

Commission uses the information provided in the application filed pursuant to Rule 19d-3 to review final actions taken by SROs including: (1) Disciplinary sanctions; (2) denials of membership, participation or association; and (3) prohibitions on or limitations of access to SRO services.

It is estimated that approximately 15 respondents will utilize this application procedure annually, with a total burden of 270 hours, for all respondents to complete all submissions. This figure is based upon past submissions. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d-3 is 18 hours. The average cost per hour, to complete each submission, is approximately \$101. Therefore, the total cost of compliance for all respondents is \$27,270. (15 submissions × 18 hours × \$101 per hour).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: April 26, 2010.

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

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## SECURITIES AND EXCHANGE COMMISSION

[Rule 19d-1; SEC File No. 270-242; OMB Control No. 3235-0206]

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor

Education and Advocacy,  
Washington, DC 20549-0213.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in Rule 19d-1 (17 CFR 240.19d-1)—Notices by Self-Regulatory Organizations of Final Disciplinary Actions, Denials Bars, or Limitations Respecting Membership, Association, or Access to Services, and Summary Suspensions. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 19d-1 ("Rule") under the Securities Exchange Act of 1934 (17 U.S.C. 78a *et seq.*) prescribes the form and content of notices to be filed with the Commission by self-regulatory organizations ("SROs") for which the Commission is the appropriate regulatory agency concerning the following final SRO actions: (1) Disciplinary sanctions (including summary suspensions); (2) denials of membership, participation or association with a member; and (3) prohibitions or limitations on access to SRO services.

The Rule enables the Commission to obtain reports from the SROs containing information regarding SRO determinations to discipline members or associated persons of members, deny membership or participation or association with a member, and similar adjudicated findings. The Rule requires that such actions be promptly reported to the Commission. The Rule also requires that the reports and notices supply sufficient information regarding the background, factual basis and issues involved in the proceeding to enable the Commission: (1) To determine whether the matter should be called up for review on the Commission's own motion; and (2) to ascertain generally whether the SRO has adequately carried out its responsibilities under the Exchange Act.

It is estimated that 10 respondents will utilize this application procedure annually, with a total burden of 1,175 hours, based upon past submissions. This figure is based on 10 respondents, spending approximately 117.5 hours each per year. Each respondent submitted approximately 235 responses. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d-1 for each submission is 0.5 hours. The average cost per hour, per each

submission is approximately \$101. Therefore, the total cost of compliance for all the respondents is \$118,675. (10 respondents × 235 responses per respondent × .5 hrs per response × \$101 per hour).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: April 26, 2010.

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

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## SECURITIES AND EXCHANGE COMMISSION

[Rule 17f-4; SEC File No. 270-232; OMB Control No. 3235-0225]

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Section 17(f) (15 U.S.C. 80a-17(f)) under the Investment Company Act of

1940 (the "Act")<sup>1</sup> permits registered management investment companies and their custodians to deposit the securities they own in a system for the central handling of securities ("securities depositories"), subject to rules adopted by the Commission.

Rule 17f-4 (17 CFR 270.17f-4) under the Act specifies the conditions for the use of securities depositories by funds<sup>2</sup> and custodians. The Commission staff estimates that 138 respondents (including 74 active funds, 48 custodians, and 16 possible securities depositories)<sup>3</sup> are subject to the requirements in rule 17f-4. The rule is elective, but most, if not all, funds use depository custody arrangements.<sup>4</sup>

Rule 17f-4 contains two general conditions. First, a fund's custodian must be obligated, at a minimum, to exercise due care in accordance with reasonable commercial standards in discharging its duty as a securities intermediary to obtain and thereafter maintain financial assets.<sup>5</sup> This obligation does not contain a collection of information because it does not impose identical reporting, recordkeeping or disclosure requirements. Funds and custodians may determine the specific measures the custodian will take to comply with this obligation.<sup>6</sup> If the fund deals directly with a depository, the depository's contract or written rules for its participants must provide that the depository will meet similar obligations, which is a collection of information for purposes of the Paperwork Reduction Act of 1995. All funds that deal directly

with securities depositories in reliance on rule 17f-4 should have either modified their contracts with the relevant securities depository, or negotiated a modification in the securities depository's written rules when the rule was amended. Therefore, we estimate there is no ongoing burden associated with this collection of information.<sup>7</sup>

