

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

[FR Doc. 2011-19106 Filed 7-27-11; 8:45 am]

**BILLING CODE 7710-FW-P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available*

*From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

*Extension:*

Rule 10A-1; SEC File No. 270-425; OMB Control No. 3235-0468.

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 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.

Rule 10A-1 (17 CFR 240.10A-1) implements the reporting requirements in Section 10A of the Exchange Act (15 U.S.C. 78j-1) which was enacted by Congress on December 22, 1995 as part of the Private Securities Litigation Reform Act of 1995, Public Law 104-67, 109 Stat 737. Under section 10A and Rule 10A-1 reporting occurs only if a registrant's board of directors receives a report from its auditor that: (1) There is an illegal act material to the registrant's financial statements, (2) senior management and the board have not taken timely and appropriate remedial action, and (3) the failure to take such action is reasonably expected to warrant the auditor's modification of the audit report or resignation from the audit engagement. The board of directors must notify the Commission within one business day of receiving such a report. If the board fails to provide that notice, then the auditor, within the next business day, must provide the Commission with a copy of the report that it gave to the board.

Likely respondents are those registrants filing audited financial statements under the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*) and the Investment Company Act of 1940 (15 U.S.C. 80a-1, *et seq.*).

It is estimated that Rule 10A-1 results in an aggregate additional reporting burden of 10 hours per year. The

estimated average burden hours are solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules or forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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 Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312, or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: July 21, 2011.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011-19054 Filed 7-27-11; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available*

*From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Form F-6; OMB Control No. 3235-0292; SEC File No. 270-270.

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 collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for approval.

Form F-6 (17 CFR 239.36) is a form used by foreign companies to register the offer and sale of American Depositary Receipts (ADRs) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Form F-6 requires disclosure of

information regarding the terms of the depository bank, fees charged, and a description of the ADRs. No special information regarding the foreign company is required to be prepared or disclosed, although the foreign company must be one which periodically furnishes information to the Commission. The information is needed to ensure that investors in ADRs have full disclosure of information concerning the deposit agreement and the foreign company. Form F-6 takes approximately 1 hour per response to prepare and is filed by 150 respondents annually. We estimate that 25% of the 1 hour per response (0.25 hours) is prepared by the filer for a total annual reporting burden of 37.5 hours (0.25 hours per response × 150 responses).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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 Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: July 22, 2011.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011-19053 Filed 7-27-11; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29735; File No. 812-13909]

### ING Asia Pacific High Dividend Equity Income Fund, et al.; Notice of Application

July 21, 2011.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of application under section 6(c) of the Investment Company

Act of 1940 ("Act") for an exemption from section 19(b) of the Act and rule 19b-1 under the Act.

**Summary of Application:** Applicants request an order ("Order") to permit certain registered closed-end management investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as monthly in any taxable year, and as frequently as distributions are specified by or in accordance with the terms of any outstanding preferred stock that such investment companies may issue.

**Applicants:** ING Asia Pacific High Dividend Equity Income Fund ("IAE"), ING Emerging Markets High Dividend Equity Fund ("IHD"); ING Global Advantage and Premium Opportunity Fund ("IGA"); ING Global Equity Dividend and Premium Opportunity Fund ("IGD"); ING Infrastructure, Industrials and Materials Fund ("IDE"); ING International High Dividend Equity Income Fund ("IID"); ING Prime Rate Trust ("PRT"); ING Risk Managed Natural Resources Fund ("IRR," together with IAE, IHD, IGA, IGD, IDE, IID and PRT, the "Current Funds"); ING Investments, LLC ("IIL"); ING Investment Management Co. ("ING IM"); and Directed Services LLC ("DSL," together with IIL and ING IM, the "Investment Advisers").

**DATES: Filing Dates:** The application was filed on May 26, 2011, and amended on July 21, 2011.

**Hearing or Notification of Hearing:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 15, 2011, and should be accompanied by proof of service on the applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090; Applicants, c/o Jeffrey S. Poretz, Dechert LLP, 1775 I Street, NW., Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Laura L. Solomon, Senior Counsel, at (202) 551-6915, or Daniele Marchesani,

Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

#### Applicants' Representations

1. Each Current Fund is a registered closed-end management investment company and is organized as a Delaware statutory trust, with the exception of PRT (which is organized as a Massachusetts business trust).<sup>1</sup> The common shares of the Current Funds are listed on the New York Stock Exchange. PRT has also issued preferred shares. Each Current Fund reserves the right to issue preferred shares in the future. Applicants believe that investors in the common shares of the Current Funds may prefer an investment vehicle that provides regular/monthly distributions and a steady cash flow.

