

### 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>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</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 and Rule 19b-4(f)(6)(iii) 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.

### 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-NYSE-2010-26 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-NYSE-2010-26. 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 publicly available. All submissions should refer to File Number SR-NYSE-2010-26 and should be submitted on or before April 28, 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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61807; File No. SR-NYSEAmex-2010-09]

### Self-Regulatory Organizations; NYSE Amex LLC; Order Granting Approval of Proposed Rule Change Amending Its Trust Unit Rules and Proposing the Listing of the Nuveen Diversified Commodity Fund

March 31, 2010.

On January 29, 2010, NYSE Amex LLC ("NYSE Amex" or "Exchange") 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 amend NYSE Amex Rule 1600 *et seq.* to permit the listing and trading of shares ("Shares") of the Nuveen Diversified Commodity Fund (the "Fund"). The proposed rule change was published in the **Federal Register** on

March 1, 2010.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

### I. Description of the Proposal

NYSE Amex previously adopted Rule 1600 *et seq.* to permit the listing of Trust Units, which are defined as securities that are issued by a trust or other similar entity that invests in the assets of a trust, partnership, limited liability company, corporation or other similar entity constituted as a commodity pool that holds investments comprising or otherwise based on any combination of futures contracts, options on futures contracts, forward contracts, swap contracts and/or commodities.<sup>4</sup> Rule 1600 was adopted in contemplation of the listing of shares of the Nuveen Commodities Income and Growth Fund (the "Fund"), a fund sponsored by Nuveen Investments, Inc. ("Nuveen"). Nuveen now proposes to go forward with a listing of shares (the "Shares") of the Fund under a new name, the Nuveen Diversified Commodity Fund, and with a modified investment plan, which is described in detail in the Notice.<sup>5</sup> NYSE Amex Rule 1600 as currently in effect permits only the listing of Trust Units whose issuers utilize the master/feeder structure originally intended to be used for the Fund. According to the Exchange, due to a change in the interpretation of applicable tax law by the Internal Revenue Service, the originally expected trust reporting procedures would no longer be available under a master/feeder structure. Nuveen therefore proposes to modify its approach and have the listed Fund make its own direct investments. Consequently, the Exchange proposes to amend the definition of Trust Units in Rule 1600 to remove the master/feeder structure requirement and permit the listing of Trust Units where the issuer is constituted as a commodity pool which invests directly in commodities and commodity derivatives. Nuveen has represented to the Exchange that there are no material revisions to the Fund's structure or investment approach other than those described in this current filing.

<sup>3</sup> See Securities Exchange Act Release No. 61571 (February 23, 2010), 75 FR 9265 ("Notice").

<sup>4</sup> See Securities Exchange Act Release No. 56880 (December 3, 2007), 72 FR 69259 (December 7, 2007) (SR-Amex-2006-96) (order approving NYSE Amex Rule 1600 *et seq.*).

<sup>5</sup> See Securities Exchange Act Release No. 56465 (September 19, 2007), 72 FR 54489 (September 25, 2007) (SR-Amex-2006-96) (notice providing a description of the Fund).

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

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</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.

The Fund was formed as a Delaware statutory trust on December 7, 2005 pursuant to a Declaration of Trust signed by Wilmington Trust Company, as the Delaware Trustee.<sup>6</sup> The Fund's primary investment objective is to seek total return through broad exposure to the commodities markets. The Fund's secondary objective is to provide investors with monthly income and capital distributions not commonly associated with commodity investments. The Fund intends to pursue its investment objective by utilizing: (a) An actively managed rules-based commodity investment strategy, whereby the Fund will invest in a diversified basket of commodity futures and forward contracts with an aggregate notional value substantially equal to the net assets of the Fund; and (b) a risk management program designed to moderate the overall risk and return characteristics of the Fund's commodity investments. The Fund will invest in commodity futures and forward contracts, options on commodity futures and forward contracts and over-the-counter ("OTC") commodity options in the following commodity groups: energy, industrial metals, precious metals, livestock, agriculturals, and tropical foods and fibers and may in the future include other commodity investments that become the subject of commodity futures trading.

