SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Amend its Rules Regarding the Minimum Increments for Electronic Bids and Offers and Exercise Prices of Certain FLEX Options and Clarify in the Rules How the System Ranks FLEX Option Bids and Offers for Allocation Purposes

March 4, 2021.

On November 16, 2020, Cboe Exchange, Inc. filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 19b–4 thereunder, a proposed rule change to amend its rules regarding the minimum increments for electronic bids and offers and exercise prices of certain FLEX options and clarify how the system ranks FLEX option bids and offers for allocation purposes. On November 30, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The Commission published notice of the proposed rule change, as modified by Amendment No. 1, in the Federal Register on December 4, 2020. On January 14, 2021, pursuant to Section 19(b)(2) of the Exchange Act, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change. The Commission has received no comments on the proposal. This order institutes proceedings under Section 19(b)(2)(B) of the Exchange Act to determine whether to approve or disapprove the proposed rule change.

I. Description of the Proposal

The Exchange has proposed to amend the minimum increments for bids and offers and exercise prices of flexible exchange options ("FLEX Options") submitted to an electronic FLEX auction and make related changes to its rules. The Exchange is proposing to change the permissible minimum increment for exercise price. The Exchange’s rules provide that, when submitting a FLEX Order, the submitting FLEX trader must include all the required terms of a FLEX Options series, including an exercise (or strike) price. According to the Exchange, the exercise price of a FLEX Option may currently be expressed as either (1) a fixed price expressed in terms of dollars and decimals or a specific index value, as applicable (which may not be smaller than $0.01), or (2) a percentage of the closing value of the underlying equity security or index, as applicable, on the trade date (which may not be smaller than 0.01%). The Exchange is proposing to amend CBOE Rule 4.21(b)(6)(A) to provide that, for FLEX Orders submitted to an electronic FLEX auction: (1) An exercise price expressed as a fixed price may be in increments no smaller than $0.001; and (2) an exercise price expressed as a percentage of the closing value of the underlying equity security or index, as applicable, on the trade date may be in increments no smaller than 0.0001%,.

The Exchange also proposes to amend CBOE Rule 4.21(b)(6) to state that the Exchange may determine the smallest increment for exercise prices of FLEX Options on a class-by-class basis. The Exchange states that this codifies its longstanding interpretation of the current rule, which references the minimum increment for bids and offers as set forth in CBOE Rule 5.4. CBOE Rule 5.4(c)(4) provides that the Exchange may determine the minimum increment for bids and offers on FLEX Options on a class-by-class basis, which may be no smaller than the amounts specified in that rule. The Exchange states that it has therefore interpreted CBOE Rule 4.21(b)(6) to mean that those same provisions apply to the minimum increments for exercise prices for FLEX Options. The proposed rule change also adds to CBOE Rule 4.21(b)(6)(A)(ii) that the Exchange’s system rounds the actual exercise price to the nearest fixed price minimum increment for bids and offers in the class (as set forth in CBOE Rule 5.4).

The Exchange is also proposing to amend the permissible minimum increment for bids and offers. The Exchange proposes to amend CBOE Rule 5.4(c)(4)(B), which currently provides that the minimum increment for bids and offers on FLEX Options with (1) an exercise price expressed as a fixed price may not be smaller than $0.01 and (2) an exercise price expressed as a percentage of the closing value of the underlying equity security or index on the trade date may not be smaller than 0.01%. As proposed, CBOE Rule 5.4(c)(4) would provide that the minimum increment for bids and offers, for FLEX Orders and auction responses submitted to an electronic FLEX auction, with (1) an exercise price expressed as a fixed price may not be smaller than $0.001; and (2) an exercise price expressed as a percentage of the closing value of the underlying equity security or index on the trade date may not be smaller than 0.0001%.


7 See CBOE Rule 1.1.

8 A “FLEX Order” is an order submitted in a FLEX Option. See CBOE Rule 5.70.

9 See CBOE Rule 4.21(b) for a description of the terms of a FLEX Option series that a submitting FLEX trader must include in a FLEX Order.

