

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2011-21466 Filed 8-22-11; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65149; File No. SR-Phlx-2011-89]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Granting Approval of Proposed Rule Change Relating to Alpha Index Options

August 17, 2011.

I. Introduction

On June 23, 2011, NASDAQ OMX PHLX LLC (the “Exchange” or “Phlx”) filed with the Securities and Exchange Commission (the “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ a proposed rule change to list and trade options on a number of new Alpha Indexes and to amend Exchange Rule 1001A, Position Limits, with respect to certain Alpha Index options. The proposed rule change was published for comment in the **Federal Register** on July 8, 2011.² The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description

On February 7, 2011, the Commission approved the Exchange’s proposed rule change to list and trade options on a number of Alpha Indexes.³ Alpha Indexes measure relative total returns of one underlying stock or exchange traded fund (“ETF”) share against another underlying stock or ETF share underlying options which are also traded on the Exchange (each such combination of two components is referred to as an “Alpha Pair”). The first component identified in an Alpha Pair (the “Target Component”) is measured against the second component identified in the Alpha Pair (the “Benchmark Component”). Total return measures performance (rate of return) of price

appreciation plus dividends over a given evaluation period.

The Alpha Index options that the Commission has previously approved for listing and trading on the Exchange are limited to specific Alpha Indexes the Target Component of which is a single stock.⁴ The Exchange proposes to expand the number of Alpha Indexes on which options can be listed to include certain Alpha Indexes based on the following Alpha Pairs: DIA/SPY, EEM/SPY, EWJ/SPY, EWZ/SPY, FXI/SPY, GLD/SPY, IWM/SPY, QQQ/SPY, SLV/SPY, TLT/SPY, XLE/SPY and XLF/SPY. In these Alpha Indexes, the Target Component as well as the Benchmark Component is an ETF share. The proposed Alpha Index options will enable investors to trade the relative performance of the market sectors represented by the Target Components as compared with the overall market performance represented by the Benchmark Component SPY.

As with each initial Alpha Index option, each proposed new Alpha Index option will meet the criteria set forth in Exchange Rule 1009A(f).⁵ Further,

⁴ The Commission previously approved the listing and trading of options on Alpha Indexes based on the following Alpha Pairs: AAPL/SPY, AMZN/SPY, CSCO/SPY, F/SPY, GE/SPY, GOOG/SPY, HPQ/SPY, IBM/SPY, INTC/SPY, KO/SPY, MRK/SPY, MSFT/SPY, ORCL/SPY, PFE/SPY, RIMM/SPY, T/SPY, TGT/SPY, VZ/SPY and WMT/SPY. See *supra* note 3. In connection with its proposed rule change to list and trade this initial set of Alpha Index options, the Exchange represented that it would not list Alpha Index options on any other Alpha Pairs without filing a proposed rule change seeking Commission approval. See *id.*

⁵ Rule 1009A(f) requires that options on Alpha Indexes meet the following criteria: (1) Alpha Index options will be A.M.-settled. The exercise settlement value will be based upon the opening prices of the individual stock or ETF from the primary listing market on the last trading day prior to expiration (usually a Friday); (2) at the time of listing an Alpha Index option, options on each underlying component of an Alpha Index will also be listed and traded on the Exchange and will meet the requirements of Rule 1009, Criteria for Underlying Securities. Additionally, each underlying component’s trading volume (in all markets in which the underlying security is traded) must have averaged at least 2,250,000 shares per day in the preceding twelve months; (3) following the listing of an Alpha Index option, options on each of the component securities of the Alpha Index will continue to meet the continued listing standards set forth by Phlx Rule 1010, Withdrawal of Approval of Underlying Securities or Options. Additionally, each underlying component’s trading volume (in all markets in which the underlying security is traded) must have averaged at least 2,000,000 shares per day in the preceding twelve months; and (4) no Alpha Index option will be listed unless and until options overlying each of the Alpha Index component securities have been listed and traded on a national securities exchange with an average daily options trading volume during the three previous months of at least 10,000 contracts. Following the listing of an Alpha Index option, options on each of the component securities of the Alpha Index must continue to meet this options average daily volume standard.

following the listing of these Alpha Index options, options on each of the component securities of the Alpha Index must continue to meet the continued listing standards set forth by Exchange Rule 1010, Withdrawal of Approval of Underlying Securities or Options.

Position Limits

The Exchange also proposes to amend section (f) of Exchange Rule 1001A to establish a 15,000 contract position limit in options on Alpha Indexes in which the Target Component is an ETF share. This 15,000 contract position limit would apply not only to the specific Alpha Index options proposed herein, but also to any options the Exchange may list in the future on Alpha Indexes in which the Target Component is an ETF share.⁶ For purposes of determining compliance with position limits, positions in Alpha Index options will be aggregated with positions in equity options on the underlying securities. All position limit hedge exemptions will apply.

Clearing

Like the Alpha Index options that are currently trading, the proposed new Alpha Index options are “Strategy Based Options” that will be cleared by the Options Clearing Corporation.

