

establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of public representatives, broker dealer representatives, bank representatives, and advisor representatives. Such rules—

(i) Shall provide that the number of public representatives of the Board shall at all times exceed the total number of regulated representatives and that the membership shall at all times be as evenly divided in number as possible between public representatives and regulated representatives;

(ii) Shall specify the length or lengths of terms members shall serve;

(iii) May increase the number of members which shall constitute the whole Board, provided that such number is an odd number; and

(iv) Shall establish requirements regarding the independence of public representatives.

The MSRB believes the proposed rule change is consistent with the Exchange Act in that the proposal provides that the number of public representatives of the Board shall exceed the total number of regulated representatives by one so that the membership shall be as evenly divided as possible between public representatives and regulated representatives—11 to 10. The proposal specifies the length of term that Board members will serve—three years—which is consistent with the length of the terms served by Board members prior to the adoption of the Dodd-Frank Act. The proposal increases the size of the Board from 15 to 21, consistent with the size of the Board during the transitional period that commenced on October 1, 2010. For the reasons discussed earlier, the Board believes a 21-member Board is effective and fairly represents all constituencies referenced in the Exchange Act, including public representatives and regulated representatives. Finally, the proposed rule change maintains the existing requirement regarding the independence of public representatives.

Section 15B(b)(1) of the Exchange Act further sets forth minimum representation requirements for certain categories of public representatives, as well as for bank dealer, broker-dealer and municipal advisor representatives. The proposed rule change complies with these requirements. The Exchange Act does not, however, mandate the specific number of any class of representative that should serve on the Board, nor does it set forth maximum Board composition or representation requirements. Thus, the MSRB believes that its proposal does provide for fair representation of public representatives, broker-dealers, bank dealers and municipal advisors under the Exchange Act, and it believes that providing a

minimum number of non-dealer municipal advisors—at least 30% of the regulated representatives—is reasonable, and consistent with the Exchange Act.

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

The Board 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 since it is solely concerned with the administration of the MSRB and, in any event, provides for fair representation on the Board of public representatives, broker dealer representatives, bank dealer representatives and municipal advisor representatives.

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

Written comments were neither solicited nor received on the proposed rule change.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

### **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-MSRB-2011-11 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-MSRB-2011-11. 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 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 business days between the hours of 10 am and 3 pm. Copies of such filing also will be available for inspection and copying at the MSRB's offices. 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 Number SR-MSRB-2011-11 and should be submitted on or before September 13, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>4</sup>

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011-21557 Filed 8-22-11; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-65150; File No. SR-NASDAQ-2011-113]**

### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Clerical Changes to Its Rules**

August 17, 2011.

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

<sup>4</sup> 17 CFR 200.30-3(a)(12).

(“Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on August 5, 2011, 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 and II, which Items have been prepared by NASDAQ. 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 make clerical corrections to correct cross-references and a typographical error in Rule 5710 of the NASDAQ rulebook. NASDAQ proposes to implement the proposed rule change immediately.

The text of the proposed rule change is available on NASDAQ’s Web site at <http://www.nasdaq.cchwallstreet.com>, at NASDAQ’s principal office, on the Commission’s Web site at <http://www.sec.gov>, 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

NASDAQ proposes to make clerical corrections to update certain cross-references in Rule 5710 and correct a typographic error. NASDAQ inadvertently failed to change these cross-references when the listing rules were relocated from the Rule 4000 Series of the NASDAQ Rulebook to the Rule 5000 Series.<sup>3</sup> This rule filing will correct those cross-references. In addition, this rule filing will correct a

typographic error in the Rule. The Exchange is not making any substantive changes to Rule 5710.

##### 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>4</sup> in general, and with Section 6(b)(5) of the Act,<sup>5</sup> in particular, in that the proposal 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. The proposed rule change is consistent with these provisions in that it will eliminate confusion about NASDAQ rules by updating inaccurate cross-references to rules that have been renumbered, without changing the substance of the rules.

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

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments were neither solicited nor received.

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

Pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b–4(f)(3) thereunder,<sup>7</sup> NASDAQ has designated this proposal as one that is concerned solely with the administration of the self-regulatory organization. Accordingly, NASDAQ believes this proposal should become immediately effective.

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–2011–113 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–2011–113. 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–2011–113 and should be submitted on or before September 13, 2011.

<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. 59663 (March 31, 2009), 74 FR 15552 (April 6, 2009) (SR–NASDAQ–2009–018).

