

such persons oversee the operations of member firms and provide the first line of defense in ensuring that member firms are complying with the rules of the exchange as well as the Federal securities laws. In addition, ISE may waive the qualification examination requirement in exceptional cases where the applicant has demonstrated that good cause exists to grant the waiver. The Commission also expects this authority to be used sparingly. Finally, the Commission notes that these exceptions are substantively the same as exceptions provided in similar rules at other SROs.⁴¹

The Commission believes the restrictions on registration that bar a member from maintaining a registration with ISE (1) persons no longer active in the member's securities business, (2) persons no longer functioning in the registered capacity, or (3) avoidance of an examination requirement, are appropriate. These limitations should help ensure that only persons qualified for their category of registration who are engaged in a securities business are able to transact business on the ISE.

The Commission notes that ISE has exempted several categories of associated persons from the new registration requirements. These persons would not be considered to be actively engaged in a securities business unless they are registered on the floor of another exchange, in which case they would not have to register with ISE.⁴² The Commission understands that ISE's proposed rule change applies to all associated persons conducting a securities business, on a proprietary or agency basis, on ISE.

The Commission believes ISE's proposed provision requiring any person whose registration has been revoked by the Exchange as a disciplinary sanction, or whose most recent registration as a principal or representative has been terminated for a period of two or more years immediately preceding the date of receipt by the Exchange of a new application, to pass the qualification examination appropriate to such person's category of registration is appropriate. This requirement should help to ensure that an associated person's qualifications are current.⁴³

⁴¹ See, e.g., FINRA Rule 1070(d) and NASDAQ Rule 1070(d).

⁴² See Notice, p. 17; 75 FR 80095. Such persons must comply with Section 15(b)(8) of the Exchange Act.

⁴³ Additionally, the Commission believes that the proposed revisions to Rules 601 (Registration of Options Principals) 602 (Registration of Representatives), and 603 (Termination of Registered Persons) to update certain references

ISE's proposed rule change will help ensure that all associated persons of members transacting business on ISE, as well as those who supervise, train or otherwise oversee those who do, will be registered with, and qualified by, the Exchange and will be subject to continuing education requirements. The proposal will enhance ISE's ability to ensure an effective supervisory structure for those conducting business on ISE. The requirements apply broadly and are intended to help close a regulatory gap which has resulted in varying registration, qualification, and supervision requirements across markets. The Commission believes that the changes proposed by ISE to its rules will strengthen the regulatory structure of the Exchange and should enhance the ability of its members to comply with the Exchange's rules as well as with the Federal securities laws.

Additionally, the Commission believes that the proposed rule change is consistent with the principles of Section 11A(a)(1)(22) of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Commission believes that the proposed rule change will promote uniformity of regulation across markets, thus reducing opportunities for regulatory arbitrage. ISE's proposed rule change helps ensure that all persons conducting a securities business through ISE are appropriately supervised, as is required under the Exchange Act.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁴⁴ that the proposed rule change (SR-ISE-2010-115), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁵

Cathy H. Ahn,
Deputy Secretary.

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pertaining to registration and termination forms, as well as to WebCRD and FINRA, will provide clarity to ISE's rules, enabling regulators, members, and the general public to better understand the rules.

⁴⁴ 15 U.S.C. 78s(b)(2).

⁴⁵ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63860; File No. SR-Phlx-2010-176]

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

February 7, 2011.

I. Introduction

On December 10, 2010, 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 amend certain of its rules to provide for the listing and trading of options on NASDAQ OMX ("Nasdaq") Alpha IndexesSM (the "Alpha Indexes") on the Exchange's electronic trading platform for options. The proposed rule change was published for comment in the **Federal Register** on December 27, 2010.² The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description

The Exchange proposes to list and trade cash-settled, European-style options on Alpha Indexes.

Index Design and Composition

Alpha Indexes measure relative total returns of one stock and one exchange-traded fund share ("ETF") underlying options which are also traded on the Exchange (each such combination of two components is referred to as an "Alpha Pair").³ 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").

The Exchange proposes to list and trade Alpha Index options only 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. The Exchange represents that it will not list Alpha Index options on any other Alpha Pairs without filing a

¹ 15 U.S.C. 78s(b)(1).

² See Securities Exchange Act Release No. 63575 (December 17, 2010), 75 FR 81320 ("Notice").