Surveillance

Surveillance for opening price manipulation will be in place for the launch of these new Alpha Index options and other existing surveillance patterns will be utilized to monitor trading in these options. The Exchange represents that these surveillance procedures are adequate to monitor the trading of the new Alpha Index options. For surveillance purposes, the Exchange will have complete access to information regarding trading activity in the pertinent underlying securities and options thereon.

Margin

The Exchange will set customer margin levels for the new Alpha Index options at the higher of the margin required for options on the Target Component or the margin required for options on the Benchmark Component.

Systems Capacity

Additionally, the Exchange affirms that it possesses the necessary systems capacity to support new series that would result from the introduction of these new Alpha Index options. The

⁶ The Exchange will not, however, list options on any such Alpha Pairs without filing a proposed rule change seeking Commission approval.

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² See Securities Exchange Act Release No. 64788 (July 1, 2011), 76 FR 40415 (“Notice”).

³ See Securities Exchange Act Release No. 63860 (February 7, 2011), 76 FR 7888 (February 11, 2011) (SR-Phlx-2010-176).

Exchange also has been informed that the Options Price Reporting Authority ("OPRA") has the capacity to support such new series.

Customer Protection

Exchange rules designed to protect public customers trading in options would apply to the new Alpha Index options. Phlx Rule 1026 is designed to ensure that options, including Alpha Index options, are sold only to customers capable of evaluating and bearing the risks associated with trading in the instruments. Phlx Rule 1024, applicable to the conduct of accounts, Phlx Rule 1025 relating to the supervision of accounts, Phlx Rule 1028 relating to confirmations, and Phlx Rule 1029 relating to the delivery of options disclosure documents also apply to trading in Alpha Index options.

Exchange Rules Applicable

All other Exchange rules applicable to Alpha Index options will also apply to the Alpha Index options proposed herein.

III. Discussion

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.⁷ Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁸ 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.

As a national securities exchange, Phlx is required, under Section 6(b)(1) of the Act,⁹ 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 addition, brokers that trade the new Alpha Index options will also be subject to best execution obligations and FINRA rules.¹⁰ Applicable Exchange rules also require that customers receive appropriate disclosure before trading

any Alpha Index option.¹¹ Furthermore, brokers opening accounts and recommending options transactions must comply with relevant customer suitability standards.¹²

Exchange rules applicable to Alpha Index options will also apply to the Alpha Index options proposed herein. As stated in the previous approval for the listing and trading of Alpha Index options, the Commission believes that the listing rules for Alpha Index options are consistent with the Act. Further, the Commission notes that Alpha Index options will be listed only on the specific Alpha Indexes approved by the Commission.¹³ The Exchange has represented that it will not list options on any new Alpha Indexes without filing a proposed rule change seeking Commission approval.

The Commission notes that the Exchange has represented that it will have adequate surveillance procedures in place for trading in the new Alpha Index options. Opening price manipulation surveillance will be in place for the launch of the new options on Alpha Indexes and other existing surveillance patterns will be utilized to monitor trading in options on each new Alpha Index. In addition, for surveillance purposes, the Exchange will have complete access to information regarding trading activity in the pertinent underlying securities and options thereon. Further, the Commission believes that the Exchange's proposed position and exercise limits for the new Alpha Index options are appropriate and consistent with the Act.

Lastly, the Commission notes that the Exchange has affirmed that it possesses the necessary systems capacity to support any new series that would result from the introduction of the new Alpha Index options.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR-Phlx-2011-89) be, and hereby is, approved.

¹¹ See Exchange Rule 1029.

¹² See Exchange Rule 1026. See also Exchange Rules 1024 and 1025.

¹³ The Commission has previously approved the listing and trading of options on the following Alpha Indexes: AAPL/SPY, AMZN/SPY, CSCO/SPY, F/SPY, GE/SPY, GOOG/SPY, HPQ/SPY, IBM/SPY, INTC/SPY, KO/SPY, MRK/SPY, MSFT/SPY, ORCL/SPY, PFE/SPY, RIMM/SPY, T/SPY, TGT/SPY, VZ/SPY and WMT/SPY. See *supra* note 3. The Commission is now approving the listing and trading of options on the following Alpha Indexes only: DIA/SPY, EEM/SPY, EWJ/SPY, EWZ/SPY, FXI/SPY, GLD/SPY, IWM/SPY, QQQ/SPY, SLV/SPY, TLT/SPY, XLE/SPY and XLF/SPY.

¹⁴ 15 U.S.C. 78s(b)(2).

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Secretary.

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SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before September 22, 2011. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83-1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, D.C. 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205-7044.

SUPPLEMENTARY INFORMATION:

Title: "Personal Financial Statement".

Frequency: On Occasion.

SBA Form Number: 413.

Description of Respondents:

Participating Lenders.

Responses: 44,588.

Annual Burden: 66,882.

Title: Quarterly Reports file by Grantees of the Drug Free Workplace Program.

Frequency: On Occasion.

SBA Form Number: N/A.

⁷ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation.

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b)(1).

¹⁰ See NASD Rule 2320.

¹⁵ 17 CFR 200.30-3(a)(12).