Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [22] and Rule 19b–4(f)(6) thereunder.[23] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### 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 email to *rule-comments@ sec.gov.* Please include File Number SR– CBOE–2012–004 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–CBOE–2012–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/ rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE– 2012–004 and should be submitted on or before February 16, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

**Kevin M. O'Neill,**
*Deputy Secretary.*
[FR Doc. 2012–1627 Filed 1–25–12; 8:45 am]
**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–66208; File No. SR–Phlx– 2012–06]**

**Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Real-Time Risk Management Fee and Other Clarifying Amendments**

January 20, 2012.

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 January 10, 2012, NASDAQ OMX PHLX LLC ("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 proposes to amend the Real-Time Risk Management Fee to further clarify the application of the Fee. The Exchange also proposes to relocate the FLEX and Cabinet Options Transaction Fees within Section II of the

Exchange's Fee Schedule and add clarifying text.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/ micro.aspx?id=PHLXfilings,* 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to memorialize the Exchange's practice of limiting the assessment of the Real-time Risk Management Fee to two (2) ports. The Exchange also proposes to add language to clarify the types of ports that are subject to this fee.

The Exchange initially filed to adopt a real-time, trade information fee (Real-time Risk Management Fee) for members receiving option trading information on-line (i.e., electronically) from the Exchange.[3] The purpose of the fee was to provide members and member organizations with option trade information electronically on a real-time basis. Members and member organizations were able to log on to an interface with AUTOM to receive options (among other information) transaction information real-time. When adopted, the Exchange limited the assessment of the Real-Time Risk Management Fee to two ports.[4] The Exchange has not assessed any member or member organization in excess of two

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[22] 15 U.S.C. 78s(b)(3)(A).
[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43719 (December 13, 2000), 65 FR 80975 (December 22, 2000) (SR–Phlx–00–97). The Exchange initially assessed $.0025 per contract and later raised this fee to $.003 per contract. *See also* Securities Exchange Act Release No. 61685 (March 10, 2010), 75 FR 13187 (March 18, 2010) (SR–Phlx–2010–39).

[4] *See* Securities Exchange Act Release No. 43719 (December 13, 2000), 65 FR 80975 (December 22, 2000) (SR–Phlx–00–97). The information included symbol, volume, price, time and clearing information.

ports since this Fee was adopted in 2000.[5] The Exchange proposes to memorialize this practice in its Fee Schedule. The port may be either a Specialized Quote Feed ("SQF")[6] Port or a Clearing Trade Interface ("CTI")[7] Port. The member/member organization is assessed up to two ports. The Exchange proposes to add the following language to the Fee Schedule: "**$.003 per contract for members and member organizations receiving information on a real-time basis up to a maximum of two ports, which may be either an SQF Port or a CTI Port**" (new language in bold), to memorialize its current practice.

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[5] It was always the intent of the Exchange to limit this Fee to two ports, although the initial filing does not state this limitation, this has always been the practice of the Exchange.

[6] SQF is an interface that allows specialists, streaming quote traders and remote streaming quote traders to connect and send quotes into Phlx XL. SQF 6.0 allows participants to access information in a single feed available to all participants, rather than through accessing multiple feeds. The information available includes execution reports and other relevant data. Non quoting firms may also receive relevant information available over SQF by connecting to the SQF interface, but they may not send quotes. The set of data offered over this data feed is administrative in nature or is used to attract liquidity to the Exchange in response to an auction. Participants who write interfaces to the Phlx system use the administrative data to determine the current state of the trading system. For example, this data displays which symbols are trading on the Phlx, the current state of an options symbol (*i.e.,* open for trading, trading, halted or closed from trading), as well as similar information regarding complex order strategies. This administrative data also includes the definition of complex order strategies. *See* Securities Exchange Act Release No. 63034 (October 4, 2010), 75 FR 62441 (October 8, 2010) (SR–Phlx–2010–124).

[7] CTI provides Exchange members with real-time clearing trade updates. The updates include the members clearing trade messages on a low latency, real-time basis. The trade messages are routed to a member's connection containing certain information. The information includes, among other things, the following: (i) The Clearing Member Trade Agreement or "CMTA" or The Options Clearing Corporation or "OCC" number; (ii) Exchange badge or house number; and (iii) the Exchange internal firm identifier. The administrative and market event messages include, but are not limited to: System event messages to communicate operational-related events; options directory messages to relay basic option symbol and contract information for options traded on the Exchange; complex strategy messages to relay information for those strategies traded on the Exchange; and trading action messages to inform market participants when a specific option or strategy is halted or released for trading on the Exchange. The information related to complex order strategy messages includes information that lists the legs and the leg ratios, which uniquely defines this strategy for an underlying. In addition, the interface contains an indicator which distinguishes electronic and non-electronic delivered orders. This information will be available to members on a real-time basis. *See* Securities Exchange Act Release No. 62155 (May 24, 2010), 75 FR 30081 (May 28, 2010) (SR–Phlx–2010–67).

The Exchange also proposes to relocate the FLEX[8] and Cabinet[9] Options transaction fees within Section II of the Fee Schedule, entitled "Equity Option Fees," and add additional text to clarify that the transaction fees for FLEX[10] and Cabinet[11] Options are not in addition to the Options Transaction Charges. The Exchange also proposes to include text concerning the waiver of facilitation orders, currently in Section II in another part of Section II which addresses other facilitation waivers. The Exchange believes that relocating this text and adding a sentence which states "Cabinet and FLEX Option Fees above are not in addition to the Options Transaction Charges" will add more clarity to the Fee Schedule.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(4) of the Act[13] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that amending the Fee Schedule to memorialize the Exchange's practice of not assessing the Real-time Risk Management Fee on more than two ports is reasonable

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[8] A FLEX option is a customized option that provides parties to the transaction with the ability to fix terms including the exercise style, expiration date, and certain exercise prices. *See* Exchange Rule 1079. FLEX Options are a trademark of the Chicago Board Options Exchange.

