with a mechanism to ensure that it has a sufficient number of qualified non-public arbitrators readily available to resolve TPH controversies. Section 6(b)(5) of the Act specifically provides, among other things, that the rules of a national securities exchange should foster cooperation and coordination with persons engaged in regulating securities.<sup>12</sup> The Commission believes that the proposed rule change would foster cooperation between CBOE and FINRA to help facilitate and improve the administration of CBOE's arbitration forum. In addition, the proposed rule change would provide the Exchange with greater flexibility in its selection of qualified non-public arbitration panels, which would prevent unnecessary delays in, and improve the administration of, its arbitration forum for resolving disputes.

The Commission does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change merely helps ensure that CBOE has a sufficient number of qualified non-public arbitrators readily available for TPH controversies. Moreover, the proposed rule change would be neutrally applied to all TPH controversies.

#### IV. Accelerated Approval

In its filing, CBOE requested that the Commission approve the proposed rule change on an accelerated basis so that the proposal may become operative as soon as practicable. The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> for approving the proposed rule change prior to the 30th day after the date of publication in the **Federal Register**. In particular, CBOE represented to the Commission staff that there are pending TPH controversies that cannot be heard in arbitration because there are not enough eligible arbitrators on the Committee because many Committee members have interests, relationships, or circumstances that preclude them from being able to render an objective and impartial determination in these matters.<sup>14</sup> The Exchange has also represented that the delay in resolving these TPH controversies has created an undue hardship on the parties involved.<sup>15</sup> The Commission believes

that granting CBOE's request for accelerated approval would allow the Exchange to more readily select the arbitration panels for these pending TPH controversies, thus preventing further delay in hearing the parties' claims. Accordingly, the Commission finds that good cause exists to approve the proposed rule change on an accelerated basis.

#### V. 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-CBOE-2013-114 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2013-114. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make

available publicly. All submissions should refer to File Number SR-CBOE-2013-114 and should be submitted on or before January 2, 2014.

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-CBOE-2013-114) be, and hereby is, approved on an accelerated basis.

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

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71004; File No. SR-Phlx-2013-101]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Granting Approval of Proposed Rule Change Regarding the Short Term Options Program

December 6, 2013.

#### I. Introduction

On October 3, 2013, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to: (1) Expand the number of classes on which short term options series ("STOs") may be opened in accordance with its Short Term Option Series Program ("STO Program") from 30 to 50; (2) modify the initial and additional series listing provisions to allow the Exchange to open up to thirty STOs for each expiration date in a STO class; (3) expand the strike price range limitations for STOs; and (4) allow the Exchange to list STOs at a strike price interval of \$2.50 or greater where the strike price is above \$150. The proposed rule change was published for comment in the **Federal Register** on October 22, 2013.<sup>3</sup> The Commission received one comment letter on the proposal.<sup>4</sup> This

<sup>16</sup> *Id.*

<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> Securities Exchange Act Release No. 70682 (October 15, 2013), 78 FR 62809 ("Notice").

<sup>4</sup> See letter from Megan R. Malone, Attorney, Legal Division, Chicago Board Options Exchange, Incorporated ("CBOE"), to Elizabeth M. Murphy,

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> *Id.*

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> See email from Corinne Klott, Attorney, CBOE, to Daniel Fisher, Branch Chief, Division of Trading and Markets, Commission, dated December 3, 2013.

<sup>15</sup> *Id.*

order approves the proposed rule change.

## II. Description of the Proposal

Currently, Commentary .11(a) to Rule 1012 permits the Exchange to open for trading on any Thursday or Friday that is a business day series of options on no more than thirty option classes that expire at the close of business on each of the next five consecutive Fridays that are business days.<sup>5</sup> The Exchange may also list STOs on option classes selected by other exchanges under their respective STO Program rules.<sup>6</sup> The Exchange has proposed to increase from thirty to fifty the number of option classes that may be opened by the Exchange pursuant to the STO Program.