2. IIL, an Arizona limited liability company, acts as the Current Funds' investment adviser. ING IM, a Connecticut corporation, acts as a sub-adviser to certain of the Current Funds. DSL, a Delaware limited liability company, is an investment adviser under common control with IIL and ING IM. Each of IIL, ING IM and DSL is a registered investment adviser under the Investment Advisers Act of 1940, as amended ("Advisers Act") and is an indirect, wholly-owned subsidiary of ING Groep N.V. ("ING Groep"). ING Groep is a global financial institution of Dutch origin.<sup>2</sup> Each future Investment

<sup>1</sup> Applicants request that any Order issued granting the relief requested in the application also apply to any registered closed-end investment company currently advised or to be advised in the future by IIL, ING IM or DSL (including any successor in interest) or by an entity controlling, controlled by or under common control (within the meaning of section 2(a)(9) of the Act) with IIL, ING IM or DSL (such entities, together with IIL, ING IM and DSL, the "Investment Advisers") that decides in the future to rely on the requested relief. Any closed-end investment company that relies on the Order in the future will comply with the terms and conditions of the application (such investment companies together with the Current Funds, the "Funds," and with the Investment Advisers, the "Applicants"). All existing Funds currently intending to rely on the Order have been named as Applicants. A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

<sup>2</sup> Prior to July 1, 2011, each applicant was able to rely on the exemptive order granted in the Matter of ING Clarion Real Estate Income Fund, *et al.*,

Adviser to a Fund will be registered under the Advisers Act.

3. Applicants state that, prior to a Fund's implementing a distribution plan in reliance on the Order, the Board of Trustees (the "Board") of the Fund, including a majority of the trustees who are not "interested persons," of such Fund as defined in section 2(a)(19) of the Act (the "Independent Trustees"), shall have requested, and the Investment Advisers shall have provided, such information as is reasonably necessary to make an informed determination on whether the Board should adopt a proposed distribution policy. In particular, the Board and the Independent Trustees shall have reviewed information regarding the purpose and terms of a proposed distribution policy, the likely effects of such policy on such Fund's long-term total return (in relation to market price and its net asset value per common share ("NAV")) and the relationship between such Fund's distribution rate on its common shares under the policy and such Fund's total return (in relation to NAV); whether the rate of distribution would exceed such Fund's expected total return in relation to its NAV; and any foreseeable material effects of such policy on such Fund's long-term total return (in relation to market price and NAV). The Independent Trustees shall also have considered what conflicts of interest the Investment Advisers and the affiliated persons of the Investment Advisers and each such Fund might have with respect to the adoption or implementation of such policy. Applicants state that, only after considering such information shall the Board, including the Independent Trustees, of a Fund approve a distribution policy with respect to such Fund's common shares (the "Plan") and in connection with such approval shall have determined that such Plan is consistent with a Fund's investment objectives and in the best interests of a Fund's common shareholders.

4. Applicants state that the purpose of a Plan would be to permit a Fund to distribute over the course of each year, through periodic distributions as nearly equal as practicable and any required special distributions, an amount closely approximating the total taxable income of such Fund during such year and, if

Investment Co. Act Release Nos. 28329 (Jul. 8, 2008) (notice) and 28352 (Aug. 5, 2008) (order) ("Existing Order") to make periodic distributions of long-term capital gains with respect to the Current Funds' outstanding common stock as frequently as twelve times each year and as frequently as distributions are specified in the terms of any outstanding preferred stock. As of July 1, 2011, due to a restructuring of ING Groep, applicants are no longer able to rely on the Existing Order.

so determined by its Board, all or a portion of the returns of capital paid by portfolio companies to such Fund during such year. It is anticipated that under the Plan of a Fund, such Fund would distribute to its respective common shareholders a fixed monthly percentage of the market price of such Fund's common shares at a particular point in time or a fixed monthly percentage of NAV at a particular time or a fixed monthly amount, any of which may be adjusted from time to time. It is anticipated that under a Plan, the minimum annual distribution rate with respect to such Fund's common shares would be independent of a Fund's performance during any particular period but would be expected to correlate with a Fund's performance over time. Except for extraordinary distributions and potential increases or decreases in the final dividend periods in light of a Fund's performance for an entire calendar year and to enable a Fund to comply with the distribution requirements of Subchapter M of the Internal Revenue Code ("Code") for the fiscal year, it is anticipated that each distribution on the common shares would be at the stated rate then in effect.