[9] An "accommodation" or "cabinet" trade refers to trades in listed options on the Exchange that are worthless or not actively traded. Cabinet trading is generally conducted in accordance with Exchange Rules, except as provided in Exchange Rule 1059 entitled "Accommodation Trading", which sets forth specific procedures for engaging in cabinet trading below $ 1 per option contract. Cabinet or accommodation trading of option contracts is intended to accommodate persons wishing to effect closing transactions in those series of options dealt in on the Exchange for which there is no auction market.

[10] FLEX transaction fees are $0.10 per contract side for all participants, except Customers. Specifically, the Exchange assess a $.10 transaction charge on Professionals, Specialists, Registered Options Traders, Streaming Quote Traders, Remote Streaming Quote Traders, Broker-Dealers and Firms. Customers are not assessed a transaction charge for FLEX Options. *See* Securities Exchange Act Release No. 62379 (June 25, 2010), 75 FR 38163 (July 1, 2010) (SR–Phlx–2010–87).

[11] Cabinet transaction fees are $ 0.10 per contract side for all participants, except Customers. Specifically, the Exchange assess a $.10 transaction charge on Professionals, Specialists, Registered Options Traders, Streaming Quote Traders, Remote Streaming Quote Traders, Broker-Dealers and Firms. Customers are not assessed a transaction charge for Cabinet Options. *See* Securities Exchange Act Release No. 65740 (November 18, 2011), 76 FR 72744 (November 25, 2011) (SR–Phlx–2011–150).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

because this practice will be clearly stated on the Fee Schedule. Also, the Exchange believes that it is reasonable to clearly note the types of ports that are subject to this Fee. The Exchange also believes that this amendment is equitable and not unfairly discriminatory because the Exchange is uniformly assessing the Real-time Risk Management Fee on all members and member organizations. Every member or member organization will not be assessed the Real-time Risk Management Fee in excess of two ports, either an SQF Port or a CTI Port.

The Exchange believes that its proposal to relocate the Cabinet and FLEX Options section within Section II of the Fee Schedule and add more clarity concerning the assessment of these fees is reasonable, equitable and not unfairly discriminatory because the amendments will further clarify the application of Section II fees. The proposed amendments are not substantive. The Exchange believes the amendments would create a more user-friendly Fee Schedule.

*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)(ii) of the Act.[14] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and

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[14] 15 U.S.C. 78s(b)(3)(A)(ii).

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 email to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2012–06 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 No. SR–Phlx–2012–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2012–06 and should be submitted on or before February 13, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–1583 Filed 1–25–12; 8:45 am]

**BILLING CODE 8011–01–P**

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34–66201; File No. SR–NYSEArca–2011–86]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change To List and Trade the Accuvest Global Opportunities ETF Under NYSE Arca Equities Rule 8.600**

January 20, 2012.

**I. Introduction**

On November 16, 2011, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares ("Shares") of the Accuvest Global Opportunities ETF ("Fund") under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on December 7, 2011.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

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

The Exchange proposes to list and trade the Shares of the Fund pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by AdvisorShares Trust ("Trust"), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[4] The

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[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65862 (December 1, 2011), 76 FR 76457 ("Notice").

[4] The Trust is registered under the Investment Company Act of 1940 ("1940 Act"). On May 9, 2011, the Trust filed with the Commission Post-Effective Amendment No. 25 to Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) and under the 1940 Act relating to the Fund (File Nos. 333–157876 and 811–22110) ("Registration Statement"). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release

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investment adviser to the Fund is AdvisorShares Investments, LLC ("Adviser"). Accuvest Global Advisers is the Fund's sub-adviser ("Sub-Adviser") and provides day-to-day portfolio management of the Fund. Foreside Fund Services, LLC is the principal underwriter and distributor of the Fund's Shares. The Exchange states that neither the Adviser nor the Sub-Adviser is affiliated with a broker-dealer.[5]

*Description of the Fund*

The Fund will seek long-term capital appreciation in excess of global equity benchmarks such as the MSCI All Country World Index. The Fund will be a "fund-of-funds" that seeks to achieve its investment objective by investing primarily in other U.S.-listed exchange-traded products ("Underlying ETPs").[6] The Sub-Adviser will seek to achieve the Fund's investment objective by investing in Underlying ETPs that provide diversified exposure to select economies around the world. The Sub-Adviser will rank countries on a monthly basis using its proprietary country ranking model in order to determine their relative attractiveness. The Sub-Adviser then will endeavor to invest in Underlying ETPs that individually or in combination correspond generally to the price and yield performance of the specific countries (or regions) identified as most attractive by the model. The Fund's portfolio will be invested only in countries with the highest ranking as

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No. 29291 (May 28, 2010) (File No. 812–13677) ("Exemptive Order").

[5] *See* Commentary .06 to NYSE Arca Equities Rule 8.600. The Exchange represents that in the event (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

[6] Underlying ETPs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); Trust Units (as described in NYSE Arca Equities Rule 8.500); Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600), and closed-end funds. The Underlying ETPs all will be listed and traded in the United States on registered exchanges. The Underlying ETPs in which the Fund may invest will primarily be index-based exchange-traded funds that hold substantially all of their assets in securities representing a specific index.