

be uniformly applied to each of these participants.

NASDAQ is one of eight options market in the national market system for standardized options. Joining NASDAQ and electing to trade options is entirely voluntary. Under these circumstances, NASDAQ's fees must be competitive and low in order for NASDAQ to attract order flow, execute orders, and grow as a market. NASDAQ thus believes that its fees are fair and reasonable and consistent with the Exchange Act.

#### *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>9</sup> and paragraph (f)(2) of Rule 19b-4<sup>10</sup> thereunder. At any time within 60 days of the filing of such 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2010-088 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 Number SR-NASDAQ-2010-088. 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 available publicly. All submissions should refer to File No. SR-NASDAQ-2010-088 and should be submitted on or before August 27, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

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

[FR Doc. 2010-19370 Filed 8-5-10; 8:45 am]

**BILLING CODE 8010-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-62616; File No. SR-Phlx-2010-103]**

#### **Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add Seventy-Five Options Classes to the Penny Pilot Program**

July 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on July 22, 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 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.

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

The Exchange is filing with the Commission a proposal to designate seventy-five options classes to be added to the Penny Pilot Program ("Penny Pilot" or "Pilot") on August 2, 2010.<sup>3</sup> The Exchange is not proposing to amend any rule text, but simply administering or enforcing an existing rule.<sup>4</sup>

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, at the principal office of the Exchange, 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, 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

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

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

<sup>3</sup> The Penny Pilot was established in January 2007 and in October 2009 was expanded and extended through December 31, 2010. See Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR-Phlx-2006-74) (notice of filing and approval order establishing Penny Pilot); 60873 (October 23, 2009), 74 FR 56675 (November 2, 2009) (SR-Phlx-2009-91) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60966 (November 9, 2009), 74 FR 59331 (November 17, 2009) (SR-Phlx-2009-94) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 60966 (November 9, 2009), 75 FR 61454 (February 1, 2010), 75 FR 6233 (February 8, 2010) (SR-Phlx-2010-12) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); and 62028 (May 4, 2010), 75 FR 25890 (May 10, 2010) (SR-Phlx-2010-65) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot).

<sup>4</sup> See Rule 1034 regarding the Penny Pilot.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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 this filing is to identify the next seventy-five options classes to be added to the Penny Pilot effective August 2, 2010.

In the Exchange's immediately effective filing to extend and expand the Penny Pilot through December 31, 2010,<sup>5</sup> the Exchange proposed expanding the Pilot four times on a quarterly basis. Each such quarterly expansion would be of the next seventy-five most actively traded multiply listed options classes based on the national average daily volume ("ADV") for the six months prior to selection, closing under \$200 per share on the Expiration Friday prior to expansion; however, the month

immediately preceding the addition of options to the Penny Pilot will not be used for the purpose of the six-month analysis. Index option products would be included in the quarterly expansions if the underlying index levels were under 200.

The Exchange is identifying, in the chart below, seventy-five options classes that it will add to the Penny Pilot on August 2, 2010, based on ADVs for the six months ending June 30, 2010.

