

be published daily in the financial section of newspapers. The Fund's Web site will also include a form of the prospectus for the Fund, information relating to NAV (updated daily), and other quantitative and trading information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.²⁰ In addition, the Exchange will halt trading in the Shares under the specific circumstances set forth in NYSE Arca Equities Rule 8.600(d)(2)(D) and may halt trading in the Shares if trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.²¹ Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.²² The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees, and neither the Adviser nor the Sub-Adviser is affiliated with a broker-dealer.²³ The Commission also

notes that the Exchange can obtain information with respect to the Underlying ETFs from the U.S. exchanges, which are all members of the Intermarket Surveillance Group, listing and trading such Underlying ETFs.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures applicable to derivative products, which include Managed Fund Shares, are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit Aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV is disseminated; (e) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or

information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

concurrently with the confirmation of a transaction; and (f) trading and other information.

(5) For initial and/or continued listing, the Fund will be in compliance with Rule 10A-3 under the Act,²⁴ as provided by NYSE Arca Equities Rule 5.3.

(6) The Fund will not: (a) Purchase illiquid securities, including Rule 144A securities and loan participation interests; (b) invest in non-U.S. issues (except for Underlying ETFs that may hold non-U.S. issues); (c) invest in leveraged, inverse, or inverse leveraged Underlying ETFs; and (d) pursuant to the terms of the Exemptive Order, invest in options contracts, futures contracts, or swap agreements.

(7) A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act²⁵ 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,²⁶ that the proposed rule change (SR-NYSEArca-2011-80) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012-322 Filed 1-10-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66111; File No. SR-Phlx-2011-187]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Waive PSX Port Pair Fees for Certain Newly-Added Routable Port Pairs

January 5, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,²

²⁴ See 17 CFR 240.10A-3.

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ 15 U.S.C. 78s(b)(2).

²⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²⁰ See NYSE Arca Equities Rule 8.600(d)(1)(B).

²¹ See NYSE Arca Equities Rule 8.600(d)(2)(C).

With respect to trading halts, the Exchange may consider other relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

²² See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

²³ See *supra* note 5 and accompanying text. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public

notice is hereby given that on December 28, 2011, NASDAQ OMX PHLX LLC ("Exchange" or "PHLX"), 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 offer a waiver of PSX Port Pair fees for certain newly-added routable port pairs during the months of January through March, 2012.

The text of the proposed rule change is below. Proposed new language is italicized.

VIII. NASDAQ OMX PSX FEES

Access Services Fees†

The following charges are assessed by the Exchange for ports to establish connectivity to the NASDAQ OMX PSX market, as well as ports to receive data from the NASDAQ OMX PSX market: \$400 per month for each port pair, other than Multicast ITCH® data feed pairs, for which the fee is \$1000 per month. *The \$400 port pair fee will be waived from January 2012 through March 2012 for a single port pair subscribed to by a member used for routing during this free period. To be eligible for the fee waiver, the member must increase the number of routable ports it has as of December 31, 2011 and must send routable order flow through the designated port pair at some point during the free period, otherwise the monthly fee will apply.*

An additional \$200 per month for each Internet port that requires additional bandwidth.

* * * * *

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 Exchange is amending its fee schedule to waive fees assessed on a single port pair used for routing orders from PSX, during the months of January through March, 2012. The Exchange recently began allowing orders placed on the Exchange to route away from PSX for execution.³ The Exchange is proposing to waive, for a limited time, the fee assessed for a single port pair under Chapter VIII of the NASDAQ OMX PHLX Fee Schedule, applicable to a member firm that adds an additional port and uses that port for routing on the PSX market during the months of January through March, 2012. The Exchange believes that waiving the port pair fee will encourage market participants to utilize the routing function of the market, and to take advantage of new routing strategies made available to market participants.⁴

