

prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>13</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>14</sup> normally does not become operative for 30 days after the date of 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 proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.<sup>16</sup>

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.

#### 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 No. SR-BYX-2012-001 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 No. SR-BYX-2012-001. 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 a.m. and 3 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 No. SR-BYX-2012-001 and should be submitted on or before February 15, 2012.

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. 34-66193; File No. SR-ODD-2012-01]

#### Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of Accelerated Delivery of Supplement to the Options Disclosure Document Reflecting Certain Changes to Disclosure Regarding Relative Performance Options

January 19, 2012.

On August 15, 2011, The Options Clearing Corporation ("OCC") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Rule 9b-1 under the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> five preliminary copies of a supplement to amend the options disclosure document ("ODD") to reflect certain changes to disclosure regarding relative performance options ("January 2012 Supplement").<sup>2</sup> On January 5, 2012, the OCC submitted to the Commission five definitive copies of the January 2012 Supplement.<sup>3</sup>

The ODD currently contains general disclosures on the characteristics and risks of trading standardized options. The March 2011 Supplement amended the ODD to provide disclosure regarding relative performance options in response to the Commission's approval of NASDAQ OMX PHLX LLC's ("Phlx") proposal to list and trade Alpha Index options.<sup>4</sup> In August 2011, the Commission approved a proposed rule change that permitted Phlx to list and trade certain Alpha Index options where both components of the Alpha Index are ETF shares.<sup>5</sup> The current proposed January 2012 Supplement amends the ODD disclosure to accommodate the listing of relative performance options where both components of the

<sup>1</sup> 17 CFR 240.9b-1.

<sup>2</sup> See letter from Jean M. Cawley, Senior Vice President, Deputy General Counsel and Chief Compliance Officer, OCC, to Sharon Lawson, Senior Special Counsel, Division of Trading and Markets ("Division"), Commission, dated August 15, 2011.

<sup>3</sup> See letter from Jean M. Cawley, Senior Vice President, Deputy General Counsel and Chief Compliance Officer, OCC, to Sharon Lawson, Senior Special Counsel, Division, Commission, dated January 5, 2012.

<sup>4</sup> See Securities Exchange Act Release No. 63860 (February 7, 2011), 76 FR 7888 (February 11, 2011) (SR-Phlx-2010-176) (order approving Phlx's proposed rule change to list and trade Alpha Index options).

<sup>5</sup> See Securities Exchange Act Release No. 65149 (August 17, 2011), 76 FR 52729 (August 23, 2011) (SR-Phlx-2011-89) (order approving Phlx's proposed rule change to list and trade Alpha Index options where both Alpha Index components are ETF shares).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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).

<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>17</sup> 17 CFR 200.30-3(a)(12).

underlying relative performance index could be an ETF share. The supplement also clarifies that the ETF share components must be non-leveraged. In addition, the supplement proposes to add an example of the calculation of a relative performance index. The proposed supplement is intended to be read in conjunction with the more general ODD, which discusses the characteristics and risks of options generally.<sup>6</sup>

Rule 9b-1(b)(2)(i) under the Act<sup>7</sup> provides that an options market must file five copies of an amendment or supplement to the ODD with the Commission at least 30 days prior to the date definitive copies are furnished to customers, unless the Commission determines otherwise, having due regard to the adequacy of the information disclosed and the public interest and protection of investors.<sup>8</sup> In addition, five copies of the definitive ODD, as amended or supplemented, must be filed with the Commission not later than the date the amendment or supplement, or the amended ODD, is furnished to customers. The Commission has reviewed the proposed January 2012 Supplement, and the amendments to the ODD contained therein, and finds that, having due regard to the adequacy of the information disclosed and the public interest and protection of investors, the supplement may be furnished to customers as of the date of this order.

It is therefore ordered, pursuant to Rule 9b-1 under the Act,<sup>9</sup> that definitive copies of the January 2012 Supplement to the ODD (SR-ODD-2012-01), reflecting changes to disclosure regarding relative performance options, may be furnished to customers as of the date of this order.

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

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

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<sup>6</sup> The Commission notes that the options markets must continue to ensure that the ODD is in compliance with the requirements of Rule 9b-1(b)(2)(i) under the Act, 17 CFR 240.9b-1(b)(2)(i), including when changes regarding relative performance options are made in the future. Any future changes to the rules of the options markets concerning relative performance options would need to be submitted to the Commission under Section 19(b) of the Act, 15 U.S.C. 78s(b).

<sup>7</sup> 17 CFR 240.9b-1(b)(2)(i).

<sup>8</sup> This provision permits the Commission to shorten or lengthen the period of time which must elapse before definitive copies may be furnished to customers.

<sup>9</sup> 17 CFR 240.9b-1.

<sup>10</sup> 17 CFR 200.30-3(a)(39).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66192; File No. SR-NYSEArca-2012-02]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Amendments to NYSE Arca Rule 9.4 and NYSE Equities Inc. Rules 5.3(d) and 9.4 Relating to Discretionary Proxy Voting on Executive Compensation Matters and Election of Directors To Comply With the Dodd-Frank Act

January 19, 2012.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on January 5, 2012, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") 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 and is approving the proposed rule change on an accelerated basis.

#### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Rule 9.4 and to adopt Commentary .01 to NYSE Arca Rule 9.4 and, through its wholly-owned corporation, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), proposes to amend NYSE Arca Equities Rule 5.3(d) and NYSE Arca Equities Rule 9.4 and to adopt Commentary .01 to NYSE Arca Equities Rule 9.4. These amendments are being made to comply with the requirements of the Dodd-Frank Act with respect to the broker voting rules of national securities exchanges. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and [www.nyse.com](http://www.nyse.com).

#### 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 self-regulatory organization 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 those 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 parts of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

Section 957 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") adopted new Section 6(b)(10)<sup>4</sup> of the Securities Exchange Act (the "Exchange Act").<sup>5</sup> This new provision requires all national securities exchanges to adopt rules that prohibit their members from voting on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, by rule, unless the member receives voting instructions from the beneficial owner of the shares.

NYSE Arca Rule 9.4 governs when OTP Holders and OTP Firms may vote shares held for customers and NYSE Arca Equities Rule 9.4 governs when ETP Holders may vote[sic] shares held for customers. NYSE Arca Rule 9.4 prohibits OTP Holders and OTP Firms, and NYSE Arca Equities Rule 9.4 prohibits ETP Holders, from voting any uninstructed shares, but also permits the OTP Holder or OTP Firm (in the case of NYSE Arca Rule 9.4) or ETP Holder (in the case of NYSE Arca Equities Rule 9.4) to follow the rules of another national securities exchange instead. In addition to its general requirements with respect to voting of uninstructed shares by ETP Holders, NYSE Arca Equities Rule 9.4 specifically prohibits ETP Holders from voting uninstructed shares on any proposal with respect to the implementation of any equity compensation plan, or any material revision to the terms of any existing equity compensation plan (whether or not stockholder approval of such plan is required by NYSE Arca Equities Rule 5.3(d)(1)-(7)), unless the beneficial owner of the shares has given voting instructions.

In order to assure compliance, in all cases, with newly adopted Section

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 15 U.S.C. 78f(b)(10).

<sup>5</sup> 15 U.S.C. 78a.