The Exchange also proposed to modify its initial and additional STO listing requirements to permit the Exchange to open up to thirty STOs for each expiration date in a class. Phlx's current rules provide that the Exchange may open up to twenty STOs for each expiration date in a class.<sup>7</sup> Phlx's rules also provide that if the Exchange opens less than twenty STOs for an expiration date, it may open additional series "when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened."<sup>8</sup> The proposed rule change would permit Phlx to open up to thirty STOs for each expiration date in a class. Under the proposed rule change, if Phlx opens less than thirty STOs for an expiration date, it may open additional series under the same conditions noted above.

Phlx also proposed to change the strike price range limitations for the STO Program. Currently, the strike price of each STO has to be fixed with approximately the same number of strike prices being opened above and below the value of the underlying security at about the time that the STOs are initially opened for trading on the Exchange, and with strike prices being within thirty percent (30%) above or below the closing price of the underlying security from the preceding day.<sup>9</sup> Further, any additional strike prices listed by the Exchange must also be within thirty percent (30%) above or

below the current price of the underlying security.<sup>10</sup>

Phlx's proposed rule would provide that any initial or additional series listed by the Exchange shall be reasonably close to the price of the underlying equity security and within the following parameters: (i) If the price of the underlying security is less than or equal to \$20, strike prices shall be not more than one hundred percent (100%) above or below the price of the underlying security; and (ii) if the price of the underlying security is greater than \$20, strike prices shall be not more than fifty percent (50%) above or below the price of the underlying security. Under the proposed rule change, the Exchange may also open STOs with strike prices that are more than 50% above or below the current price of the underlying security (if the price is greater than \$20); provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers (not including Market-Makers trading for their own account).<sup>11</sup>

The Exchange also proposed to modify the STO Program delisting provisions to conform to the proposed STO strike price range limitations. Currently, the STO delisting rules in Commentary .11(d) to Rule 1012 allow the Exchange to delist certain series so as to list series between 10% and 30% above or below the current price of the underlying.<sup>12</sup> The current rules also permit the Exchange to list additional series in excess of the thirty permitted in the STO Program rules if the underlying has moved such that there are no series that are within the 10% to 30% range and all existing series have open interest.<sup>13</sup> Phlx proposed to remove the range methodology to provide that the Exchange will delist any series with no open interest in both the call and the put series having a: (i) Strike higher than the highest price with open interest in the put and/or call series for a given expiration week; and (ii) strike lower than the lowest strike

price with open interest in the put and/or the call series for a given expiration week.

Finally, the Exchange proposed to amend Commentary .11(e) to Rule 1012 to indicate that the interval between strike prices on STOs may be \$2.50 or greater where the strike price is above \$150. The current STO Program rules include specific strike price intervals for certain classes that participate in the STO Program, e.g. the strike price may be \$0.50 or greater where the strike price is less than \$75, and \$1 or greater where the strike price is between \$75 and \$150.<sup>14</sup> According to the Exchange, the proposed \$2.50 strike price interval addresses the issue that above a \$150 strike price STO strike price intervals may be \$5.00 or greater.<sup>15</sup>

In the proposed rule change, the Exchange stated that the principal reason for the proposed expansion is market demand for weekly options and continuing strong customer demand to use STOs to execute hedging and trading strategies, particularly in the current fast and volatile trading and investing environment.<sup>16</sup> The Exchange also stated that it has received requests from traders and other market participants to expand the STO Program.<sup>17</sup> Phlx also stated that it believes that the delisting proposal will add clarity and certainty to the STO Program.<sup>18</sup>

The Exchange stated that it has analyzed its capacity, and represented that it and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to handle the potential additional traffic associated with Phlx's proposed amendment to the STO Program. In addition, Phlx stated that it believes that its members will not have a capacity issue as a result of the proposed rule change.<sup>19</sup>

## III. Discussion and Commission Findings

After careful review of the proposed rule change and the CBOE Letter, 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.<sup>20</sup> Specifically, the Commission finds that the proposal is consistent with Section

Secretary, Commission, dated November 12, 2013 ("CBOE Letter"). CBOE expressed support for the proposed expansion of the STO Program to 50 classes.

