

Commission also notes that the Exchange will obtain a representation from the Fund that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.<sup>14</sup> Additionally, if it becomes aware that the NAV or the Disclosed Portfolio is not disseminated to all market participants at the same time, the Exchange will halt trading in the Shares until such information is available to all market participants. Further, if the PIV is not being disseminated as required, the Exchange may halt trading during the day in which the interruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.<sup>15</sup> Finally, 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.<sup>16</sup>

The Exchange has represented that the Shares are equity securities subject to the Exchange's 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's surveillance procedures 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.

(3) Prior to the commencement of trading, the Exchange will inform its ETP 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 and that Shares

are not individually redeemable; (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP 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 ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(4) The Fund will be in compliance with Rule 10A-3 under the Act.<sup>17</sup>

(5) Except for Underlying ETFs that may hold non-U.S. issues, the Fund will not otherwise invest in non-U.S. issues.

In addition, the Commission notes that it has not received any comments regarding the proposed rule change.

For the forgoing reasons, the Commission believes that the Exchange's proposal to list and trade the Shares is consistent with the Act. This order is based on the Exchange's representations.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> that the proposed rule change (SR-NYSEArca-2010-79) be, and it hereby is, approved.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-26132 Filed 10-15-10; 8:45 am]

**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63071; File No. SR-Phlx-2010-139]

#### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Floor Broker Responsibilities

October 8, 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 October 5, 2010, NASDAQ OMX PHLX, Inc.

("Phlx" 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 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 Exchange Rule 1063, Responsibility of Floor Brokers, and Option Floor Procedure Advice ("OFPA") C-2, Options Floor Broker Management System: to: (i) Require floor brokers to enter specific identifying information on their orders; and (ii) amend the current language applicable to the entry of clearing information by floor brokers.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, at the principal office of the Exchange, 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 require floor brokers to enter certain identifying information on their orders to enhance the Exchange's audit trail to provide more specificity in identifying a market participant's executing order. The Exchange is proposing to require floor brokers<sup>3</sup> to

<sup>3</sup> An Options Floor Broker ("Floor Broker") is an individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and executing options orders received from members and member organizations. An Options Floor Broker shall not accept an order from any other source unless he is the nominee of a member organization qualified to transact business

decisions on the Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

<sup>14</sup> See NYSE Arca Equities Rule 8.600(d)(1)(B).

<sup>15</sup> See NYSE Arca Equities Rule 8.600(d)(2)(D). Trading in the Shares may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising the Disclosed Portfolio and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

<sup>16</sup> See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

<sup>17</sup> 17 CFR 240.10A-3.

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<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.

enter certain alpha/numeric identifying information in addition to their own account number.

Currently, floor brokers enter their own alpha/numeric identification information,<sup>4</sup> assigned by the Exchange, on the Options Floor Broker Management System,<sup>5</sup> for each order they receive and represent in the trading crowd.<sup>6</sup> Similarly, Advice F-1 requires ROTs to enter their complete alpha/numeric identification assigned by the Exchange on the FBMS for each order they receive in the trading crowd. The Exchange is proposing to amend Exchange Rule 1063 and Option Floor Procedure Advice C-2 to require Floor Brokers to enter alpha/numeric identification for all orders entered on behalf of ROTs,<sup>7</sup> not just for orders they receive and represent themselves in a trading crowd.

Additionally, the Exchange is proposing to amend the timeframe within which floor brokers enter certain clearing information into the FBMS. Currently, a floor broker is required to contemporaneously upon receipt of an order and prior to the representation of such an order record the following specific information with respect to orders represented by a floor broker into FBMS: (i) The order type (*i.e.*, customer, firm, broker-dealer, professional); (ii) the option symbol; (iii) buy, sell, cross or cancel; (iv) call, put, complex (*i.e.*, spread, straddle), or contingency order as described in Rule 1066; (v) number of contracts; (vi) limit price or market order or, in the case of a complex order, net debit or credit, if applicable; (vii) whether the transaction is to open or

close a position; and (viii) The Options Clearing Corporation ("OCC") clearing number of the broker-dealer that submitted the order (collectively, the "required information").<sup>8</sup>

In addition, floor brokers or their employees are required to enter clearing information onto the FBMS no later than five minutes after the execution of the trade. The clearing information, which is the contra-side clearing information, is not required to be entered pursuant to COATS.<sup>9</sup> Rather, this information facilitates the identification of the trade for clearing.<sup>10</sup> The Exchange proposes to amend the current language to state any additional information with respect to the order shall be inputted into the Exchange's systems contemporaneously upon receipt, which may occur after the representation and execution of the order.<sup>11</sup>

The Exchange believes this amendment to the time, from a five minute timer to a "upon receipt" requirement, is necessary to allow floor brokers to enter the requisite clearing information. Currently, certain types of trades that are handled in a trading crowd are being entered upon receipt and prior to the expiration of the five minute timer without incident. Other types of transactions which are received by a floor broker from an upstairs firm<sup>12</sup>

which may involve Prime Brokerage<sup>13</sup> relationships may require additional time, beyond five minutes, because the clearing information may not be readily ascertainable. Likewise, complex orders with multiple legs can take longer than five minutes to input into the FBMS system simply because of the quantity of information that is required to be entered. The Exchange believes that upon receipt means as soon as that clearing information becomes available to a floor broker. That timeframe must be reasonable and will be monitored by the Exchange's surveillance staff to ensure such timing is not unreasonable.

