

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-65478; File No. SR-Phlx-2011-130]

**Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the SQT Fees**

October 4, 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 September 27, 2011, NASDAQ OMX PHLX LLC (“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 Streaming Quote Trader<sup>3</sup> (“SQT”) Fees. While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on October 3, 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, 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, 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 the Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

The purpose of the proposed rule change is to amend the SQT Fees in Section VI of the Exchange’s Fee Schedule, entitled “Access Service, Cancellation, Membership, Regulatory and Other Fees.” The Exchange proposes to simplify the SQT Fees by amending certain text, without changing the fees, for ease of reference. Additionally, the Exchange proposes to

amend the calculation of the SQT Fees to incentivize trading in equity options, excluding currencies and indexes. The Exchange believes that the proposed SQT Fees will continue to incentivize SQTs to remain on the Exchange’s options floor and thereby provide liquidity for floor-brokered orders traded in-crowd.

Currently, a member organization is assessed per month an SQT Fee based on the total number of options in which all SQTs in the same member organization are assigned. A member organization is assessed an SQT Fee based on the aggregate amount of equity options and index options traded by the SQTs in that member organization. The highest applicable SQT Fee is assessed based on the highest SQT category level in which the SQT was qualified at any time during a particular calendar month.<sup>4</sup> For example, if an SQT was eligible to trade at any time in a given calendar month as a Category I SQT, and sometime during that same calendar month became qualified and eligible to trade as a Category II SQT, the SQT member organization would be assessed the fee applicable to a Category II SQT, regardless of when such SQT became eligible to trade at the Category II level, and regardless if, during that same calendar month, the SQT resumed eligibility as a Category I SQT.<sup>5</sup>

The Exchange proposes to amend the verbiage of the current SQT Fees to simplify the fees as follows:

Number of option class assignments	SQT fees
Up to 200 classes .....	\$0.00 per calendar month.
Up to 400 classes .....	\$2,200 per calendar month.
Up to 600 classes .....	\$3,200 per calendar month.
Up to 800 classes .....	\$4,200 per calendar month.
Up to 1000 classes .....	\$5,200 per calendar month.
Up to 1200 classes .....	\$6,200 per calendar month.
All equity issues .....	\$7,500 per calendar month.

The Exchange is proposing to remove the references to “SQT is Eligible to trade:” and “equity and index options issues” and instead use the term “classes.” The Exchange proposes to amend the calculation of the SQT Fees

as well. In calculating the SQT Fees, the Exchange will calculate the number of option class assignments for equity options including exchange-traded funds (“ETFs”), exchange-traded notes (“ETNs”)<sup>6</sup> and HOLDRS<sup>7</sup>. The

Exchange will not include and therefore not assess a fee for currencies or indexes in calculating the number of option class assignments. The Exchange proposes to amend the Fee Schedule to

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

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

<sup>3</sup> An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

<sup>4</sup> See Exchange Rules 1014(b) and 507 for qualifications relating to assignments.

<sup>5</sup> For example, if a member organization’s SQT is eligible to trade up to 200 equity and index options issues at any time in a given month, and is thus

qualified as a Category I SQT, and sometime during that month becomes eligible to trade up to 400 equity and index options issues during that same month, and is thus qualified as a Category II SQT, the member organization employing that SQT would be assessed the fee applicable to a Category II SQT, regardless of when, during that month, the SQT became eligible to trade at the Category II level.

<sup>6</sup> ETNs are also known as “Index-Linked Securities,” which are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable

underlying securities, commodities, currencies, derivative instruments or market indexes of the foregoing. Index-Linked Securities are the non-convertible debt of an issuer that have a term of at least one (1) year but not greater than thirty (30) years. Despite the fact that Index-Linked Securities are linked to an underlying index, each trade as a single, exchange-listed security. Accordingly, rules pertaining to the listing and trading of standard equity options apply to Index-Linked Securities.

<sup>7</sup> HOLDRS are Holding Company Depository Receipts.

note the method of calculation as follows:

"In calculating the number of option class assignments, equity options including ETFs, ETNs and HOLDRS will be counted. Currencies and indexes will not be counted in the number of option class assignments."

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on October 3, 2011.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>9</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that the proposed amendments to the SQT Fees are reasonable because the fees remain the same, except the verbiage is simplified. The Exchange believes that the fees continue to be reasonable because SQT Fees are lower than RSQT Fees. This is because SQTs have more out-of-pocket costs associated with their streaming quote systems as compared to RSQTs. For example, SQTs generally have to purchase additional software programs and hardware from outside vendor to support their streaming quote systems, in addition to incurring additional costs associated with market data to enable them to price options within their particular options pricing model. Furthermore, the Exchange believes that excluding currencies and indexes from the basis of the calculation of the SQT Fees is reasonable because the Exchange is seeking to incentivize SQTs to transact equity options including ETFs, ETNs and HOLDRs.<sup>10</sup>

The Exchange believes that the proposed calculation of the SQT Fees is equitable and not unfairly discriminatory because the calculation will be uniformly applied to all SQTs. The exclusion of the currencies and indexes from the calculation of option class assignments to determine the amount of SQT Fees will apply equally to all SQTs.

### *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>11</sup> 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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 No. SR-Phlx-2011-130 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 No. SR-Phlx-2011-130. 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-2011-130 and should be submitted on or before November 1, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

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**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-65468; File No. SR-NYSEArca-2011-51]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change To List and Trade Managed Fund Shares of TrimTabs Float Shrink ETF Under NYSE Arca Equities Rule 8.600**

October 3, 2011.

#### **I. Introduction**

On July 29, 2011, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") 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 TrimTabs Float Shrink ETF ("Fund") under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on August 18,

<sup>12</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>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> The Exchange is excluding currencies and indexes.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).