<sup>4</sup> 15 U.S.C. 78f.

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b–4(f)(3).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011-21466 Filed 8-22-11; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65149; File No. SR-Phlx-2011-89]

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

August 17, 2011.

#### I. Introduction

On June 23, 2011, 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"),<sup>1</sup> a proposed rule change to list and trade options on a number of new Alpha Indexes and to amend Exchange Rule 1001A, Position Limits, with respect to certain Alpha Index options. The proposed rule change was published for comment in the **Federal Register** on July 8, 2011.<sup>2</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

#### II. Description

On February 7, 2011, the Commission approved the Exchange's proposed rule change to list and trade options on a number of Alpha Indexes.<sup>3</sup> Alpha Indexes measure relative total returns of one underlying stock or exchange traded fund ("ETF") share against another underlying stock or ETF share underlying options which are also traded on the Exchange (each such combination of two components is referred to as an "Alpha Pair"). 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"). Total return measures performance (rate of return) of price

appreciation plus dividends over a given evaluation period.

The Alpha Index options that the Commission has previously approved for listing and trading on the Exchange are limited to specific Alpha Indexes the Target Component of which is a single stock.<sup>4</sup> The Exchange proposes to expand the number of Alpha Indexes on which options can be listed to include certain Alpha Indexes based on the following Alpha Pairs: DIA/SPY, EEM/SPY, EWJ/SPY, EWZ/SPY, FXI/SPY, GLD/SPY, IWM/SPY, QQQ/SPY, SLV/SPY, TLT/SPY, XLE/SPY and XLF/SPY. In these Alpha Indexes, the Target Component as well as the Benchmark Component is an ETF share. The proposed Alpha Index options will enable investors to trade the relative performance of the market sectors represented by the Target Components as compared with the overall market performance represented by the Benchmark Component SPY.

As with each initial Alpha Index option, each proposed new Alpha Index option will meet the criteria set forth in Exchange Rule 1009A(f).<sup>5</sup> Further,

<sup>4</sup> The Commission previously approved the listing and trading of options on Alpha Indexes based 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. See *supra* note 3. In connection with its proposed rule change to list and trade this initial set of Alpha Index options, the Exchange represented that it would not list Alpha Index options on any other Alpha Pairs without filing a proposed rule change seeking Commission approval. See *id.*

<sup>5</sup> Rule 1009A(f) requires that options on Alpha Indexes meet the following criteria: (1) Alpha Index options will be A.M.-settled. The exercise settlement value will be based upon the opening prices of the individual stock or ETF from the primary listing market on the last trading day prior to expiration (usually a Friday); (2) at the time of listing an Alpha Index option, options on each underlying component of an Alpha Index will also be listed and traded on the Exchange and will meet the requirements of Rule 1009, Criteria for Underlying Securities. Additionally, 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; (3) following the listing of an Alpha Index option, options on each of the component securities of the Alpha Index will continue to meet the continued listing standards set forth by Phlx Rule 1010, Withdrawal of Approval of Underlying Securities or Options. Additionally, 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; and (4) 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.

following the listing of these Alpha Index options, 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.

#### Position Limits

The Exchange also proposes to amend section (f) of Exchange Rule 1001A to establish a 15,000 contract position limit in options on Alpha Indexes in which the Target Component is an ETF share. This 15,000 contract position limit would apply not only to the specific Alpha Index options proposed herein, but also to any options the Exchange may list in the future on Alpha Indexes in which the Target Component is an ETF share.<sup>6</sup> 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. All position limit hedge exemptions will apply.

#### Clearing

Like the Alpha Index options that are currently trading, the proposed new Alpha Index options are "Strategy Based Options" that will be cleared by the Options Clearing Corporation.

#### Surveillance

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

#### Margin

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

#### Systems Capacity

Additionally, the Exchange affirms that it possesses the necessary systems capacity to support new series that would result from the introduction of these new Alpha Index options. The

<sup>6</sup> The Exchange will not, however, list options on any such Alpha Pairs without filing a proposed rule change seeking Commission approval.

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> See Securities Exchange Act Release No. 64788 (July 1, 2011), 76 FR 40415 ("Notice").

<sup>3</sup> See Securities Exchange Act Release No. 63860 (February 7, 2011), 76 FR 7888 (February 11, 2011) (SR-Phlx-2010-176).