10 See CBOE Rule 4.21(b)(6). The Exchange states that, while the specific minimums for the exercise price are not currently included in CBOE Rule 4.21(b)(6), that rule indicates that the Exchange’s system rounds the exercise price to the nearest minimum increment as set forth in CBOE Rule 5.4. and the Exchange has interpreted the rule to mean that the minimum increment for the exercise price of FLEX Options is the same as the minimum increment for bids and offers of FLEX Options. The term “trade date” as used herein refers to the date on which the FLEX Option was bought or sold (i.e., the date on which the FLEX Option trade occurs).

11 The Exchange states that the proposed rule change will have no impact on the smallest increment for exercise prices for open outcry FLEX Orders and auction responses, which may be no smaller than $0.01 if the exercise price for the FLEX Option series is a fixed price) or 0.01% (if the exercise price for the FLEX Option series is a percentage of the closing value of the underlying equity security or index on the trade date).

12 The Exchange determines the minimum increment for bids and offers on FLEX Options on a class-by-class basis. See CBOE Rule 5.4(c)(4).

13 The Exchange states that the proposed rule change will have no impact on the minimum increment for bids and offers for open outcry FLEX Orders and auction responses, which minimum increment for bids and offers will continue to be $0.01 (if the exercise price for the FLEX Option series is a fixed price) or 0.01% (if the exercise price for the FLEX Option series is a percentage of the closing value of the underlying equity security or index on the trade date).

14 The Exchange states that the proposed rule change will have no impact on the smallest increment for exercise prices for open outcry FLEX Options and auction responses, which may be no smaller than $0.001 for bids and offers and $0.01 for the FLEX Option series. Therefore, the Exchange has determined that the minimum increment for bids and offers will continue to be $0.01 (if the exercise price for the FLEX Option series is a fixed price) or 0.01% (if the exercise price for the FLEX Option series is a percentage of the closing value of the underlying equity security or index on the trade date).

15 The Exchange also states that the proposed rule change will have no impact on the smallest increment for exercise prices for open outcry FLEX Options and auction responses, which minimum increment for bids and offers will continue to be $0.01 (if the exercise price for the FLEX Option series is a fixed price) or 0.01% (if the exercise price for the FLEX Option series is a percentage of the closing value of the underlying equity security or index on the trade date).

16 The Exchange also states that the proposed rule change will have no impact on the smallest increment for exercise prices for open outcry FLEX Options and auction responses, which minimum increment for bids and offers will continue to be $0.01 (if the exercise price for the FLEX Option series is a fixed price) or 0.01% (if the exercise price for the FLEX Option series is a percentage of the closing value of the underlying equity security or index on the trade date).

17 The Exchange also states that the proposed rule change will have no impact on the smallest increment for exercise prices for open outcry FLEX Options and auction responses, which minimum increment for bids and offers will continue to be $0.01 (if the exercise price for the FLEX Option series is a fixed price) or 0.01% (if the exercise price for the FLEX Option series is a percentage of the closing value of the underlying equity security or index on the trade date).

18 The Exchange also states that the proposed rule change will have no impact on the smallest increment for exercise prices for open outcry FLEX Options and auction responses, which minimum increment for bids and offers will continue to be $0.01 (if the exercise price for the FLEX Option series is a fixed price) or 0.01% (if the exercise price for the FLEX Option series is a percentage of the closing value of the underlying equity security or index on the trade date).

19 The Exchange also states that the proposed rule change will have no impact on the smallest increment for exercise prices for open outcry FLEX Options and auction responses, which minimum increment for bids and offers will continue to be $0.01 (if the exercise price for the FLEX Option series is a fixed price) or 0.01% (if the exercise price for the FLEX Option series is a percentage of the closing value of the underlying equity security or index on the trade date).

continued
In addition, the Exchange proposes to amend CBOE Rule 5.3(e)(3), which currently states that bids and offers for FLEX Options must be expressed in (a) U.S. dollars and decimals, if the exercise price for the FLEX Option series is a fixed price, or (b) a percentage, if the exercise price for the FLEX Option series is a percentage of the closing value of the underlying equity security or index on the trade date, per unit of the underlying security or index, as applicable. The Exchange’s system rounds bids and offers to the nearest minimum increment. The proposed rule change states that bids and offers would be in the applicable minimum increment as set forth in CBOE Rule 5.4. As proposed, CBOE Rule 5.3(e)(3) would also state that the system rounds the final transaction prices to the nearest minimum fixed price increment for the class as set forth in CBOE Rule 5.4(e)(4)(A).

