

substantial difficulty determining whether a national securities exchange or exempt exchange was continuing to operate in compliance with the Act.

Initial filings on Form 1 by new exchanges are made on a one-time basis. The Commission estimates that it will receive approximately three initial Form 1 filings per year and that each respondent would incur an average burden of 47 hours to file an initial Form 1 at an average cost per response of approximately \$10,354. Therefore, the Commission estimates that the annual burden for all respondents to file the initial Form 1 would be 141 hours (one response/respondent × three respondents × 47 hours/response) and \$31,062 (one response/respondent × three respondents × \$10,354/response).

There currently are thirteen entities registered as national securities exchanges and two exempt exchanges, for a total of 15 exchanges. The Commission estimates that each registered or exempt exchange files four amendments or periodic updates to Form 1 per year, incurring an average burden of 25 hours to comply with Rule 6a-2. The Commission estimates that the annual burden for all respondents to file amendments and periodic updates to the Form 1 pursuant to Rule 6a-2 is 1500 hours (15 respondents × 25 hours/response × four response/respondent per year) and \$317,700 (15 respondents × \$5,295/response × one response/respondent per year).

Compliance with Rules 6a-1 and 6a-2 and Form 1 is mandatory for entities seeking to register as a national securities exchange or seeking an exemption from registration based on limited trading volume. Information received in response to Rules 6a-1 and 6a-2 and Form 1 shall not be kept confidential; the information collected is public information. As set forth in Rule 17a-1 (17 CFR 240.17a-1) under the Act, a national securities exchange generally is required to retain records of the collection of information for at least five years.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: [Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov); and (ii) Charles Boucher, Director/Chief Information Officer, Securities and

Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: June 2, 2010.

**Elizabeth M. Murphy**,  
Secretary.

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**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29292; File No. 812-13748]

### FFCM, LLC and FQF Trust; Notice of Application

June 2, 2010.

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

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 (“Act”) for an exemption from rule 12d1-2(a) under the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit open-end management investment companies relying on rule 12d1-2 under the Act to invest in certain financial instruments.

**APPLICANTS:** FFCM, LLC (“FFCM,” and together with any entity controlling, controlled by or under common control with FFCM, the “Adviser”) and FQF Trust (“Trust,” and together with the Adviser, “Applicants”).

**FILING DATES:** The application was filed on January 28, 2010, and amended on May 27, 2010.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 28, 2010 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer’s interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090;

Applicants: FFCM, LLC and FQF Trust, 230 Congress Street, 5th Floor, Boston, MA 02110.

**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Senior Counsel, at (202) 551-6876, or Michael W. Mundt, Assistant Director, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission’s Web site by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

#### *Applicants’ Representations:*

1. The Trust is organized as a Delaware statutory trust and is registered with the Commission as an open-end management investment company. The Adviser, a Delaware limited liability company, will register as an investment adviser under the Investment Advisers Act of 1940, as amended, prior to relying on the requested order. A broker-dealer registered under the Securities Exchange Act of 1934, as amended (“Exchange Act”), will be selected and will serve as distributor.

2. Applicants request the exemption to the extent necessary to permit any existing or future registered open-end management investment company or series thereof that (a) is advised by the Adviser, (b) is in the same group of investment companies, as defined in section 12(d)(1)(G) of the Act, (c) invests in shares of other registered open-end investment companies (“Underlying Funds”) in reliance on section 12(d)(1)(G) of the Act, and (d) is also eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1-2 under the Act (“Funds of Funds”), to also invest, to the extent consistent with its investment objective, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (“Other Investments”). Applicants state that all Funds of Funds and Underlying Funds are or will be registered with the Commission as open-end management investment companies.

3. Consistent with its fiduciary obligations under the Act, each Fund of Fund’s board of trustees or directors will review the advisory fees charged by the Fund of Fund’s investment adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided

pursuant to the advisory agreement of any investment company in which the Fund may invest.

*Applicants' Legal Analysis:*

1. Section 12(d)(1)(A) of the Act provides that no registered investment company ("acquiring company") may acquire securities of another investment company ("acquired company") if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies and companies controlled by them.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (a) The acquired company and acquiring company are part of the same group of investment companies; (b) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (c) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (d) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1-2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (a) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (b) securities (other than securities issued

by an investment company); and (c) securities issued by a money market fund, when the investment is in reliance on rule 12d1-1 under the Act. For the purposes of rule 12d1-2, "securities" means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1-2 under the Act, but for the fact that the Funds of Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1-2(a) to allow the Funds of Funds to invest in Other Investments. Applicants assert that permitting the Funds of Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

*Applicants' Condition*

Applicants agree that the order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1-2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Fund of Funds from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-13822 Filed 6-8-10; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-62196; File No. SR-Phlx-2010-73]

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

June 1, 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 May 20, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, 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 proposes to amend the Exchange's Fee Schedule to increase the number of options to be included in the Exchange's current rebates for adding, and fees for removing, liquidity. In addition, the Exchange proposes to clarify its rebates for adding and fees for removing liquidity, specifically the applicability of fees to electronic auctions.

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 June 1, 2010.

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>.

**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 [sic] The Exchange proposes to increase liquidity and to attract order

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

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