

Permit Holders have an appointment to trade in open outcry in all options classes traded on the Hybrid Trading System (including VIX) pursuant to Exchange Rule 8.3(c)(ii). CBOE is proposing establish a 1,000 contract per month minimum to allow for minimum activity in VIX without having to pay a VIX Tier Appointment fee.<sup>4</sup>

In addition to the proposed changes to the Fees Schedule described above, CBOE is proposing to revise its regulatory circular that sets forth the existing Trading Permit Holder application and other related fees. The Exchange proposes to revise this circular to incorporate the changes to Section 10 of the CBOE Fees Schedule that are described above. The proposed changes to the circular are included as Exhibit 2 to the Form 19b-4.

## 2. Statutory Basis

The proposed rule change will treat similarly situated Trading Permit Holders in the same manner. Specifically, CBOE shall assess the same base tier appointment fees to all Trading Permit Holders based on the type of tier appointment requested and based on objective standards with respect to open outcry trading in the applicable class. Accordingly, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>6</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among persons using its facilities for the reasons described above.

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

CBOE does not believe that the proposed rule change will impose any burden on competition that is 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 solicited or received with respect to the proposed rule change.

<sup>4</sup> This may be distinguished from SPX as all Market-Maker Trading Permit Holders trading in open outcry in SPX, a Hybrid 3.0 class, are required to maintain a separate appointment in SPX in accordance with Rule 8.3(c)(iii).

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

### 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) of the Act<sup>7</sup> and subparagraph (f)(2) of Rule 19b-4<sup>8</sup> thereunder. 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-CBOE-2011-013 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-CBOE-2011-013. 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

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-CBOE-2011-013 and should be submitted on or before March 9, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011-3417 Filed 2-15-11; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63881; File No. SR-NYSEArca-2010-120]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change To List and Trade Shares of the SPDR Nuveen S&P High Yield Municipal Bond ETF

February 9, 2011.

#### I. Introduction

On December 21, 2010, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to list and trade shares ("Shares") of the SPDR Nuveen S&P High Yield Municipal Bond ETF ("ETF" or "Fund") under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02. The proposed rule change was published for comment in the **Federal Register** on January 6, 2011.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange proposes to list and trade shares ("Shares") under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02, which governs the listing and trading of Investment Company Units ("Units"), of the following series of the SPDR Series

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 63624 (December 30, 2010), 76 FR 805 ("Notice").

Trust (“Trust”) based on the S&P Municipal Yield Index (“Index”): SPDR Nuveen S&P High Yield Municipal Bond ETF (“Fund” or “ETF”).

The SPDR Nuveen S&P High Yield Municipal Bond ETF<sup>4</sup> seeks to provide investment results that, before fees and expenses, correspond generally to the price and yield performance of the Index, which tracks the U.S. municipal bond market, and to provide income that is exempt from regular Federal income taxes.<sup>5</sup>

The Index consists of categories of bonds in the following proportions: (i) 70% of the Index constituents are components of the Standard & Poor’s/InvestorTools High Yield Bond Index,<sup>6</sup> which are non-rated or are rated below investment grade; (ii) 20% of the Index constituents are components of the Standard & Poor’s/InvestorTools Bond Index that are rated Baa3, Baa2, or Baa1 by Moody’s Investors Service, or BBB–, BBB, or BBB+ by Standard and Poor’s or Fitch; and (iii) 10% of the Index constituents are components of the Standard & Poor’s/InvestorTools Bond Index that are rated A3, A2, or A1 by Moody’s Investor Services, or A–, A, or A+ by Standard & Poor’s or Fitch.<sup>7</sup> As of December 20, 2010, there were approximately 21,141 issues included in the Index.

The Exchange submitted this proposed rule change because the Index underlying the Fund does not meet all of the “generic” listing requirements of Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3) applicable to listing of Units based on US indexes. Specifically, the Index does not meet the requirement set forth in

Commentary .02(a)(2):<sup>8</sup> As of December 20, 2010, 26.47% of the weight of the Index components have a minimum principal amount outstanding of \$100 million or more. The Exchange represents that: (1) Except for Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3), the Shares currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3); (2) the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to Units shall apply to the Shares; and (3) the Trust is required to comply with Rule 10A–3<sup>9</sup> under the Exchange Act for the initial and continued listing of the Shares. In addition, the *Exchange represents that* the Shares will comply with all other requirements applicable to Units including, but not limited to, requirements relating to the dissemination of key information such as the value of the Index and *Intraday Indicative Value*, rules governing the trading of equity securities, trading hours, trading halts, surveillance, and the Information Bulletin to ETP Holders, as set forth in Exchange rules applicable to Units and prior Commission orders approving the generic listing rules applicable to the listing and trading of Units.<sup>10</sup>

Detailed descriptions of the Fund, the Index, procedures for creating and redeeming Shares, transaction fees and expenses, dividends, distributions, taxes, risks, and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statement or on the Web site for the Fund (<http://www.spdr.com>), as applicable.

### III. Discussion and Commission’s Findings

After careful consideration, 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.<sup>11</sup> In

particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,<sup>12</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and 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.

Although NYSE Arca Equities Rule 5.2(j)(3) permits the Exchange to list Units based on U.S. indexes pursuant to Rule 19b–4(e) under the Act,<sup>13</sup> the Index for the Fund does not meet all of the generic listing requirements applicable to the listing of Units based on U.S. indexes. Specifically, the Index does not satisfy Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3), which requires that components that in the aggregate account for at least 75% of the weight of the index or portfolio each shall have a minimum principal amount outstanding of \$100 million or more. According to the Exchange, as of December 20, 2010, 26.47% of the weight of the Index components had a minimum principal amount outstanding of \$100 million or more.