5. Applicants state that prior to the implementation of a Plan for a Fund, the Board shall have adopted policies and procedures under rule 38a-1 under the Act that: (i) Are reasonably designed to ensure that all notices required to be sent to the Fund's shareholders pursuant to section 19(a) of the Act, rule 19a-1 thereunder and condition 4 below (each a "19(a) Notice") include the disclosure required by rule 19a-1 under the Act and by condition 2(a) below, and that all other written communications by the Fund or its agents regarding distributions under the Plan include the disclosure required by condition 3(a) below; and (ii) require the Fund to keep records that demonstrate its compliance with all of the conditions of the Order and that are necessary for such Fund to form the basis for, or demonstrate the calculation of, the amounts disclosed in its 19(a) Notices.

#### Applicants' Legal Analysis

1. Section 19(b) of the Act generally makes it unlawful for any registered investment company to make long-term capital gains distributions more than once every twelve months. Rule 19b-1 under the Act limits the number of capital gains dividends, as defined in section 852(b)(3)(C) of the Code ("distributions"), that a fund may make with respect to any one taxable year to one, plus a supplemental "clean up" distribution made pursuant to section

855 of the Code not exceeding 10% of the total amount distributed for the year, plus one additional capital gain dividend made in whole or in part to avoid the excise tax under section 4982 of the Code.

2. Section 6(c) of the Act provides that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants state that one of the concerns leading to the enactment of section 19(b) and adoption of rule 19b-1 was that shareholders might be unable to distinguish between frequent distributions of capital gains and dividends from investment income. Applicants state, however, that rule 19a-1 effectively addresses this concern by requiring that distributions (or the confirmation of the reinvestment thereof) estimated to be sourced in part from capital gains or capital be accompanied by a separate statement showing the sources of the distribution (e.g., estimated net income, net short-term capital gains, net long-term capital gains and/or return of capital). Applicants state that similar information is included in the Funds' annual reports to shareholders and on the Internal Revenue Service Form 1099 DIV, which is sent to each common and preferred shareholder who received distributions during a particular year.

4. Applicants further state that each of the Funds will make the additional disclosures required by the conditions set forth below, and each of them has adopted compliance policies and procedures in accordance with rule 38a-1 under the Act to ensure that all required 19(a) Notices and disclosures are sent to shareholders. Applicants argue that by providing the information required by section 19(a) and rule 19a-1, and by complying with the procedures adopted under the Plan and the conditions listed below, each Fund's shareholders would be provided sufficient information to understand that their periodic distributions are not tied to a Fund's net investment income and realized capital gains to date, and may not represent yield or investment return. Accordingly, Applicants assert that continuing to subject the Funds to section 19(b) and rule 19b-1 would afford shareholders no extra protection.

5. Applicants assert that section 19(b) and rule 19b-1 also were intended to prevent certain improper sales practices, including, in particular, the practice of urging an investor to purchase shares of a fund on the basis of an upcoming capital gains dividend ("selling the dividend"), where the dividend would result in an immediate corresponding reduction in NAV and would be in effect a taxable return of the investor's capital. Applicants assert that the "selling the dividend" concern should not apply to closed-end investment companies, such as the Funds, which do not continuously distribute shares. According to the Applicants, if the underlying concern extends to secondary market purchases of shares of closed-end funds that are subject to a large upcoming capital gains dividend, adoption of a periodic distribution plan actually helps minimize the concern by avoiding, through periodic distributions, any buildup of large end-of-the-year distributions.