³ The total return measures performance (rate of return) of price appreciation plus dividends over a given evaluation period.

proposed rule change seeking Commission approval.

Index Calculation

In order to calculate an Alpha Index, Nasdaq measures the total return performance of the Target Component relative to the total return performance of the Benchmark Component, based upon prices of transactions on the primary listing exchange of each underlying component. The Exchange has represented that any Target Component or Benchmark Component upon which an Alpha Index is based will meet the Exchange's listing standards, and options overlying them will already be listed and traded on the Exchange. Further, the value of each Alpha Index will initially be set at 100.00.

To calculate an Alpha Index, Nasdaq first calculates a daily total return for both the Target Component and the Benchmark Component of the Alpha Pair. To calculate the daily total return today, the previous trading day's closing market price for the component would be subtracted from today's closing market price for the component to determine a price difference (the "Price Difference"). The Price Difference would be added to any declared dividend, if today were an "ex-dividend" date, to yield the Price Plus Dividend Difference for the component. The Price Plus Dividend Difference for the component is then divided by the previous trading day's closing market price for the component, and the result is rounded to four decimal places to yield the total daily return.

The total daily return for each component is then added to the whole number one, which permits the ultimate Alpha Index to be expressed in percentage terms. This figure for the Target Component is then divided by the comparable figure for the Benchmark Component, and then multiplied by previous trading day's closing Alpha Index value. The resulting level depicts the Target Component's total return performance versus that of the previous trading day.

In the case of a corporate event which eliminates one of the underlying components of an Alpha Pair, Nasdaq will cease calculation of the Alpha Index for that Alpha Pair and all outstanding option positions for that Alpha Pair will be immediately settled at the last disseminated price of that Alpha Index. In the case of a corporate event such as a spin off that affects the price of one of the underlying components, Nasdaq will make an appropriate one-time adjustment to the price of the underlying component used

in the calculation to ensure that the Alpha Index continues to reflect the daily total return of the component.

Alpha Index values will be disseminated every second over the NASDAQ OMX Global Index Data Service ("GIDS").⁴

Contract Specifications

The Exchange represents that Alpha Indexes are not broad-based or narrow-based indexes. Rather, they are strategy-based indexes that measure the relative total return of one stock and one ETF. Options on Alpha Indexes are European-style and A.M. cash-settled. The trading hours for options on the Alpha Indexes will be from 9:30 a.m. to 4:15 p.m. (Philadelphia Time).

There will be at least two expiration months from the March, June, September, December cycle plus two additional near-term months so that the three nearest term months will always be available. Minimum strike price intervals for Alpha Index options would be at 1 point intervals. In addition, the minimum tick size for series of Alpha Index options trading below \$3 shall be \$0.05, and for series trading at or above \$3 shall be \$0.10.

Listing Requirements

Alpha Index options will be listed only on Alpha Indexes comprised of Alpha Pairs that are actively traded. Rule 1009A, Designation of the Index, is being amended to provide that at the time of the listing of an Alpha Index option, options on each underlying component must also be listed and traded on the Exchange and must meet the requirements of Rule 1009, Criteria for Underlying Securities. Additionally, Rule 1009A is being amended to provide that 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. Further, following the listing of an Alpha Index option, 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. Also, 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.

Finally, Rule 1009A is being amended to provide that 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.

Index Option Trading

The Exchange proposes to list series of Alpha Index options at \$1 or greater strike price intervals, and to list at least two strike prices above and two strike prices below the current value of each Alpha Index option at about the time a series is opened for trading on the Exchange.⁵ The Exchange may also list additional strike prices at any price point, with a minimum of a \$1.00 interval between strike prices, as required to meet the needs of customers.⁶

Under Exchange Rule 1033A, Meaning of Premium Bids and Offers, bids and offers in index options are to be expressed in terms of dollars and decimal equivalents of dollars per unit of the index. As proposed by the Exchange, the minimum tick size for series of Alpha Index options trading below \$3 will be \$0.05 and for series trading at or above \$3 will be \$0.10; provided, however, that if options on either component of an Alpha Pair have a minimum tick size of \$0.01, options on the Alpha Index will also have a minimum tick size of \$0.01.⁷

Pursuant to Exchange Rule 1047A(c), trading in Alpha Index options may be halted with the approval of an Options Exchange Official, whenever trading on the primary market of one of the Alpha Pair components is halted or suspended. Additionally, Exchange Rule 1047A(c) provides that trading shall be halted whenever an Options Exchange Official deems such action appropriate in the interests of a fair and orderly market and to protect investors. Rule 1047A(c) is being amended to provide that the Exchange will also halt trading in any Alpha Index option whenever trading is halted in an option overlying one or both of the components of the Alpha

⁵ See Exchange Rule 1101A, Terms of Option Contracts, as proposed to be amended.