The Fund is a commodity pool and is managed by Nuveen Commodities Asset Management, LLC (the "Manager"). The Manager is registered as a commodity pool operator (the "CPO") and a commodity trading advisor (the "CTA") with the Commodity Futures Trading Commission ("CFTC") and is a member of the National Futures Association ("NFA"). The Manager will serve as the CPO and a CTA of the Fund and will determine the Fund's overall investment strategy, including: (i) The selection and ongoing monitoring of the Fund's sub-advisors; (ii) the management of the Fund's business affairs; and (iii) the provision of certain clerical, bookkeeping and other administrative services. Gresham Investment Management LLC (the "Commodity Sub-Advisor") will invest on a notional basis substantially all of the Fund's assets in commodity futures and forward contracts pursuant to the commodity investment strategy and a risk management program.<sup>7</sup> The Commodity

Sub-Advisor is a Delaware limited liability company and is registered with the CFTC as a CTA and a CPO and is a member of the NFA. The Commodity Sub-Advisor is also registered with the Commission as an investment adviser. Nuveen Asset Management (the "Collateral Sub-Advisor"), an affiliate of the Manager, will invest the Fund's collateral in short-term, investment-grade quality debt instruments. The Collateral Sub-Advisor is registered with the Commission as an investment adviser.

The Exchange states that the Shares will conform to the initial and continued listing criteria under NYSE Amex Rule 1602 and that the Fund has represented to the Exchange that, for initial and continued listing of the Shares, it will be in compliance with Section 803 of the NYSE Amex Company Guide (Independent Directors and Audit Committee) and Rule 10A-3 under the Act.<sup>8</sup> Additional information regarding the Fund, the Shares, the Fund's investment objectives, strategies, policies, and restrictions, fees and expenses, availability of information, trading rules, and surveillance procedures, among other things, can be found in the Notice.<sup>9</sup>

## II. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act<sup>10</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>11</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>12</sup> which requires, among other things, that the Exchange's rules be 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

Such short-term borrowings would mature in less than 60 days from the date of borrowing. In order to facilitate any such borrowing, the Fund intends to establish a standby credit facility with State Street Bank and Trust Company that will be entered into as of the closing of the offering of its common shares. Any temporary or emergency borrowings would be used to provide the Fund with added potential flexibility in managing short-term portfolio liquidity needs and managing the payment of distributions.

<sup>8</sup> 17 CFR 240.10A-3.

<sup>9</sup> See *supra* note 3.

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>12</sup> 17 U.S.C. 78f(b)(5).

public interest. The Commission notes that the Shares must comply with the requirements of NYSE Amex Rule 1600 *et seq.* to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>13</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. The daily settlement prices for the commodity futures and forward contracts held by the Fund are publicly available on the Web sites of the futures and forward exchanges trading the particular contracts. Various data vendors and news publications publish futures prices and data. The Exchange represents that futures, forwards and related exchange traded options quotes and last sale information for the commodity contracts are widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters. In addition, the Exchange further represents that complete real-time data for such futures, forwards and exchange traded options is available by subscription from Reuters and Bloomberg. The relevant futures and forward exchanges also provide delayed futures and forward contract information on current and past trading sessions and market news free of charge on their respective Web sites. The contract specifications for the futures and forward contracts are also available from the futures and forward exchanges on their Web sites as well as other financial informational sources.

The Fund's total portfolio holdings will also be disclosed and updated on its Web site on each business day that the Exchange is open for trading.<sup>14</sup> This Web site disclosure of portfolio holdings (as of the previous day's close) will be made daily and will include, as applicable: (a) The name and value of each commodity investment; (b) the value of over-the-counter commodity put options, if any, and the value of the collateral as represented by cash; (c) cash equivalents; and (d) debt securities held in the Fund's portfolio. The values of the Fund's portfolio holdings will, in

<sup>13</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>14</sup> The total portfolio holdings will be disseminated to all market participants at the same time.