6. Applicants note that the common stock of closed-end funds generally tends to trade in the marketplace at a discount to their NAVs. Applicants believe that this discount may be reduced if the Funds are permitted to pay relatively frequent dividends on their common shares at a consistent rate, whether or not those dividends contain an element of capital gain.

7. Applicants assert that the application of rule 19b-1 to a Plan actually gives rise to one of the concerns that rule 19b-1 was intended to avoid: Inappropriate influence on portfolio management decisions. Applicants state that, in the absence of an exemption from rule 19b-1, the adoption of a periodic distribution plan imposes pressure on management: (i) Not to realize any net long-term capital gains until the point in the year that the fund can pay all of its remaining distributions in accordance with rule 19b-1; and (ii) not to realize any long-term capital gains during any particular year in excess of the amount of the aggregate pay-out for the year (since as a practical matter excess gains must be distributed and accordingly would not be available to satisfy pay-out requirements in following years), notwithstanding that purely investment considerations might favor realization of long-term gains at different times or in different amounts. Applicants assert that by limiting the number of capital gain distributions that a fund may make with respect to any one year, rule 19b-1 may prevent the normal and efficient operation of a periodic distribution plan whenever that fund's realized net long-term capital gains in any year exceed the total

of the periodic distributions that may include such capital gains under the rule.

8. In addition, Applicants assert that rule 19b-1 may cause fixed regular periodic distributions to be funded with returns of capital<sup>3</sup> (to the extent net investment income and realized short term capital gains are insufficient to fund the distribution), even though undistributed realized net long-term capital gains otherwise would be available. To distribute all of a fund's long-term capital gains within the limits in rule 19b-1, a fund may be required to make total distributions in excess of the annual amount called for by its periodic distribution plan or to retain and pay taxes on the excess amount. Applicants thus assert that the requested Order would minimize these anomalous effects of rule 19b-1 by enabling the Funds to realize long-term capital gains as often as investment considerations dictate without fear of violating rule 19b-1.

9. Applicants state that Revenue Ruling 89-81 under the Code requires that a fund that has both common shares and preferred shares outstanding designate the types of income, e.g., investment income and capital gains, in the same proportion as the total distributions distributed to each class for the tax year. To satisfy the proportionate designation requirements of Revenue Ruling 89-81, whenever a fund has realized a long-term capital gain with respect to a given tax year, the fund must designate the required proportionate share of such capital gain to be included in common and preferred share dividends. Applicants state that although rule 19b-1 allows a fund some flexibility with respect to the frequency of capital gains distributions, a fund might use all of the exceptions available under rule 19b-1 for a tax year and still need to distribute additional capital gains allocated to the preferred shares to comply with Revenue Ruling 89-81.

10. Applicants assert the potential abuses addressed by section 19(b) and rule 19b-1 do not arise with respect to preferred shares issued by a closed-end fund. Applicants assert that such distributions are either fixed, determined in periodic auctions, or determined by reference to short-term interest rates rather than by reference to performance of the issuer, and Revenue Ruling 89-81 determines the proportion of such distributions that are comprised of long-term capital gains.

<sup>3</sup>Returns of capital as used in the application means return of capital for financial accounting purposes and not for tax accounting purposes.

11. Applicants also submit that the "selling the dividend" concern is not applicable to preferred shares, which entitles a holder to no more than a periodic dividend at a fixed rate or the rate determined by the market, and like a debt security, is priced based upon its liquidation value, dividend rate, credit quality, and frequency of payment. Applicants assert that investors buy preferred shares for the purpose of receiving payments at the frequency bargained for and do not expect the liquidation value of their shares to change.

12. Applicants request an order pursuant to section 6(c) of the Act granting an exemption from the provisions of section 19(b) of the Act and rule 19b-1 thereunder to permit each Fund to make periodic capital gain dividends (as defined in section 852(b)(3)(C) of the Code) as often as monthly in any one taxable year in respect of its common shares and as often as specified by or determined in accordance with the terms thereof in respect of the Fund's preferred shares.

#### Applicants' Conditions

Applicants agree that, with respect to each Fund seeking to rely on the Order, the Order will be subject to the following conditions.