The Commission believes that the listing and trading of the Shares is consistent with the Act. The Commission believes that the Index is not susceptible to manipulation. As of December 20, 2010, there were approximately 21,141 issues included in the Index and the total dollar amount outstanding of issues in the Index was approximately \$532.82 billion. Further, the most heavily weighted component represents 0.86% of the weight of the Index and the five most heavily weighted components represent 2.52% of the weight of the Index.

The Commission also notes that, based on the Exchange’s representations: (1) The Shares currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3), except for the requirement under Commentary .02(a)(2); (2) the Shares will be subject to all of the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to Units; and (3) the Trust is required to comply with Rule 10A–3 under the Act for the initial and continued listing of Shares.<sup>14</sup> The Commission also notes that Shares of

<sup>4</sup> Standard & Poor’s Financial Services LLC is the Index Sponsor with respect to the Index. The Exchange has represented that the Index Sponsor is not affiliated with a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Index.

<sup>5</sup> See the Trust’s registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) and the Investment Company Act of 1940 (15 U.S.C. 80a), dated February 22, 2010 (File No. 333–57793 and 811–08839) (“Registration Statement”).

<sup>6</sup> The Standard & Poor’s/InvestorTools Municipal Bond Index is composed of bonds held by managed municipal bond fund customers of Standard & Poor’s Securities Pricing, Inc. that are priced daily. Only bonds with total outstanding amounts of \$2,000,000 or more qualify for inclusion. The Standard and Poor’s/InvestorTools Municipal Bond High Yield Index is comprised of all bonds in the Standard and Poor’s/InvestorTools Municipal Bond Index that are non-rated or whose ratings are BB+ S&P and/or BA–1 Moody’s or lower. This index does not contain bonds that are prerefunded or are escrowed to maturity.

<sup>7</sup> Where the ratings assigned by the agencies are not consistent, the Index will use the middle rating if three ratings are available, and the lower of two ratings if only two ratings are available.

<sup>8</sup> Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3) provides that components that in the aggregate account for at least 75% of the weight of the index or portfolio each shall have a minimum principal amount outstanding of \$100 million or more.

<sup>9</sup> 17 CFR 240.10A–3.

<sup>10</sup> See, e.g., Securities Exchange Act Release Nos. 55783 (May 17, 2007), 72 FR 29194 (May 24, 2007) (SR–NYSEArca–2007–36) (order approving NYSE Arca generic listing standards for Units based on a fixed income index); 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR–PCX–2001–14) (order approving generic listing standards for Units and Portfolio Depository Receipts); 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR–PCX–98–29) (order approving rules for listing and trading of Units).

<sup>11</sup> In approving this rule change, the Commission notes that it has considered the proposed rule’s

impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> See 17 CFR 240.19b–4(e). See also Commentary .02 to NYSE Arca Equities Rule 5.2(j)(3).

<sup>14</sup> See 17 CFR 240.10A–3.

the Fund will comply with all other requirements of NYSE Arca Equities Rule 5.2(j)(3), applicable to Units including, but not limited to, requirements relating to the dissemination of key information such as the Index value and Intraday Indicative Value, rules governing the trading of equity securities, trading hours, trading halts, surveillance, firewalls, and Information Bulletins to ETP Holders, as set forth in prior Commission orders approving the generic listing rules applicable to the listing and trading of Units.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>15</sup> and the rules and regulations thereunder applicable to a national securities exchange.

**IV. Conclusion**

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-NYSEArca-2010-120), be, and it hereby is, approved.

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

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011-3441 Filed 2-15-11; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-63880; File No. SR-Phlx-2011-12]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to Fees for Complex Orders**

February 9, 2011.

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 7, 2011, NASDAQ OMX PHLX LLC (“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. 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 its Complex Order<sup>3</sup> Fees in Section I of its Fee Schedule titled Rebates and Fees for Adding and Removing Liquidity in Select Symbols.

This filing is effective on February 7, 2011.

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 to modify the Exchange’s Fee Schedule to support the enhanced Complex Order System.<sup>4</sup>

*Changes to the Fees in Part B, Complex Orders.* Specifically, the Exchange is proposing to amend the Rebates for Adding Liquidity, create Fees for Adding Liquidity and amend Fees for Removing Liquidity. With respect to the Rebate for Adding Liquidity, the Exchange proposes to increase the Customer rebate to \$0.24 and not pay other market participants a rebate. With respect to the Fees for Adding Liquidity, the Exchange proposes to not assess Customers any fees and assess market makers \$0.10 per contract and Firms, Broker-Dealers and Professionals \$0.20 per contract. With respect to the Fees for Removing Liquidity, the Exchange proposes to increase Firms and Professionals to \$0.28 per contract (a \$0.01 increase).

A table displaying the proposed fees follows as well as a description of each proposed amendment.

	Customer	Directed participant	Specialist, ROT, SQT and RSQT	Firm	Broker-dealer	Professional
Rebate for Adding Liquidity .....	\$0.24	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Fee for Adding Liquidity .....	0.00	0.10	0.10	0.20	0.20	0.20
Fee for Removing Liquidity .....	0.25	0.25	0.27	0.28	0.35	0.28

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

<sup>16</sup> 15 U.S.C. 78s(b)(2).

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

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

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

<sup>3</sup> A Complex Order is any order involving the simultaneous purchase and/or sale of two or more

different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number

of units of an underlying stock or ETF coupled with the purchase or sale of options contract(s). See Exchange Rule 1080, Commentary .08(a)(i).

<sup>4</sup> See Securities Exchange Act Release No. 63777 (January 26, 2011), 76 FR 2733 (January 14, 2011) (SR-Phlx-2010-157).