| Nat'l ranking | Symbol | Security name                                    | Nat'l ranking | Symbol | Security name                                    |
|---------------|--------|--|---------------|--------|--|
| 199           | MBI    | MBIA Inc.  | 316           | CB     | Chubb Corp.                                      |
| 205           | MA     | Mastercard Inc.                                  | 320           | ADM    | Archer-Daniels-Midland Co.                       |
| 224           | ATPG   | ATP Oil & Gas Corp/United States.                | 322           | HSY    | Hershey Co./The                                  |
| 226           | YUM    | Yum! Brands Inc.                                 | 323           | TXT    | Textron Inc.                                     |
| 232           | RCL    | Royal Caribbean Cruises Ltd.                     | 324           | GGP    | General Growth Properties Inc.                   |
| 238           | BPOP   | Popular Inc.                                     | 325           | NOV    | National Oilwell Varco Inc.                      |
| 248           | EK     | Eastman Kodak Co.                                | 326           | TWX    | Time Warner Inc.                                 |
| 252           | CNX    | Co.sol Energy Inc.                               | 327           | XOP    | SPDR S&P Oil & Gas Exploration & Production ETF. |
| 260           | DCTH   | Delcath Systems Inc.                             | 328           | MYL    | Mylan Inc./PA/                                   |
| 274           | MTG    | MGIC Investment Corp.                            | 329           | TSO    | Tesoro Corp.                                     |
| 277           | PXP    | Plains Exploration & Production Co.              | 330           | CI     | CIGNA Corp.                                      |
| 278           | GPS    | Gap Inc./The                                     | 331           | ESI    | ITT Educational Services Inc.                    |
| 280           | TSL    | Trina Solar Ltd.                                 | 332           | NKE    | NIKE Inc.  |
| 282           | EWV    | iShares MSCI Mexico Investable Market Index Fund | 335           | FIS    | Fidelity National Information Services Inc.      |
| 283           | CRM    | Salesforce.com Inc.                              | 336           | SUN    | Sunoco Inc.                                      |
| 286           | SWN    | Southwestern Energy Co.                          | 338           | BBBY   | Bed Bath & Beyond Inc.                           |
| 287           | HBAN   | Huntington Bancshares Inc./OH                    | 340           | APWR   | A-Power Energy Generation Systems Ltd.           |
| 288           | EOG    | EOG Resources Inc.                               | 341           | FWLT   | Foster Wheeler AG.                               |
| 290           | APA    | Apache Corp                                      | 342           | LNC    | Lincoln National Corp.                           |
| 291           | VVUS   | Vivus Inc.                                       | 343           | RSH    | RadioShack Corp.                                 |
| 292           | JDSU   | JDS Uniphase Corp                                | 344           | TYC    | Tyco International Ltd.                          |
| 293           | ACI    | Arch Coal Inc.                                   | 345           | CL     | Colgate-Palmolive Co.                            |
| 294           | NE     | Noble Corp                                       | 346           | FXP    | ProShares UltraShort FTSE/Xinhua China 25.       |
| 296           | BAX    | Baxter International Inc.                        | 347           | NTAP   | NetApp Inc.                                      |
| 297           | ADSK   | Autodesk Inc.                                    | 348           | SO     | Southern Co.                                     |
| 299           | KRE    | SPDR KBW Regional Banking ETF                    | 349           | PHM    | Pulte Group Inc.                                 |
| 300           | XL     | XL Group Plc                                     | 350           | HOT    | Starwood Hotels & Resorts Worldwide Inc.         |
| 302           | WLT    | Walter Energy Inc.                               | 351           | QLD    | ProShares Ultra QQQ.                             |
| 303           | IBN    | ICICI Bank Ltd.                                  | 352           | VRSN   | VeriSign Inc.                                    |
| 305           | EWY    | iShares MSCI South Korea Index Fund              | 353           | PCL    | Plum Creek Timber Co. Inc.                       |
| 306           | WHR    | Whirlpool Corp.                                  | 354           | NBR    | Nabors Industries Ltd.                           |
| 307           | BHI    | Baker Hughes Inc.                                | 355           | ESRX   | Express Scripts Inc.                             |
| 308           | KMP    | Kinder Morgan Energy Partners LP.                | 356           | ACAS   | American Capital Ltd.                            |
| 309           | MRO    | Marathon Oil Corp.                               | 357           | XLNX   | Xilinx Inc.                                      |
| 310           | AGO    | Assured Guaranty Ltd.                            | 358           | DO     | Diamond Offshore Drilling Inc.                   |
| 311           | GIS    | General Mills Inc.                               | 359           | CMA    | Comerica Inc.                                    |
| 312           | ANR    | Alpha Natural Resources Inc.                     | 360           | KEY    | KeyCorp.   |
| 314           | GENZ   | Genzyme Corp.                                    |               |        |  |

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>7</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and

equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by identifying the options classes to be

added to the Penny Pilot in a manner consistent with prior approvals and filings.

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

The Exchange does not believe that the proposed rule change will impose

<sup>5</sup> See Securities Exchange Act Release No. 60873 (October 23, 2009), 74 FR 56675 (November 2, 2009)

(SR-Phlx-2009-91) (notice of filing and immediate effectiveness).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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 proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A)<sup>8</sup> of the Act and Rule 19b-4(f)(1)<sup>9</sup> thereunder as it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2010-103 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 Number SR-Phlx-2010-103. 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 available publicly. All submissions should refer to File No. SR-Phlx-2010-103 and should be submitted on or before August 27, 2010.

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

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

[FR Doc. 2010-19371 Filed 8-5-10; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62624; File No. SR-NFA-2010-02]

### Self-Regulatory Organizations; National Futures Association; Notice of Filing and Immediate Effectiveness of Proposed Changes to Interpretive Notice Entitled "NFA Compliance Rule 2-30(b): Risk Disclosure Statement for Security Futures Contracts"

August 2, 2010.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-7 under the Act,<sup>2</sup> notice is hereby given that on July 8, 2010, National Futures Association ("NFA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in Items I, II, and III below, which Items have been substantially prepared by the NFA. The Commission is publishing this notice to solicit comments on the proposed rule

change from interested persons. NFA also has filed this proposed rule change concurrently with the Commodity Futures Trading Commission ("CFTC").

On July 8, 2010, NFA requested that the CFTC make a determination that review of the proposed rule change of NFA is not necessary. On July 26, 2010, the CFTC notified NFA of its determination not to review the proposed rule change.<sup>3</sup>

#### I. Self-Regulatory Organization's Description of the Proposed Rule Change

The amendment to the Interpretive Notice entitled "NFA Compliance Rule 2-30(b): Risk Disclosure Statement for Security Futures Contracts" updates the document to reflect the treatment of dividends for a new class of security futures contracts that did not exist at the time the Interpretive Notice was adopted. Specifically, the amendment indicates that price adjustments for ordinary dividends may be made for a specified class of security futures contracts based on the rules of the exchange and the clearing organization.

The text of the proposed rule change is available on NFA's Web site at <http://www.nfa.futures.org>, at the principal office of NFA 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, NFA 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. NFA 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

Section 15A(k) of the Act<sup>4</sup> makes NFA a national securities association for the limited purpose of regulating the activities of NFA Members ("Members") who are registered as brokers or dealers under Section 15(b)(11) of the Act.<sup>5</sup> NFA Interpretive Notice entitled "NFA

<sup>3</sup> See letter from William Penner, Deputy Director, CFTC to Thomas W. Sexton, Senior Vice President and General Counsel, NFA, dated July 26, 2010.

<sup>4</sup> 15 U.S.C. 78o-3(k).

<sup>5</sup> 15 U.S.C. 78o(b)(11).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(1).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(7).

<sup>2</sup> 17 CFR 240.19b-7.