##### 1. Compliance Review and Reporting

The Fund's chief compliance officer will: (a) Report to the Fund's Board, no less frequently than once every three months or at the next regularly scheduled quarterly Board meeting, whether: (i) The Fund and its Investment Adviser have complied with the conditions of the order; and (ii) a material compliance matter (as defined in rule 38a-1(e)(2) under the Act) has occurred with respect to such conditions; and (b) review the adequacy of the policies and procedures adopted by the Board no less frequently than annually.

##### 2. Disclosures to Fund Shareholders

(a) Each 19(a) Notice disseminated to the holders of the Fund's common shares, in addition to the information required by section 19(a) and rule 19a-1:

(i) Will provide, in a tabular or graphical format:

(1) The amount of the distribution, on a per common share basis, together with the amounts of such distribution amount, on a per common share basis and as a percentage of such distribution amount, from estimated: (A) Net investment income; (B) net realized short-term capital gains; (C) net realized

long-term capital gains; and (D) return of capital or other capital source;

(2) The fiscal year-to-date cumulative amount of distributions, on a per common share basis, together with the amounts of such cumulative amount, on a per common share basis and as a percentage of such cumulative amount of distributions, from estimated: (A) net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(3) The average annual total return in relation to the change in NAV for the 5-year period (or, if the Fund's history of operations is less than five years, the time period commencing immediately following the Fund's first public offering) ending on the last day of the month ended immediately prior to the most recent distribution record date compared to the current fiscal period's annualized distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution record date; and

(4) The cumulative total return in relation to the change in NAV from the last completed fiscal year to the last day of the month prior to the most recent distribution record date compared to the fiscal year-to-date cumulative distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution record date.

Such disclosure shall be made in a type size at least as large and as prominent as the estimate of the sources of the current distribution; and

(ii) Will include the following disclosure:

(1) "You should not draw any conclusions about the Fund's investment performance from the amount of this distribution or from the terms of the Fund's Plan";

(2) "The Fund estimates that it has distributed more than its income and net realized capital gains; therefore, a portion of your distribution may be a return of capital. A return of capital may occur, for example, when some or all of the money that you invested in the Fund is paid back to you. A return of capital distribution does not necessarily reflect the Fund's investment performance and should not be confused with 'yield' or 'income'";<sup>4</sup> and

(3) "The amounts and sources of distributions reported in this 19(a) Notice are only estimates and are not

<sup>4</sup>The disclosure in this condition 2(a)(ii)(2) will be included only if the current distribution or the fiscal year-to-date cumulative distributions are estimated to include a return of capital.

being provided for tax reporting purposes. The actual amounts and sources of the amounts for tax reporting purposes will depend upon the Fund's investment experience during the remainder of its fiscal year and may be subject to changes based on tax regulations. The Fund will send you a Form 1099 DIV for the calendar year that will tell you how to report these distributions for Federal income tax purposes."

Such disclosure shall be made in a type size at least as large as and as prominent as any other information in the 19(a) Notice and placed on the same page in close proximity to the amount and the sources of the distribution.

(b) On the inside front cover of each report to shareholders under rule 30e-1 under the Act, the Fund will:

(i) Describe the terms of the Plan (including the fixed amount or fixed percentage of the distributions and the frequency of the distributions);

(ii) Include the disclosure required by condition 2(a)(i)(1) above;

(iii) State, if applicable, that the Plan provides that the Board may amend or terminate the Plan at any time without prior notice to Fund shareholders; and

(iv) Describe any reasonably foreseeable circumstances that might cause the Fund to terminate the Plan and any reasonably foreseeable consequences of such termination; and

(c) Each report provided to shareholders under rule 30e-1 under the Act and each prospectus filed with the Commission on Form N-2 under the Act, will provide the Fund's total return in relation to changes in NAV in the financial highlights table and in any discussion about the Fund's total return.

### 3. Disclosure to Shareholders, Prospective Shareholders and Third Parties

(a) The Fund will include the information contained in the relevant 19(a) Notice, including the disclosure required by condition 2(a)(ii) above, in any written communication (other than a communication on Form 1099) about the Plan or distributions under the Plan by the Fund, or agents that the Fund has authorized to make such communication on the Fund's behalf, to any Fund common shareholder, prospective common shareholder or third-party information provider;

(b) The Fund will issue, contemporaneously with the issuance of any 19(a) Notice, a press release containing the information in the 19(a) Notice and will file with the Commission the information contained in such 19(a) Notice, including the disclosure required by condition 2(a)(ii)

above, as an exhibit to its next filed Form N-CSR; and

(c) The Fund will post prominently a statement on its (or the Investment Advisers') Web site containing the information in each 19(a) Notice, including the disclosure required by condition 2(a)(ii) above, and will maintain such information on such Web site for at least 24 months.