Second, the custodian must provide, promptly upon request by the fund, such reports as are available about the internal accounting controls and financial strength of the custodian.<sup>8</sup> If a fund deals directly with a depository, the depository's contract with or written rules for its participants must provide that the depository will provide similar financial reports,<sup>9</sup> which is a collection of information for purposes of the Paperwork Reduction Act of 1995. Custodians and depositories usually transmit financial reports to funds twice each year.<sup>10</sup> The Commission staff estimates that 48 custodians spend approximately 885 hours (by support staff) annually in transmitting such reports to funds.<sup>11</sup> In addition, approximately 74 funds (*i.e.*, two percent of all funds) deal directly with a securities depository and may request periodic reports from their depository. Commission staff estimates that, for each of the 74 funds, depositories spend approximately 17 hours (by support

staff) annually transmitting reports to the funds.<sup>12</sup> The total annual burden estimate for compliance with rule 17f-4's reporting requirement is therefore 902 hours.<sup>13</sup>

If a fund deals directly with a securities depository, rule 17f-4 requires that the fund implement internal control systems reasonably designed to prevent an unauthorized officer's instructions (by providing at least for the form, content, and means of giving, recording, and reviewing all officers' instructions).<sup>14</sup> All funds that seek to rely on rule 17f-4 should have already implemented these internal control systems when the rule was amended. Therefore, there is no ongoing burden associated with this collection of information requirement.<sup>15</sup>

Based on the foregoing, the Commission staff estimates that the total annual hour burden of the rule's collection of information requirement is 902 hours.

The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in

<sup>7</sup> The Commission staff assumes that new funds relying on 17f-4 would choose to use a custodian instead of directly dealing with a securities depository because of the high costs associated with maintaining an account with a securities depository. Thus new funds would not be subject to this condition.

<sup>8</sup> Rule 17f-4(a)(2).

<sup>9</sup> Rule 17f-4(b)(1)(ii).

<sup>10</sup> The 48 custodians would handle requests for reports from 3770 fund clients (approximately 79 fund clients per custodian) and the depositories from the remaining 74 funds that choose to deal directly with a depository. It is our understanding based on staff conversations with representatives of custodians that custodians and depositories transmit these reports to clients in the normal course of their activities as a good business practice regardless of whether they are requested. Therefore, for purposes of this PRA estimate, the Commission staff assumes that custodians transmit the reports to all fund clients. If all custodians and depositories transmit these reports to funds in the normal course of their activities, there would be no burden associated with this collection of information. See 5 CFR 1320.3(b)(2) ("The time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities \* \* \* will be excluded if the agency demonstrates that the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary.")

<sup>11</sup> (48 custodians × 2 reports) = 96 reports × 79 fund clients per custodian = 7584 transmissions. The staff estimates that each transmission would take approximately 7 minutes for a total of 885 hours (7 minutes × 7584 transmissions). The estimate of time to transmit reports is based on staff conversations with representatives of custodians.

<sup>12</sup> (16 depositories × 2 reports) = 32 reports × 4.6 fund clients per depository = 147 transmissions. The staff estimates that each transmission would take approximately 7 minutes for a total of approximately 17 hours (7 minutes × 147 transmissions).

<sup>13</sup> 885 hours for custodians and 17 hours for securities depositories.

<sup>14</sup> Rule 17f-4(b)(2).

<sup>15</sup> The Commission staff assumes that new funds relying on 17f-4 would choose to use a custodian instead of directly dealing with a securities depository because of the high costs associated with maintaining an account with a securities depository. Thus new funds would not be subject to this condition.

<sup>1</sup> 15 U.S.C. 80a.

<sup>2</sup> As amended in 2003, rule 17f-4 permits any registered investment company, including a unit investment trust or a face-amount certificate company, to use a security depository. See Custody of Investment Company Assets With a Securities Depository, Investment Company Act Release No. 25934 (Feb. 13, 2003) (68 FR 8438 (Feb. 20, 2003)). The term "fund" is used in this Notice to mean a registered investment company.

<sup>3</sup> The Commission staff estimates that, as permitted by the rule, 2% of all active funds deal directly with a securities depository instead of using an intermediary. The number of custodians is from Lipper Inc.'s Lana Database. Securities depositories include the 12 Federal Reserve Banks and 4 registered depositories.

