

public interest. The Exchange believes that codifying certain provisions of the OLPP, as amended, serves to foster investor protection.

#### *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 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.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup> Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>10</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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-NYSEAmex-2010-39 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-NYSEAmex-2010-39. 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 the 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 Number SR-NYSEAmex-2010-39 and should be submitted on or before May 21, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-61981; File No. SR-NASDAQ-2010-051]

#### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Concerning Intermarket Option Linkage**

April 26, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on April 20, 2010, The NASDAQ Stock Market LLC ("Nasdaq" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 Substance of the Proposed Rule Change**

The Exchange is filing with the Commission a proposed rule change to delete its Temporary Rule Governing Phase-Out of P and P/A Orders<sup>3</sup> and amend several references in the rules to the Plan for the Purpose of Creating and Operating an Intermarket Linkage ("Linkage Plan").<sup>4</sup> In addition, the Exchange also proposes to amend its fees in Rule 7050, NASDAQ Options Market, to discontinue its current pilot program (the "pilot") relating to options

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

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

<sup>3</sup> See Chapter XII, Intermarket Linkage Rules, Section 4, Temporary Rule Governing Phase-Out of P and P/A Orders.

<sup>4</sup> See Securities Exchange Act Release No. 57545 (March 21, 2008), 73 FR 16394 (March 27, 2008). On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage ("Linkage") proposed by the then American Stock Exchange LLC, now NYSE Amex LLC ("NYSE Amex"), Chicago Board Options Exchange, Inc. ("CBOE"), and International Securities Exchange LLC ("ISE"). See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023, (August 4, 2000). Subsequently, Philadelphia Stock Exchange, Inc., now NASDAQ OMX PHLX, Inc. ("Phlx"), Pacific Exchange, Inc., now NYSE Arca, Inc. ("NYSE Arca") and Boston Stock Exchange, Inc., now NASDAQ OMX BX, Inc. ("BSX") joined the Linkage Plan. See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851, (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850, (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029, (February 12, 2004). The Exchange was added as a Participant to the Linkage Plan. Linkage was governed by the Options Linkage Authority under the conditions set forth under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage approved by the Commission.

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

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

transaction fees for trades executed via the Intermarket Option Linkage ("Linkage") on the Exchange.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com>, on the Commission's Web site at <http://www.sec.gov>, at Nasdaq, 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 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 Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The purpose of the proposed rule change is to eliminate existing references to the Linkage Plan and also replace some references to the Linkage Plan with references to the Options Order Protection and Locked/Crossed Market Plan ("Plan") in order to clarify the current rules in effect.

On June 17, 2008, the Exchange filed the Plan, joining all other approved options markets in adopting the Plan.<sup>5</sup> The Plan requires each options exchange to adopt rules implementing various requirements specified in the Plan. The Plan replaces the former Linkage Plan. The Linkage Plan required Participating Exchanges to operate a stand-alone system or "Linkage" for sending order-flow between exchanges

to limit trade-throughs.<sup>6</sup> The Options Clearing Corporation ("OCC") operated the Linkage system (the "System").<sup>7</sup> The Exchange adopted various new rules in connection with the Plan to avoid trade-throughs and locked markets, among other things.<sup>8</sup> The Exchange currently offers private routing directly to away markets.<sup>9</sup>

The Exchange adopted a temporary rule entitled Temporary Rule Governing Phase-Out of P and P/A Orders ("Temporary Rule"),<sup>10</sup> in order to facilitate the participation of certain Participating Exchanges who may require the use of Principal Acting as Agent Orders ("P/A Orders")<sup>11</sup> and Principal Orders ("P")<sup>12</sup> after implementation of the Plan.<sup>13</sup> Certain Participating Exchanges required a temporary transition period during which they continued to utilize these order types that existed under the Linkage Plan. The Exchange proposed substantially similar rules with that of the other Participating Exchanges to accommodate the possibility of continued use of P/A Orders and P Orders. At this time all Participating Exchanges have discontinued use of the Linkage Plan. The Exchange proposes at this time to delete this Temporary Rule because it is no longer necessary in light of the discontinued use of the Linkage Plan. The Exchange also proposes to delete a reference to the Linkage Plan in Chapter VII, Market Participants, Section 5, Obligations of Market Makers. Additionally, the Exchange proposes to amend Section 1, Definitions, in Chapter XII, Intermarket Linkage Rules,

to redefine "Plan" to comport with the new Plan.