### 4. Delivery of 19(a) Notices to Beneficial Owners

If a broker, dealer, bank or other person ("financial intermediary") holds common shares issued by the Fund in nominee name, or otherwise, on behalf of a beneficial owner, the Fund: (a) Will request that the financial intermediary, or its agent, forward the 19(a) Notice to all beneficial owners of the Fund's shares held through such financial intermediary; (b) will provide, in a timely manner, to the financial intermediary, or its agent, enough copies of the 19(a) Notice assembled in the form and at the place that the financial intermediary, or its agent, reasonably requests to facilitate the financial intermediary's sending of the 19(a) Notice to each beneficial owner of the Fund's shares; and (c) upon the request of any financial intermediary, or its agent, that receives copies of the 19(a) Notice, will pay the financial intermediary, or its agent, the reasonable expenses of sending the 19(a) Notice to such beneficial owners.

### 5. Additional Board Determinations for Funds Whose Shares Trade at a Premium

If:

(a) The Fund's common shares have traded on the stock exchange that they primarily trade on at the time in question at an average premium to NAV equal to or greater than 10%, as determined on the basis of the average of the discount or premium to NAV of the Fund's common shares as of the close of each trading day over a 12-week rolling period (each such 12-week rolling period ending on the last trading day of each week); and

(b) The Fund's annualized distribution rate for such 12-week rolling period, expressed as a percentage of NAV as of the ending date of such 12-week rolling period, is greater than the Fund's average annual total return in relation to the change in NAV over the 2-year period ending on the last day of such 12-week rolling period; then:

(i) At the earlier of the next regularly scheduled meeting or within four months of the last day of such 12-week rolling period, the Board, including a majority of the Independent Trustees:

(1) Will request and evaluate, and the Fund's Investment Advisers will furnish, such information as may be reasonably necessary to make an informed determination of whether the Plan should be continued or continued after amendment;

(2) Will determine whether continuation, or continuation after amendment, of the Plan is consistent with the Fund's investment objective(s) and policies and in the best interests of the Fund and its shareholders, after considering the information in condition 5(b)(i)(1) above, including, without limitation:

(A) Whether the Plan is accomplishing its purpose(s);

(B) The reasonably foreseeable material effects of the Plan on the Fund's long-term total return in relation to the market price and NAV of the Fund's common shares; and

(C) The Fund's current distribution rate, as described in condition 5(b) above, compared with the Fund's average annual taxable income or total return over the 2-year period, as described in condition 5(b), or such longer period as the Board deems appropriate; and

(3) Based upon that determination, will approve or disapprove the continuation, or continuation after amendment, of the Plan; and

(ii) The Board will record the information considered by it, including its consideration of the factors listed in condition 5(b)(i)(2) above, and the basis for its approval or disapproval of the continuation, or continuation after amendment, of the Plan in its meeting minutes, which must be made and preserved for a period of not less than six years from the date of such meeting, the first two years in an easily accessible place.

### 6. Public Offerings

The Fund will not make a public offering of the Fund's common shares other than:

(a) A rights offering below NAV to holders of the Fund's common shares;

(b) An offering in connection with a dividend reinvestment plan, merger, consolidation, acquisition, spin-off or reorganization of the Fund; or

(c) An offering other than an offering described in conditions 6(a) and 6(b) above, provided that, with respect to such other offering:

(i) The Fund's annualized distribution rate for the six months ending on the last day of the month ended immediately prior to the most recent

distribution record date,<sup>5</sup> expressed as a percentage of NAV as of such date, is no more than 1 percentage point greater than the Fund's average annual total return for the 5-year period ending on such date,<sup>6</sup> and

(ii) The transmittal letter accompanying any registration statement filed with the Commission in connection with such offering discloses that the Fund has received an order under section 19(b) to permit it to make periodic distributions of long-term capital gains with respect to its common shares as frequently as twelve times each year, and as frequently as distributions are specified by or determined in accordance with the terms of any outstanding preferred shares as such Fund may issue.