The Exchange also proposes to amend CBOE Rules 5.72(c)(3)(A) and (d)(2), 5.73(e), and 5.74(e) to state how FLEX auction response bids and offers (as well as Initiating Orders and Solicitation Orders with respect to FLEX AIM Auctions and FLEX SAM Auctions, respectively) are ranked during the allocation process following each type of FLEX auction (i.e., electronic FLEX Auction, open outcry FLEX Auction, FLEX AIM Auction, and FLEX SAM Auction, respectively). The Exchange proposes to state that, for purposes of ranking responses, when determining how to allocate an order and responses, the term “price” refers to (1) the dollar and decimal amount of the order or response bid or offer or (2) the percentage value of the order or response bid or offer, as applicable. According to the Exchange, FLEX Orders will always first be allocated to responses at the best price, as applicable.14 With respect to responses to all types of FLEX auctions for a FLEX Option series with an exercise price expressed as a dollar and decimal, the “prices” at which FLEX traders submitting responses are competing are the dollar and decimal amounts of the response bids and offers entered as fixed amounts (as is the case with all non-FLEX options), and the Exchange states that the proposed rule change codifies this in the Exchange’s rules. With respect to responses to all types of FLEX auctions for a FLEX Option series with an exercise price expressed as a percentage, the “prices” at which FLEX traders submitting responses are competing are the percentage values of the response bids and offers entered as percentages (which ultimately become a dollar value after the closing value for the underlying security or index, as applicable, is available), and according to the Exchange, the proposed rule change codifies this in its rules.

II. Proceedings To Determine Whether To Approve or Disapprove SR-CBOE-2020-106 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act15 to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as stated below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change to inform the Commission’s analysis of whether to approve or disapprove the proposal.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,16 the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change’s consistency with the Exchange Act, and, in particular, with Section 6(b)(5) of the Exchange Act, 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, and in general, to protect investors and the public interest.17

While the Exchange states that there is demand from customers for the additional precision the proposal would allow and that the proposal would encourage trading of customized options that is currently available on the OTC market, the Exchange does not address the impact on customers and market quality in the Exchange’s non-FLEX options market. Accordingly, the proposal raises questions as to whether any potential benefit of order flow migrating from the OTC market to the Exchange would outweigh the potential costs of orders moving from the non-FLEX options market to the less transparent FLEX Options market and the impact on market quality and customer orders in the non-FLEX options market.
The proposal would also permit FLEX traders to submit bids and offers, and therefore trade at prices, that are in smaller increments than those available on the non-FLEX options market. The Exchange asserts that, because the electronic auction responses are generally not visible to other FLEX traders, and there is no displayed liquidity to step ahead of, traders will be unable to purposefully increase bids and offers by trivial amounts and step ahead of other traders’ prices. The Exchange also states that auction prices are not intended to serve as a price-setting function. The Exchange believes, however, that as a result of these factors, sub-increment bids and offers for electronic FLEX auctions will not diminish liquidity in FLEX auctions. Auction prices for FLEX SAM Auctions, however, are disseminated. With respect to FLEX SAM Auctions, the proposal could increase the risk that traders can step ahead of other traders by amounts that are economically insignificant. In its proposal, the Exchange did not address this risk and the potential impact of the proposal on FLEX SAM Auctions and its consistency with Section 6(b)(5) of the Exchange Act including, among others, investor protection.

Moreover, the Exchange does not explain how it will ensure that, under the proposed decimal pricing, bids and offers are being improved at increments that are meaningful to market participants. There is potential that the increased complexity created by the proposed pricing increments could have the effect of reducing participation in FLEX auctions and thereby lead to less competitive prices. The Exchange itself has acknowledged in a different context in another proposal that de minimis price improvement may discourage market participants from providing contra-side interest at the best prices and liquidity providers from joining or improving at meaningful increments.