<sup>4</sup> Based on responses to Item 18 of Form N-SAR (17 CFR 274.101), approximately 98 percent of all funds now use depository custody arrangements. As of November 30, 2009, approximately 3770 funds out of the 3844 active funds relied on rule 17f-4.

<sup>5</sup> Rule 17f-4(a)(1). This provision incorporates into the rule the standard of care provided by section 504(c) of Article 8 of the Uniform Commercial Code when the parties have not agreed to a standard. Rule 17f-4 does not impose any substantive obligations beyond those contained in Article 8. Uniform Commercial Code, Revised Article 8—Investment Securities (1994 Official Text with Comments) ("Revised Article 8").

<sup>6</sup> Moreover, the rule does not impose any requirement regarding evidence of the obligation.

writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: April 26, 2010.

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61984; File No. SR-Phlx-2010-60]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to QNET Sector Index Option Fees

April 26, 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 April 16, 2010, NASDAQ OMX PHLX, 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 due, fee, or other charge applicable only to a member under Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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 Exchange’s Fee Schedule for Sector Index Options by assessing a \$.20 per contract transaction fee for options overlying the NASDAQ Internet Index (“QNET”). The Exchange also proposes making other technical clarifications.

While changes to the Exchange’s Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has

designated this proposal to be operative for trades settling on or after May 3, 2010.

The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, on the Commission’s Web site at <http://www.sec.gov>, 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 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 Exchange proposes to add additional transaction fees to Category III of its Fee Schedule, titled Sector Index Options. The Exchange proposes to assess a \$.20 per contract transaction fee for options overlying QNET for the following market participants: Customers, registered options traders (on-floor), specialists, professionals,<sup>5</sup> firms and broker-dealers. The Exchange is proposing to assess the \$.20 per contract fee from trade date April 30, 2010 through trade date December 30, 2010. Thereafter, the Exchange proposes to assess the options transaction charges for sector index options as designated by category of market participant on the Fee Schedule, beginning on trade date December 31, 2010. In other words, the Exchange is proposing to eliminate the \$.20 per contract transaction promotional pricing after December 30, 2010 and instead assess members the applicable sector index options transaction charges, by market participant, on December 31, 2010. For example, for transactions in QNET sector index options, a customer would no longer be assessed the \$.20 per

contract on trade date December 31, 2010, but instead would be assessed the option transaction charge, which is currently \$.44 per contract.

The Exchange proposes to assess a fixed rate across all market participants for a specified period of time to incentivize members to trade QNET.

The Exchange also proposes removing certain text from the Fee Schedule that was the result of an inadvertent error. The Exchange is proposing to delete the text, “Subject to certain thresholds and per trade caps” from Categories III and IV of the Fee Schedule as related to Registered Options Traders (on-floor) and Specialists in sector index options fees and U.S. dollar-settled foreign currency option fees. The Exchange indicated in a prior proposed rule change that the Firm Related Equity Option and Index Option Cap would no longer be applicable to sector index options<sup>6</sup> and U.S. dollar-settled foreign currency options<sup>7</sup> and the volume threshold.<sup>8</sup>

While changes to the Exchange’s Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be operative for trades settling on or after May 3, 2010.

###### 2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>10</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the proposed \$.20 per contract sector index option fees for QNET is equitable because all market participants would be assessed the same fee. The Exchange further believes that offering the \$.20 per contract fee for a specified promotional period and thereafter assessing the standard sector index option transaction fees is also equitable because it is intended to encourage trading in QNET. In addition, the removal of extraneous language in the Fee Schedule should provide clarity to members concerning fees.

<sup>6</sup> See Securities Exchange Act Release No. 59545 (March 9, 2009), 74 FR 11158 (March 16, 2009) (SR-Phlx-2009-20).

<sup>7</sup> See Securities Exchange Act Release Nos. [sic] 59243 (January 13, 2009), 74 FR 4272 (January 23, 2009) (SR-Phlx-2008-86).

<sup>8</sup> See Securities Exchange Act Release No. 61337 (January 12, 2010), 75 FR 2905 (January 19, 2010) (SR-Phlx-2009-104).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<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. 78s(b)(3)(A)(ii).

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

<sup>5</sup> The Exchange defines a “professional” as any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).