The Exchange proposes to discontinue the current pilot program related to transaction fees sent to the Exchange via Linkage. The current pilot is set to expire July 31, 2010.<sup>14</sup>

Under the Exchange's current rule, the fee for members or non-members entering orders via Linkage that execute on the Exchange is \$0.45 per executed contract. Because there are no longer any participant exchanges to the Linkage Plan, the Exchange proposes to discontinue the pilot. The Exchange also proposes to amend Rule 7050, NASDAQ Options Market, to remove all references to Linkage fees.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>15</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>16</sup> in particular, in that it is 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, by proposing the elimination of its Temporary Rule, which reflects usage of a former Linkage Plan that has since been replaced by a new Plan. In addition, the Exchange believes that amending its Rules to refer to the current Plan and by proposing to discontinue its pilot, to clarify that Linkage fees are no longer applicable, will provide its members clarity.

### 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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant

<sup>5</sup> See Securities Exchange Act Release Nos. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (National Market System Plan Relating to Options Order Protection and Locked/Crossed Markets). The Plan is a national market system plan proposed by the seven existing options exchanges and approved by the Commission. See Securities Exchange Act Release No. 59647 (March 30, 2009), 74 FR 15010 (April 2, 2009) ("Plan Notice") and 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) ("Plan Approval"). The seven options exchanges are: Chicago Board Options Exchange, Incorporated ("CBOE"); International Securities Exchange LLC ("ISE"); NASDAQ OMX BX, Inc. ("BOX"); The NASDAQ Stock Market LLC ("Nasdaq"); NYSE Amex LLC ("NYSE Amex"); NYSE Arca, Inc. ("NYSE Arca"); and Phlx (each exchange individually a "Participant" and, together, the "Participating Options Exchanges").

<sup>6</sup> See footnote 4.

<sup>7</sup> See footnote 4.

<sup>8</sup> See footnote 5.

<sup>9</sup> See Chapter VI, Trading Systems, Section 11, Order Routing.

<sup>10</sup> See Chapter XII, Intermarket Linkage Rules, Section 4, Temporary Rule Governing Phase-Out of P and P/A Orders.

<sup>11</sup> A P/A Order is an order for the principal account of a Primary Market Maker (or equivalent entity on another Eligible Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the Primary Market Maker is acting as agent. See Chapter XII, Section 4(d)(4)(i).

<sup>12</sup> A Principal Order is an order for the principal account of a market maker (or equivalent entity on another Eligible Exchange) and is not a P/A Order. See Chapter XII, Section 4 (d)(ii).

<sup>13</sup> See Securities Exchange Act Release No. 60525 (August 18, 2009), 74 FR 43188 (August 26, 2009) (SR-NASDAQ-2009-056). Linkage was governed by the Options Linkage Authority under the conditions set forth under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage approved by the Commission. The registered U.S. options markets were linked together on a real-time basis through a network capable of transporting orders and messages to and from each market.

<sup>14</sup> See Securities Exchange Act Release No. 60407 (July 30, 2009), 74 FR 39720 (August 7, 2009) (SR-NASDAQ-2009-073).

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>17</sup> and Rule 19b-4(f)(6)<sup>18</sup> thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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.

#### *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-2010-051 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-2010-051. 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 Number SR-NASDAQ-2010-051 and should be submitted on or before May 21, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-10082 Filed 4-29-10; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-61972; File No. SR-ISE-2010-32]**

### **Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes**

April 23, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 14, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") 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 self-regulatory organization. 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 is proposing to amend its Schedule of Fees. The text of the proposed rule change is available on the Exchange's Web site (<http://www.ise.com>), 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 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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**

In SR-ISE-2009-26, the Exchange adopted the term 'Singly Listed ETFs' to identify those ETF products that are listed only on ISE and for which the Exchange charges a fee of \$0.18 per contract for customer transactions. Currently, the First Trust ISE Water ETF ("FIW"), the Claymore China Technology ETF ("CQQQ"), the ProShares UltraPro Short Dow30 ("SDOW"), the ProShares UltraPro Dow30 ("UDOW"), the ProShares UltraPro Short MidCap400 ("SMDD"), the ProShares UltraPro MidCap400 ("UMDD"), the ProShares UltraPro Short Russell2000 ("SRTY") and the ProShares UltraPro Russell2000 ("URTY") are the only such ETFs listed on the Exchange's fee schedule. On April 14, 2010, ISE began listing options on the First Trust ISE Global Copper Index Fund ("CU") and the First Trust ISE Global Platinum Index Fund ("PLTM"). As of the date of this filing, CU and PLTM are both singly listed on ISE. The Exchange therefore proposes to charge a fee of \$0.18 per contract for customer transactions in options on CU and PLTM. The Exchange also proposes to charge a Payment for Order Flow fee for transactions in options on these products.

##### **2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>3</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>4</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Nasdaq has satisfied this requirement.

<sup>19</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> 15 U.S.C. 78f.

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