For example, it is possible traders could use open outcry on the trading floor to obtain a quote, and then use this information to enter an electronically equivalent option in a FLEX auction. \[\text{Equation}\]

Finally, the Exchange states that it is codifying its policy to rank exercise prices based on percentages prior to converting them to dollar amounts once the closing price is available. The Exchange states it has always ranked percentage orders this way. The Exchange does not discuss, however, that if the order had been ranked at the close, some percentage responses would be rounded to the same price as other percentage responses, and therefore, be able to participate in the order. The Exchange does not address that, in the example it provided in its filing, a percentage sell response of 7.02% would currently round to the same two decimals as the sell response of 7.01%, but given the ranking at the end of the auction before rounding, only the 7.01% response would receive the execution. While there may be a reasonable rationale for ranking prior to rounding, the Exchange should address why it believes ranking as proposed is consistent with the Exchange Act.

The Commission notes that, under the Commission’s Rules of Practice, the “burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder . . . is on the self-regulatory organization [“SRO”] that proposed the rule change.” The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding, and any failure of an SRO to provide this information may result in the Commission not having sufficient basis to make an affirmiative finding that a proposed rule change is consistent with the Exchange Act and the applicable rule and regulations.

For these reasons, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether the proposal should be approved or disapproved.

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Exchange Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by March 31, 2021. Any person who wishes to file a rebuttal to any other person’s submission must file that rebuttal by April 14, 2021.

The Commission asks that commenters address the sufficiency of the Exchange’s statements in support of the proposal, which are set forth in the Notice, in addition to any other comments they may wish to submit about the proposed rule change. 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);
• Send an email to rule-comments@sec.gov. Please include File Number SR–CBOE–2020–106 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.
SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Nasdaq PHXL LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Options on a Nasdaq-100 Volatility Index

March 4, 2021.

On August 24, 2020, Nasdaq PHXL 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 (“Exchange Act”)1 and Rule 19b–4 thereunder,2 a proposed rule change to list and trade options on a Nasdaq-100 Volatility Index. The proposed rule change was published for comment in the Federal Register on September 8, 2020.3

On October 20, 2020, pursuant to Section 19(b)(2) of the Exchange Act,4 the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.5 On December 4, 2020, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act6 to determine whether to approve or disapprove the proposed rule change.7 Section 19(b)(2) of the Exchange Act8 provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change by not more than 60 days if the

Commission determines that a longer period is appropriate and publishes reasons for such determination. The proposed rule change was published for notice and comment in the Federal Register on September 8, 2020. March 7, 2021 is 180 days from that date, and May 6, 2021 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Exchange Act,9 designates May 6, 2021 as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–Phlx–2020–41).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.10

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021–04909 Filed 3–9–21; 8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34220; File No. 812–15140]

Brighthouse Life Insurance Company, et al.

March 4, 2021.

AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Notice.

Notice of application for an order approving the substitution of certain securities pursuant to section 26(c) of the Investment Company Act of 1940, as amended (the “Act”) and an order of exemption pursuant to section 17(b) of the Act from section 17(a) of the Act.

APPLICANTS: Brighthouse Life Insurance Company (“BLIC”), Brighthouse Life Insurance Company of NY (“BLIC NY” and, together with BLIC, the “Companies”), Brighthouse Fund UL for Variable Life Insurance (“Fund UL”), Brighthouse Separate Account A (“Separate Account A”), Brighthouse Separate Account Eleven for Variable Annuities (“Separate Account Eleven”), and Brighthouse Variable Annuity Account B (“Variable Account B,” and together with Fund UL, Separate Account A, and Separate Account Eleven, the “Separate Accounts,” and

5 See Securities Exchange Act Release No. 90226, 85 FR 67781 (October 26, 2020). The Commission designated December 7, 2020 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

10 17 CFR 200.30–3(a)[31].