composition and/or changes to the Fund’s portfolio. 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 each of the portfolios.22

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 continuing 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 detect and deter 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.23

(5) The Fund and the Subsidiary will not invest in non-U.S. equity securities, except that the Fund will invest in shares issued by the Subsidiary.

(6) The Fund’s investments in Commodity-Linked Instruments will be consistent with the Fund’s investment objective and will not be used to enhance leverage.

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 the Act and the rules and regulations thereunder applicable to a national securities exchange.

IV. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,24 for approving the proposal prior to the thirtieth day after the date of publication of the Notice in the Federal Register. The Commission notes that it has approved the listing and trading on the Exchange of shares of other actively managed exchange-traded funds based on a portfolio of securities, the characteristics of which are similar to those to be invested by the Fund.25 The Commission also notes that it has not received any comments regarding this proposal. The Commission believes that the proposal to list and trade the Shares of the Fund do not raise any novel regulatory issues and accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Managed Fund Shares.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,26 that the proposed rule change (SR–NYSEArca–2010–04) be, and it hereby is, approved on an accelerated basis.

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

Florence E. Harmon,
Deputy Secretary.

[FR Doc. 2010–6114 Filed 3–19–10; 8:45 am]

BILLING CODE 8011–01–P


22 See supra note 18.

23 See supra note 8.


SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations;
NASDAQ OMX PHXL, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees and Rebates for Adding and Removing Liquidity

March 12, 2010.

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 March 1, 2010, NASDAQ OMX PHXL, Inc. (“Phlx” or “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. Phlx has designated this proposal as one establishing or changing a member due, fee, or other charge imposed under Section 19(b)(3)(A)(ii) of the Act3 and Rule 19b–4(f)(2) thereunder,4 which renders the proposal effective upon filing with the Commission. 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 applicability of Complex Orders to fees and rebates for adding and removing liquidity. While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions settling on or after March 1, 2010.5


5 The Commission notes that the fees in this proposed rule change were effective upon filing on March 1, 2010 and apply solely to trades effected on or after that date.
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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the applicability of Complex Orders to remain competitive.

The Exchange proposes modifying the applicability of Complex Orders to the fees and rebates for adding and removing liquidity. Currently, single contra-side orders that are executed against the individual components of Complex Orders will be charged under the proposed Fee Schedule. The individual components of such a Complex Order will not be charged. The Exchange proposes amending this exception to state that individual components of such a Complex Order will be charged according to the fees and rebates for adding and removing liquidity. The Exchange is amending the applicability of Complex Orders to the fees described herein because the Exchange no longer believes that this incentive is necessary.

Currently, the Exchange assesses a per-contract transaction charge in Standard and Poor’s Depositary Receipts/SPDRs (“SPY”) 6, the PowerShares QQQ Trust (“QQQQ”); iShares Russell 2000 (“IWM”) and Citigroup Inc. (“C”) options on five different categories of market participants that submit orders and/or quotes that remove, or “take,” liquidity from the Exchange. The per-contract transaction charge depends on the category of market participant submitting an order or quote to the Exchange that removes liquidity.7

The market participants are as follows: (i) Specialists, Registered Options Traders ("ROTs"); (ii) customers; (iii) specialists, ROTs, SQTs and RSQTs that receive Directed Orders (“Directed Participants” 11 or “Directed Specialists, RSQTs, or SQTs” 12); (iv) Firms; and (v) broker-dealers.

The per-contract transaction charges are assessed on participants who submit proprietary quotes and/or orders that remove liquidity from the Exchange’s market in options listed on the Fee Schedule. The Exchange also assesses a transaction charge to Firms and broker-dealers that add liquidity.

Additionally, the Exchange has in place a per-contract rebate relating to transaction charges for orders or quotations that add liquidity to the Exchange’s market in options listed on the fee schedule. The amount of the rebate depends on the category of participant whose order or quote was executed as part of the Phlx disseminated Best Bid and/or Offer.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act 13 in general, and furthers the objectives of Section 6(b)(4) of the Act 14 in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, including its monthly volumes, the order types it uses, and the prices of its quotes and orders (i.e., its propensity to add or remove liquidity). The rate increase to Firms for adding liquidity in the various symbols including the additional Symbols is the same rate that is currently being assessed on Broker-Dealers.

Specifically, the Exchange believes that amending the applicability of the complex orders to these fees is equitable as that will apply equally to all participants.

Accordingly, the Exchange also believes that the addition of the options to this portion of the Fee Schedule is equitable in that it will apply to all categories of participants in the same manner.

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)(i) of the Act 15 and paragraph (f)(2) of Rule 19b–4 16 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily approve it if it believes 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. Please include File

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NASDAQ Rule 9520 Series Regarding Eligibility Procedures for Persons Subject to Certain Disqualifications

March 12, 2010.

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 February 19, 2010, 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, II, and III below, which Items have been substantially prepared by NASDAQ. NASDAQ has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Section 19 under the Act.3 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 amend the NASDAQ Rule 9520 Series regarding eligibility procedures for persons subject to certain disqualifications. NASDAQ proposes to implement this rule change immediately upon filing. The text of the proposed rule change is available at http://nasdaqomxn.regulations.gov, at NASDAQ’s principal office, 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

The Exchange is proposing to amend the NASDAQ Rule 9520 Series, the Exchange’s eligibility proceedings section, to conform to recent changes in the rules of the Financial Industry Regulatory Authority, Inc. ("FINRA").4 The proposal also includes the proposed Statutory Disqualification Regulatory Alert ("SD Regulatory Alert") that outlines the applicable eligibility procedures. The amended rules would incorporate by reference the procedures in the SD Regulatory Alert. As further detailed in the SD Regulatory Alert, the need for a member to file an application with NASDAQ for approval, notwithstanding the disqualification would depend on: (1) The type of disqualification; (2) the date of disqualification; or (3) whether the firm or individual is seeking admission, readmission or continuation in the securities industry.

FINRA recently revised its definition of disqualification to incorporate three additional categories of statutory disqualification, including willful violations of the Federal securities or commodities laws, grounds for statutory disqualification that were enacted in the Sarbanes-Oxley Act, and associations with certain other persons subject to a disqualification. Although NASDAQ’s definition has always included these categories, Commission staff informed NASDAQ at the time of its registration as a national securities exchange that, in light of NASDAQ’s origin as a subsidiary of FINRA’s predecessor, the National Association of Securities Dealers, Inc., staff would not object if NASDAQ applied FINRA’s then more-restricted definition, pending adoption of procedures by FINRA to process disqualifications under these additional categories.

The proposed rule change would amend NASDAQ Rule 9522 to address the initiation of eligibility proceedings and the authority of NASDAQ’s Department of Member Regulation ("NASDAQ Regulation" or “Member Regulation”) to approve applications relating to a disqualification where the disqualification arises from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Act or that arise under Section 3(a)(39)(E) of the Act (i.e., the