⁶ See *id.*

⁷ See Exchange Rule 1034, Minimum Increments, as proposed to be amended.

⁴ See <http://www.nasdaqtrader.com/Trader.aspx?id=globalindexDS> for a description of the NASDAQ OMX Global Index Data Service.

Pair.⁸ Finally, the Exchange represents that if Nasdaq should cease calculation of the Alpha Index due to a corporate event (such as a merger) affecting one or more components of the Alpha Pair, the Exchange will halt trading in the option and all open contracts will be immediately settled at the last Alpha Index price to be disseminated. Re-openings are conducted pursuant to Rule 1047A(d), which is being amended so that it clearly applies to Alpha Indexes in addition to stock indexes.

Rule 1092, Obvious Errors and Catastrophic Errors, is being amended to provide that trades of Alpha Index options on the Exchange will be nullified pursuant to subsection (c)(iv)(C) of that rule if the trade occurred during a trading halt on the primary market of either component security of the Alpha Pair. The word “percent” is being added to the previous clause applicable to stock index options to correct an inadvertent omission in the existing rule text.

The Exchange will trade consecutive and cycle month series pursuant to Exchange Rule 1101A. Specifically, the Exchange represents that there will be at least two expiration months from the March, June, September, December cycle plus two additional near-term months so that the three nearest term months will always be available. The trading hours for options on Alpha Indexes will be from 9:30 a.m. to 4:15 p.m. (Philadelphia Time).⁹ Alpha Index options are index options that are available for FLEX trading.¹⁰

Exercise and Settlement

Options on any Alpha Index will expire on the Saturday following the third Friday of the expiration month. Trading in the expiring contract month will normally cease at 4:15 p.m. (Philadelphia Time) on the last day of trading. Exercise will result in delivery of cash on the business day following expiration. Additionally, Alpha Index options will be A.M.-settled.¹¹ The exercise settlement value will be based upon the opening price of the individual stock or ETF from its primary

listing market on the last trading day prior to expiration (usually a Friday).¹²

The exercise settlement amount of an Alpha Index option will be equal to the difference between the exercise settlement value and the exercise price of the option, multiplied by \$100. When the last trading day is moved because of Exchange holidays, the last trading day for expiring options will be the day immediately preceding the last regularly-scheduled trading day.

Position Limits

The Exchange proposes that the position limit for an option on an Alpha Index shall be 60,000 contracts on the same side of the market.¹³ 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.¹⁴ All position limit hedge exemptions will apply. Section (a) of Commentary .01 to Rule 1001A is being amended by adding clause (iii), which provides that each Alpha Index option position to be exempted under the index hedge exemption must be hedged by a position in each of the component securities underlying the Alpha Index.

Margin

The Exchange will set customer margin levels for Alpha Index options at the level of the higher of the margin required for options on the Target Component or the margin required for options on the Benchmark Component.¹⁵

Exchange Rules Applicable

The Exchange represents that, except as modified in the proposed rule change, Exchange Rules 1000A–1107A, Rules Applicable to Trading of Options on Indices, will be applicable to Alpha Index options. The Exchange proposes minor amendments to reflect the trading of Alpha Index options, which are not the narrow-based or broad-based stock index options that the Exchange currently trades, but rather are strategy-based securities index options based upon an index whose construction and calculation differ from those of stock index options.

Systems Capacity

The Exchange affirms that it possesses the necessary systems capacity to support any new series that would

result from the introduction of options on Alpha Indexes. The Exchange also represents that it has been informed that the Options Price Reporting Authority (“OPRA”) has the capacity to support such new series.

Clearing

Alpha Index options are “Strategy Based Options” that will be cleared by the Options Clearing Corporation.