#### 7. Amendments to Rule 19b-1

The requested order will expire on the effective date of any amendment to rule 19b-1 that provides relief permitting certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common shares as frequently as twelve times each year.

For the Commission, by the Division of Investment Management, under delegated authority.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011-19052 Filed 7-27-11; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission ("CFTC") will hold public roundtable discussions on Monday, August 1, 2011, at the CFTC's headquarters at Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

The meeting will begin at 9 a.m. and will be open to the public, with seating made available on a first-come, first-served basis. Visitors will be subject to security checks. This Sunshine Act

notice is being issued because a majority of the Commission may attend the meeting.

The agenda for the meeting includes panel discussions addressing various international issues related to the implementation of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

For further information, please contact the CFTC's Office of Public Affairs at (202) 418-5080 or the SEC's Office of Public Affairs at (202) 551-4120.

Dated: July 25, 2011.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011-19181 Filed 7-26-11; 11:15 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64948; File No. SR-NASDAQ-2011-077]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change To Adopt a Risk Monitor Mechanism

July 22, 2011.

#### I. Introduction

On June 1, 2011, The NASDAQ Stock Market LLC ("Exchange" or "NASDAQ") 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 adopt a new risk monitor mechanism. The proposed rule change was published for comment in the **Federal Register** on June 13, 2011.<sup>3</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

#### II. Description of the Proposed Rule Change

NASDAQ proposes to adopt new Chapter VI, Section 19, Risk Monitor Mechanism<sup>4</sup> to provide protection from the risk of multiple executions across multiple series of an option. The Exchange proposes to offer the Risk Monitor Mechanism functionality to all

Participant types to help liquidity providers generally, Market Makers and other participants alike, in managing risk and providing deep and liquid markets to investors. The Exchange believes that the Risk Monitor Mechanism will be most useful for Market Makers,<sup>5</sup> who are required to continuously quote in assigned options. Quoting across many series in an option creates the possibility of "rapid fire" executions that can create large, unintended principal positions that expose the Market Maker to unnecessary market risk. The Risk Monitor Mechanism is intended to assist such Participants in managing their market risk. The Exchange also believes that firms that trade on a proprietary basis and provide liquidity to the Exchange could potentially benefit, similarly to Market Makers, from the Risk Monitor Mechanism.

Pursuant to proposed Section 19(a), the Risk Monitor Mechanism operates by the System maintaining a counting program for each Participant, which counts the number of contracts traded in an option by each Participant within a specified time period, not to exceed 15 seconds, established by each Participant (the "specified time period"). The specified time period will commence for an option when a transaction occurs in any series in such option. Furthermore, the System engages the Risk Monitor Mechanism in a particular option when the counting program has determined that a Participant has traded a Specified Engagement Size (as defined below) established by such Participant during the specified time period. When such Participant has traded the Specified Engagement Size during the specified time period, the Risk Monitor Mechanism automatically removes such Participant's orders in all series of the particular option.

As provided in proposed subparagraph (b)(ii), the Specified Engagement Size is determined by the following: (A) For each series in an option, the counting program will determine the percentage that the number of contracts executed in that series represents relative to the Participant's total size at all price levels in that series ("series percentage"); (B) The counting program will determine the sum of the series percentages in the option issue ("issue percentage"); (C) Once the counting program determines that the issue percentage equals or exceeds a percentage established by the Participant ("Specified Percentage"), the

<sup>5</sup> Unlike the PHLX Risk Monitor Mechanism, the NOM Risk Monitor Mechanism will be available to all Participants, not just Market Makers.

<sup>5</sup> If the Fund has been in operation fewer than six months, the measured period will begin immediately following the Fund's first public offering.

<sup>6</sup> If the Fund has been in operation fewer than five years, the measured period will begin immediately following the Fund's first public offering.

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

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

<sup>3</sup> See Securities Exchange Act Release No. 64616 (June 7, 2011), 76 FR 34281 ("Notice").

<sup>4</sup> The proposal is very similar to NASDAQ OMX PHLX ("PHLX") Rule 1093 and is intended to bring this aspect of PHLX's technological functionality to NOM.