The Exchange believes that this modification to the rules will prevent a large number of change orders from floor brokers who are concerned with meeting the current five minute timer and enter information which is later found out to be inaccurate and a change order is required. With the more reasonable timeframe, a floor broker may properly enter the information the first time. Also, the additional flexibility will allow floor brokers with complex orders to comply with Exchange rules. Today, even if a floor broker begins to enter the clearing information for a complex order immediately after the trade was executed, they may run afoul of the five minute timer simply because the information is too large in volume to physically input within five minutes. This amendment would alleviate these concerns. The Exchange does not anticipate a change in behavior for the remainder of the floor brokers who are currently able to enter the clearing information promptly upon execution and do so today.

The Exchange previously amended its rules to add the five minute timer because once the clearing information is reported crowd participants involved in the trade would receive a position update enabling them to know their respective positions on a real-time basis and to make appropriate informed and timely hedging transactional decisions. The Exchange believes that this language will continue to enable to allow Specialists and ROTs, in particular, to receive such position updates going forward. Additionally, FBMS technology provided to floor brokers offers them an efficient means to enter clearing information for trade participants contemporaneously upon

to a floor broker for execution. The floor brokers typically are not affiliated with the "upstairs firms".

<sup>13</sup> Prime Brokerage is a mechanism for centralized securities clearing at one facility which allows multiple execution arrangements. A customer who has a Prime Brokerage account may have accounts with multiple firms used for executing trades.

with the public in which event he may accept orders from public customers of the organization. See Exchange Rule 1060.

<sup>4</sup> This is an identifying letter that is assigned by the Exchange that follows the account number and identifies a Registered Options Trader ("ROT"). A Registered Options Trader may have more than one alpha/numeric.

<sup>5</sup> The Options Floor Broker Management System ("FBMS") is a component of the Exchange's system designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. The FBMS also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order.

<sup>6</sup> See Option Floor Procedure Advice F-1 titled Use of Identification Letters and Numbers. Specialists and ROTs are also required to comply with F-1 in addition to Floor Brokers.

<sup>7</sup> A ROT includes a Streaming Quote Trader ("SQT"), a Remote Streaming Quote Trader ("RSQT") and a Non-SQT, which by definition is neither a SQT or a RSQT. See Exchange Rule 1014 (b)(i) and (ii).

<sup>8</sup> The required information complies with the Consolidated Options Audit Trail System ("COATS") requirements. COATS effectively enhances intermarket options surveillance by enabling the options exchanges to reconstruct the market promptly to effectively surveil certain rules. Through its participation in the Intermarket Surveillance Group ("ISG"), the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. The Exchange's participation in ISG helps it to satisfy the Exchange Act requirement that it have coordinated surveillance with markets on which security futures are traded and markets on which any security underlying security futures are traded to detect manipulation and insider trading. ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by cooperatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

<sup>9</sup> This COATS requirement is not to be confused with the requirement to submit the clearing information of the Broker-Dealer that submitted the order.

<sup>10</sup> Such clearing information includes the account number(s) of each contra-side participant to the floor broker's trade in the crowd and the number of contracts bought or sold. This information would be immediately reported to the clearing firm of each crowd participant involved in the trade.

<sup>11</sup> See Chicago Board Options Exchange, Inc. ("CBOE") Rule 6.24(a)(2) which contains similar language.

<sup>12</sup> An "upstairs firm" is a broker-dealer, not located on the trading floor that submits an order

receipt. This technology was not previously available.

The Exchange proposes this amendment to both Exchange Rule 1063 as well as OFPA C-2, which is part of the minor rule plan.<sup>14</sup>

## 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 requiring a floor broker to enter more specific information to identify trades. This proposal would enhance the Exchange's audit trail.

Further, the Exchange believes that amending the language concerning clearing information related to the contra-side of the trade to require the information to be entered into FBMS contemporaneously upon receipt on the Exchange is consistent with the language of other exchanges and still allows for the timely entry of information for clearing purposes.

### 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: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>17</sup> and Rule 19b-4(f)(6) thereunder.<sup>18</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 Number SR-Phlx-2010-139 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-Phlx-2010-139. 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-Phlx-2010-139 and should be submitted on or before November 8, 2010.

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

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63082; File No. SR-Phlx-2010-130]

### Self-Regulatory Organizations; Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC ("Phlx" or the "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.

October 13, 2010.

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 29, 2010, NASDAQ OMX PHLX LLC ("Phlx" or the "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 Fee Schedule to add pricing applicable to members utilizing the Exchange's

<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)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and 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 this requirement.

<sup>14</sup> The Exchange's minor rule plan consists of options floor procedure advices ("OFPA's" or "Advices") with preset fines, pursuant to Rule 19d-1(c) under the Act. 17 CFR 240.19d-1(c). Most OFPA's have corresponding options rules.

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

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

<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.