

composition and/or changes to the Fund's portfolio. Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of each of the portfolios.<sup>22</sup>

The Exchange has represented that the Shares are equity securities subject to the Exchange's rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws.

(3) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares and that Shares are not individually redeemable; (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(4) The Fund will be in compliance with Rule 10A-3 under the Act.<sup>23</sup>

(5) The Fund and the Subsidiary will not invest in non-U.S. equity securities, except that the Fund will invest in shares issued by the Subsidiary.

(6) The Fund's investments in Commodity-Linked Instruments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed

rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>24</sup> for approving the proposal prior to the thirtieth day after the date of publication of the Notice in the **Federal Register**. The Commission notes that it has approved the listing and trading on the Exchange of shares of other actively managed exchange-traded funds based on a portfolio of securities, the characteristics of which are similar to those to be invested by the Fund.<sup>25</sup> The Commission also notes that it has not received any comments regarding this proposal. The Commission believes that the proposal to list and trade the Shares of the Fund do not raise any novel regulatory issues and accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Managed Fund Shares.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>26</sup> that the proposed rule change (SR-NYSEArca-2010-04) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. 2010-6114 Filed 3-19-10; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>24</sup> 15 U.S.C. 78s(b)(2).

<sup>25</sup> See, e.g., Securities Exchange Act Release Nos. 57514 (March 17, 2008), 73 FR 15230 (March 21, 2008) (SR-Amex-2008-02) (approving the listing and trading of shares of the Bear Stearns Current Yield Fund); 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR-NYSEArca-2008-31) (approving the listing and trading of shares of twelve actively-managed funds of the WisdomTree Trust); 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR-NYSEArca-2009-79) (approving the listing and trading of shares of five actively-managed fixed income funds of the PIMCO ETF Trust); and 61365 (January 15, 2010), 75 FR 4124 (January 26, 2010) (SR-NYSEArca-2009-114) (approving the listing and trading of shares of two actively-managed funds of the Grail Advisors ETF Trust).

<sup>26</sup> 15 U.S.C. 78s(b)(1).

<sup>27</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61699; File No. SR-Phlx-2010-42]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees and Rebates for Adding and Removing Liquidity

March 12, 2010.

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 March 1, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") 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. Phlx has designated this proposal as one establishing or changing a member due, fee, or other charge imposed under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 proposes to amend the applicability of Complex Orders to fees and rebates for adding and removing liquidity.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions settling on or after March 1, 2010.<sup>5</sup>

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at <http://www.sec.gov>.

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

<sup>2</sup> 17 CFR 240.19b-4.

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

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> The Commission notes that the fees in this proposed rule change were effective upon filing on March 1, 2010 and apply solely to trades effected on or after that date.

<sup>22</sup> See *supra* note 18.

<sup>23</sup> See *supra* note 8.

## 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 purpose of the proposed rule change is to amend the applicability of Complex Orders to remain competitive.

The Exchange proposes modifying the applicability of Complex Orders to the fees and rebates for adding and removing liquidity. Currently, single contra-side orders that are executed against the individual components of Complex Orders will be charged under the proposed Fee Schedule. The individual components of such a Complex Order will not be charged. The Exchange proposes amending this exception to state that individual components of such a Complex Order will be charged according to the fees and rebates for adding and removing liquidity. The Exchange is amending the applicability of Complex Orders to the fees described herein because the Exchange no longer believes that this incentive is necessary.

Currently, the Exchange assesses a per-contract transaction charge in Standard and Poor's Depository Receipts/SPDRs ("SPY")<sup>6</sup>, the PowerShares QQQ Trust ("QQQQ")<sup>®</sup>; iShares Russell 2000 ("IWM") and Citigroup Inc. ("C") options on five different categories of market participants that submit orders and/or quotes that remove, or "take," liquidity from the Exchange. The per-contract transaction charge depends on the category of market participant submitting an order or quote to the Exchange that removes liquidity.<sup>7</sup>

The market participants are as follows: (i) Specialists, Registered Options Traders ("ROT's"), Streaming

Quote Traders ("SQTs")<sup>8</sup> and Remote Streaming Quote Traders ("RSQTs");<sup>9</sup> (ii) customers;<sup>10</sup> (iii) specialists, ROTs, SQTs and RSQTs that receive Directed Orders ("Directed Participants"<sup>11</sup> or "Directed Specialists, RSQTs, or SQTs"<sup>12</sup>); (iv) Firms; and (v) broker-dealers.

The per-contract transaction charges are assessed on participants who submit proprietary quotes and/or orders that remove liquidity from the Exchange's market in options listed on the Fee Schedule. The Exchange also assesses a transaction charge to Firms and broker-dealers that add liquidity.

Additionally, the Exchange has in place a per-contract rebate relating to transaction charges for orders or quotations that add liquidity to the Exchange's market in options listed on the fee schedule. The amount of the rebate depends on the category of participant whose order or quote was executed as part of the Phlx disseminated Best Bid and/or Offer.