Surveillance

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

Customer Protection

The Exchange represents that Exchange rules designed to protect public customers who trade in options would apply to Alpha Index options. Exchange 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. Exchange Rule 1024, applicable to the conduct of accounts, Exchange Rule 1025 relating to the supervision of accounts, Exchange Rule 1028 relating to confirmations, and Exchange Rule 1029 relating to delivery of options disclosure documents also would apply to trading in Alpha Index options.

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.¹⁶ Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹⁷ 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

⁸ See Exchange Rule 1047A, Trading Rotations, Halts or Reopenings, as proposed to be amended.

⁹ See Exchange Rules 1101A, Terms of Option Contracts, Commentary .01, and 101, Hours of Business.

¹⁰ See Exchange Rule 1079, FLEX Index, Equity and Currency Options, as proposed to be amended. The Exchange also proposes that separate position limits apply to FLEX Alpha Index options, which are the same as the position limits applicable to non-FLEX Alpha Index options.

¹¹ See Exchange Rule 1009A, Designation of the Index, as proposed to be amended.

¹² See *id.*

¹³ See Exchange Rule 1001A, Position Limits, as proposed to be amended.

¹⁴ See *id.*

¹⁵ See Exchange Rule 721, Proper and Adequate Margin, as proposed to be amended.

¹⁶ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation.

¹⁷ 15 U.S.C. 78f(b)(5).

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, the Phlx is required, under Section 6(b)(1) of the Act,¹⁸ 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 Alpha Index options will also be subject to best execution obligations and FINRA rules.¹⁹ Applicable Exchange rules also require that customers receive appropriate disclosure before trading Alpha Index options.²⁰ Furthermore, brokers opening accounts and recommending options transactions must comply with relevant customer suitability standards.²¹

The trading of options on Alpha Indexes will be governed by Exchange Rules 1000A–1107A, the Exchange's trading rules for options on indices. The Commission believes that the listing rules proposed by the Exchange are consistent with the Act. The Commission also notes that Alpha Index options will be listed only on specified Alpha Indexes.²² In addition, proposed changes to Rule 1009A requires that 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 and on a continuing basis must have averaged at least 2,000,000 shares per day in the preceding twelve months. The Commission believes that these requirements help to ensure that only highly liquid securities would underlie Alpha Indexes.

The Commission notes that the Exchange has represented that it will have appropriate surveillance procedures in place for trading in Alpha Index options. Opening price manipulation surveillance will be in place for the launch of options on Alpha Indexes and other existing surveillance patterns will be utilized to monitor trading in options on each 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 Alpha Index options are appropriate and consistent with the Act.

The Exchange has affirmed that it possesses the necessary systems capacity to support any new series that would result from the introduction of options on Alpha Indexes.²³ In addition, one point strike price intervals for Alpha Index options should provide investors with flexibility in the trading of Alpha Index options and further the public interest by allowing investors to establish positions that are better tailored to meet their investment objectives.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁴ that the proposed rule change (SR–Phlx–2010–176) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–3034 Filed 2–10–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63857; File No. SR–BATS–2011–004]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

February 7, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b–4 thereunder,² notice is hereby given that, on January 31, 2011, BATS Exchange, Inc. (the “Exchange” or “BATS”) 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. The Exchange has designated the proposed rule change as one establishing or

changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b–4(f)(2) thereunder,⁴ which renders the proposed rule change 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 modify its fee schedule applicable to Members⁵ and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on February 1, 2011.

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, 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 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

The Exchange proposes to modify its fee schedule effective February 1, 2011, in order to: (i) Adjust fees for “logical” ports used for order entry or receipt of Exchange data; and (ii) adjust the fees for orders executed at other options exchanges through Exchange-offered routing strategies in order to more closely reflect the Exchange's cost of executing orders at such away markets.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b–4(f)(2).

⁵ A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

¹⁸ 15 U.S.C. 78f(b)(1).

¹⁹ See NASD Rule 2320.

²⁰ See Exchange Rule 1029.

²¹ See Exchange Rule 1026. See also Exchange Rules 1024 and 1025.

²² 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.

²³ The Commission notes that Alpha Index values will be disseminated every second over the NASDAQ OMX Global Index Data Service.

²⁴ 15 U.S.C. 78s(b)(2).

²⁵ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.