<sup>5</sup> See Commentary .11(a) to Rule 1012.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> See Commentary .11(d) to Rule 1012.

<sup>9</sup> See Commentary .11(c) to Rule 1012.

<sup>10</sup> See Commentary .11(d) to Rule 1012.

Commentary .11(d) to Rule 1012 also permits the Exchange to open additional STOs with strike prices more than 30% above or below the current prices of the underlying security "provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers."

<sup>11</sup> Commentary .10(a) to Rule 1012 currently states that if the price of the underlying security is greater than \$20, the Exchange shall not list new option series with an exercise price more than 50% above or below the price of the underlying security. The Exchange also proposed to add language clarifying that this restriction does not apply to new proposed Commentary .11(d) to Rule 1012.

<sup>12</sup> See Commentary .11(d) to Rule 1012.

<sup>13</sup> See *id.*

<sup>14</sup> See Commentary .11(e) to Rule 1012.

<sup>15</sup> See, e.g., Commentary .05 to Rule 1012.

<sup>16</sup> See Notice, *supra* note 3 at 62812.

<sup>17</sup> *Id.*

<sup>18</sup> See *id.* at 62811.

<sup>19</sup> See *id.* at 62813.

<sup>20</sup> 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).

6(b)(5) of the Act,<sup>21</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, 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 proposal strikes a reasonable balance between the Exchange's desire to offer a wider array of investment opportunities and the need to avoid unnecessary proliferation of options series.

In approving this proposal, the Commission notes that Exchange has represented that it and OPRA have the necessary systems capacity to handle the potential additional traffic associated with the proposed amendment to the STO Program.<sup>22</sup> The Commission expects the Exchange to monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>23</sup> that the proposed rule change (SR-Phlx-2013-101) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70992; File No. SR-MIAX-2013-55]

### Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Exchange Rule 402

December 5, 2013.

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 November 26, 2013, Miami International Securities Exchange LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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 a proposal to amend Exchange Rule 402 to enable the listing and trading on the Exchange of options on the ETFs Silver Trust, the ETFs Gold Trust, the ETFs Palladium Trust, the ETFs Platinum Trust, and the Sprott Physical Gold Trust.

The text of the proposed rule change is available on the Exchange's Web site at [http://www.miaxoptions.com/filter/wotitle/rule\\_filing](http://www.miaxoptions.com/filter/wotitle/rule_filing), at MIAX's principal office, 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 Exchange proposes to amend Rule 402 (Criteria for Underlying Securities) to enable the listing and trading on the Exchange of options on the ETFs Silver Trust, the ETFs Gold Trust, the ETFs Palladium Trust, the ETFs Platinum Trust, and the Sprott Physical Gold Trust.

Under current Rule 402, only Exchange-Traded Fund Shares ("ETFs") that (1) represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments ("Funds"), including, but

not limited to, stock index futures contracts, options on futures, options on securities and indices, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the "Financial Instruments"), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the "Money Market Instruments") comprising or otherwise based on or representing investments in broad-based indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments), or (2) represent interests in a trust or similar entity that holds a specified non-U.S. currency or currencies deposited with the trust which when aggregated in some specified minimum number may be surrendered to the trust or similar entity by the beneficial owner to receive the specified non-U.S. currency or currencies and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency or currencies, if any, declared and paid by the trust ("Currency Trust Shares"), or (3) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency ("Commodity Pool ETFs"), or (4) are issued by the SPDR® Gold Trust or the iShares COMEX Gold Trust or the iShares Silver Trust, or (5) represent an interest in a registered investment company ("Investment Company") organized as an open-end management company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value ("NAV"), and when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV ("Managed Fund Share") are eligible as underlying

<sup>21</sup> 15 U.S.C. 78f(b)(5).

<sup>22</sup> See Notice, *supra* note 3 at 62813.

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</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.