<sup>6</sup> The Fund, as a commodity pool, will not be subject to registration and regulation under the Investment Company Act of 1940 (the "1940 Act").

<sup>7</sup> The Fund does not intend to utilize leverage. However, the Fund may borrow for temporary or emergency purposes in an amount up to 5% of the value of the Fund's net assets should the need arise.

each case, be determined in accordance with the Fund's valuation policies.

The Commission further believes that the proposal 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 that the NAV per Share will be calculated daily and made available to all market participants at the same time.<sup>15</sup> The Manager has represented to the Exchange that the NAV will be disseminated to all market participants at the same time.<sup>16</sup> Additionally, if the Exchange becomes aware that the portfolio holdings and net asset value per share are not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the portfolio holdings or net asset value per share occurs. If the interruption to the dissemination of the portfolio holdings or net asset value per share persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.<sup>17</sup>

In addition, each of the Manager, the Commodity Broker, and the Commodity Sub-Advisor have represented to the Exchange that they have erected and maintain firewalls within their respective institutions to prevent the flow of non-public information regarding the portfolio of underlying securities from the personnel involved in the development and implementation of the investment strategy to others such as sales and trading personnel.

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 Amex Rule 1602.

(2) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares and to deter and detect violations of Exchange rules and applicable Federal securities laws.

(3) The Exchange will distribute an Information Circular to its members in connection with the trading of the Shares. The Circular will discuss the special characteristics and risks of trading this type of security.

Specifically, the Circular, among other things, will discuss what the Shares are, the requirement that members and member firms deliver a prospectus to investors purchasing the Shares prior to or concurrently with the confirmation of a transaction during the initial public offering, applicable NYSE Amex rules, and trading information and applicable suitability rules. The Circular will also explain that the Fund is subject to various fees and expenses described in the Registration Statement. The Circular will also reference the fact that there is no regulated source of last sale information regarding physical commodities and note the respective jurisdictions of the Commission and CFTC. The Circular will advise members of their suitability obligations with respect to recommended transactions to customers in the Shares.

(4) The Fund will be in compliance with Rule 10A-3 under the Act. This approval order is based on the Exchange's representations.

In addition, the Commission finds that the proposed changes to NYSE Amex Rule 1600 *et seq.* to amend the definition of Trust Units to remove the master/feeder structure requirement and to modify and update the rules to make them consistent with the Exchange's recent rule book changes are consistent with the Act.

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.

### III. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> that the proposed rule change (SR-NYSEAmex-2010-09), 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.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61812; File No. SR-Phlx-2010-49]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by NASDAQ OMX PHLX, Inc. To Establish \$2.50 Strike Price Intervals for Options on the NASDAQ Internet Index<sup>SM</sup>

March 31, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on March 29, 2010, NASDAQ OMX PHLX, Inc. ("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 is filing with the Commission a proposal to amend: Phlx Rule 1101A (Terms of Options Contracts) regarding listing options on the NASDAQ Internet Index<sup>SM</sup> trading under the symbol QNET at \$2.50 strike-price intervals below \$200; and Phlx Rule 1107A (NASDAQ OMX Group, Inc. Indexes) regarding disclaimer of express or implied warranties in respect of NASDAQ OMX Group, Inc. ("NASDAQ") indexes.

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).<sup>3</sup>

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, 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

<sup>15</sup> See NYSE Amex Rule 1602 (a)(ii).

<sup>16</sup> See Notice, *supra*, note 3.

<sup>17</sup> See NYSE Amex Rule 1602(b)(ii).

<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.

<sup>3</sup> 17 CFR 240.19b-4(f)(6)(iii).