#### 2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>14</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, including its monthly volumes, the

<sup>8</sup> An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. See Exchange Rule 1014(b)(ii)(A).

<sup>9</sup> An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Exchange Rule 1014(b)(ii)(B).

<sup>10</sup> This applies to all customer orders, directed and non-directed.

<sup>11</sup> For purposes of this fee, a Directed Participant is a Specialist, SQT, or RSQT that executes a customer order that is directed to them by an Order Flow Provider and is executed electronically on the Exchange's electronic trading platform for options, PHLX XL II.

<sup>12</sup> See Exchange Rule 1080(l), " \* \* \* The term 'Directed Specialist, RSQT, or SQT' means a specialist, RSQT, or SQT that receives a Directed Order." A Directed Participant has a higher quoting requirement as compared with a specialist, SQT or RSQT who is not acting as a Directed Participant. See Exchange Rule 1014.

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

<sup>14</sup> 15 U.S.C. 78f(b)(4).

order types it uses, and the prices of its quotes and orders (*i.e.*, its propensity to add or remove liquidity). The rate increase to Firms for adding liquidity in the various symbols including the additional Symbols is the same rate that is currently being assessed on Broker-Dealers.

Specifically, the Exchange believes that amending the applicability of the complex orders to these fees is equitable as that will apply equally to all participants.

Accordingly, the Exchange also believes that the addition of the options to this portion of the Fee Schedule is equitable in that it will apply to all categories of participants in the same manner.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>15</sup> and paragraph (f)(2) of Rule 19b-4<sup>16</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File

<sup>6</sup> SPY options are based on the SPDR exchange-traded fund ("ETF"), which is designed to track the performance of the S&P 500 Index.

<sup>7</sup> See SR-Phlx-2010-33.

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

<sup>16</sup> 17 CFR 240.19b-4(f)(2).

Number SR-Phlx-2010-42 on the subject line.

#### Paper Comments

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

All submissions should refer to File Number SR-Phlx-2010-42. This file number should be included on the subject line if e-mail 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 publicly available. All submissions should refer to File Number SR-Phlx-2010-42 and should be submitted on or before April 12, 2010.

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

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. 2010-6115 Filed 3-19-10; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61703; File No. SR-NASDAQ-2010-023]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NASDAQ Rule 9520 Series Regarding Eligibility Procedures for Persons Subject to Certain Disqualifications

March 12, 2010.

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 February 19, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") 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 substantially prepared by NASDAQ. NASDAQ has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Section 19 under the Act.<sup>3</sup> 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

NASDAQ proposes to amend the NASDAQ Rule 9520 Series regarding eligibility procedures for persons subject to certain disqualifications. NASDAQ proposes to implement this rule change immediately upon filing. The text of the proposed rule change is available at <http://nasdaqomx.cchwallstreet.com/>, at NASDAQ'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, NASDAQ 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. NASDAQ 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 is proposing to amend the NASDAQ Rule 9520 Series, the Exchange's eligibility proceedings section, to conform to recent changes in the rules of the Financial Industry Regulatory Authority, Inc. ("FINRA").<sup>4</sup> The proposal also includes the proposed Statutory Disqualification Regulatory Alert ("SD Regulatory Alert") that outlines the applicable eligibility procedures. The amended rules would incorporate by reference the procedures in the *SD Regulatory Alert*. As further detailed in the *SD Regulatory Alert*, the need for a member to file an application with NASDAQ for approval, notwithstanding the disqualification would depend on: (1) The type of disqualification; (2) the date of disqualification; or (3) whether the firm or individual is seeking admission, readmission or continuation in the securities industry.

FINRA recently revised its definition of disqualification to incorporate three additional categories of statutory disqualification, including willful violations of the Federal securities or commodities laws, grounds for statutory disqualification that were enacted in the Sarbanes-Oxley Act, and associations with certain other persons subject to a disqualification. Although NASDAQ's definition has always included these categories, Commission staff informed NASDAQ at the time of its registration as a national securities exchange that, in light of NASDAQ's origin as a subsidiary of FINRA's predecessor, the National Association of Securities Dealers, Inc., staff would not object if NASDAQ applied FINRA's then more-limited definition, pending adoption of procedures by FINRA to process disqualifications under these additional categories.

The proposed rule change would amend NASDAQ Rule 9522 to address the initiation of eligibility proceedings and the authority of NASDAQ's Department of Member Regulation ("NASDAQ Regulation" or "Member Regulation") to approve applications relating to a disqualification where the disqualification arises from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Act or that arise under Section 3(a)(39)(E) of the Act (*i.e.*, the

<sup>4</sup> See Securities Exchange Act Release No. 59586 (March 17, 2009), 74 FR 12166 (March 23, 2009) (SR-FINRA-2008-045); Securities Exchange Act Release No. 59722 (April 7, 2009), (SR-FINRA-2009-022).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

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