A member is eligible to subscribe only one free port pair under the proposed fee waiver program and the port must be eligible for routing. The free port pair must be a newly-subscribed port pair and must be net additive to the number of port pairs a member firm is subscribed to as of December 31, 2011 (*i.e.*, it cannot replace an existing port pair). Additional port pairs subscribed to by a member firm and used for routing purposes will not be eligible for the proposed fee waiver. A member firm may add a routable port pair that meets the requirements noted above at any point during the free period, and will not be assessed a fee for the port pair for the months remaining in the free period, so long as routable order flow is sent through the port pair at some point during the free period. If no routable order flow is sent through the designated port pair during the free period, the port pair fee will apply to all months the new port pair is subscribed to. For example, if on January 25, 2012, Firm ABCD adds a routable port on PSX, the port pair would be free for the duration of the free period, so long as the member firm sends routable order flow through the port pair at some point during the free period. At the end of the free period, the member will be assessed the normal monthly fee, beginning with April 2012. If the member firm does not send routable order flow through the

³ See Securities Exchange Act Release No. 65469 (October 3, 2011), 76 FR 62486 (October 7, 2011) (SR-Phlx-2011-108).

⁴ *Id.*

newly-added port pair, the member firm would be assessed the full fee for each of the months that it had subscribed to the new port pair during the free period (in the example above, all three months of the free period). A member firm is under no obligation to continue subscription to the routable port pair at the end of the free period, and may cancel its subscription at any time prior to the expiration of the free period with no charge.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁵ in general, and with Section 6(b)(4) of the Act,⁶ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange believes that the proposed fee waiver is reasonable as it is narrowly focused, of limited duration, and is designed to encourage PSX market participants to use the full functionality of the market, thereby increasing liquidity available to investors. The Exchange believes that the proposed fee waiver is equitable since it applies to any PSX participant that seeks to use the routing function of the market and subscribes a new port pair for routing during the free period. To date, no member firms have subscribed new port pairs for the purpose of routing from PSX. As noted, a member firm is not penalized for cancelling its routing port pair at the end of the free period.

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

The Exchange 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁷ and

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78s(b)(3)(a)(ii).

subparagraph (f)(2) of Rule 19b-4 thereunder.⁸ 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

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 email to rule-comments@sec.gov. Please include File No. SR-Phlx-2011-187 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-2011-187. This file number should be included on the subject line if email 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-2011-187 and should be submitted on or before February 1, 2012.

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

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012-321 Filed 1-10-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66110; File No. SR-NYSEArca-2012-01]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Fee Schedule Changing the Monthly Fees for the Use of Ports That Provide Connectivity to Its Equity Trading Systems

January 5, 2012.

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 3, 2012, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") 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 the NYSE Arca Equities Fee Schedule ("Fee Schedule") to change the monthly fees for the use of ports that provide connectivity to its equity trading systems. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and www.nyse.com.

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 self-regulatory organization 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 those 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to change the monthly fees for the use of ports that provide connectivity to its equity trading systems.

Currently, the monthly fee for ports is \$100 per pair per month up to five pairs, then \$500 for each additional five pairs.³ For example, the fee for seven pairs of ports is \$1,000 per month. Billing for ports is based on the number of ports on the third business day prior to the end of the month. The level of activity with respect to a particular port does not affect the assessment of monthly fees, so even if a particular port that is available to a participant is not used, the participant is still billed for that port.

The Exchanges proposes that the new fee would be \$300 per pair per month up to five pairs, then \$1,500 for each additional five pairs. For example, the fee for seven pairs of ports would be \$3,000 per month. The Exchange notes that billing for ports would continue to be based on the number of ports on the third business day prior to the end of the month. In addition, the level of activity with respect to a particular port would still not affect the assessment of monthly fees, so even if a participant does not use a particular port that is available to the participant, the participant would still be billed for that port.

Finally, as stated in the Adopting Release,⁴ the port fee is charged per participant. The Exchange proposes to clarify in the Fee Schedule that per participant means per ETP ID, as ETP

³ See Securities Exchange Act Release No. 63056 (October 6, 2010), 75 FR 63233 (October 14, 2010) (SR-NYSEArca-2010-87) (the "Adopting Release").

⁴ See *supra* note 3.

⁸ 17 CFR 240.19b-4(f)(2).