

designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.<sup>26</sup> The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Commission also notes that all of the primary equity investments to be held by each Fund, as well as the non-U.S.-listed equity securities, including any depository receipts, held by each Fund will trade in markets that are ISG members or are parties to a comprehensive surveillance sharing agreement with the Exchange.<sup>27</sup>

The Exchange further represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing 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 Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures applicable to derivative products, which include Managed Fund Shares, are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit ("ETP") Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and/or continued listing, each Fund will be in compliance with Rule 10A-3 under the Act,<sup>28</sup> as provided by NYSE Arca Equities Rule 5.3.

(6) Each Fund may not hold more than 15% of net assets in illiquid investments, including Rule 144A securities and loan participations.

(7) The Funds will not invest in options, futures, or swaps, and the Funds' investments will be consistent with each Fund's investment objective and will not be used to enhance leverage.

(8) All of the primary equity investments to be held by each Fund, as well as the non-U.S.-listed equity securities, including any depository receipts, held by each Fund will trade in markets that are ISG members or are parties to a comprehensive surveillance sharing agreement with the Exchange.

(9) A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations and description of the Funds, including those set forth above and in the Notice.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>29</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>30</sup> that the proposed rule change (SR-NYSEArca-2012-34) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-14192 Filed 6-11-12; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67147; File No. SR-Phlx-2012-72]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay the Implementation Date for its Excess Order Fee

June 6, 2012.

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 May 24, 2012, NASDAQ OMX PHLX LLC ("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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes a rule change to delay the implementation date for its Excess Order Fee. The text of the proposed rule change is available at <http://nasdaqomxphlx.cchwallstreet.com/>, at the Exchange's principal office, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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

Phlx recently submitted a proposed rule change to introduce an Excess

<sup>26</sup> See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

<sup>27</sup> See Notice, *supra* note 3.

<sup>28</sup> See 17 CFR 240.10A-3.

<sup>29</sup> 15 U.S.C. 78f(b)(5).

<sup>30</sup> 15 U.S.C. 78s(b)(2).

<sup>31</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.

Order Fee,<sup>3</sup> aimed at reducing inefficient order entry practices of certain market participants that place excessive burdens on the systems of Phlx and its members and that may negatively impact the usefulness and life cycle cost of market data. In order to provide market participants with additional time to enhance their efficiency so as to avoid the fee, Phlx is delaying the implementation date of the fee until July 2, 2012.

## 2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>4</sup> in general, and with Section 6(b)(5) of the Act,<sup>5</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 public interest. Specifically, Phlx believes that delaying the implementation date of the Excess Order Fee will provide market participants with additional time to enhance the efficiency of their systems, and that implementation of the fee on July 2, 2012 will benefit investors and the public interest by encouraging more efficient order entry practices by all market participants.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

Phlx does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, Phlx believes that the fee will constrain market participants from pursuing certain inefficient and potentially abusive trading strategies. To the extent that this change may be construed as a burden on competition, Phlx believes that it is appropriate in order to further the purposes of Section 6(b)(5) of the Act.<sup>6</sup> Phlx further believes that the proposed delay of one month in the implementation of the fee will not have any effect on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act.<sup>7</sup> 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 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2012-72 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-Phlx-2012-72. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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-Phlx-2012-72, and should be submitted on or before July 3, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **Commercial Space Transportation Advisory Committee; Public Teleconference**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Commercial Space Transportation Advisory Committee Teleconference.

**SUMMARY:** Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. 2), notice is hereby given of a teleconference of the Operations Working Group (OWG) of the Commercial Space Transportation Advisory Committee (COMSTAC). The teleconference will take place on Tuesday, July 17, 2012, starting at 1 p.m. Eastern Daylight Time. Individuals who plan to participate should contact Susan Lender, Designated Federal Officer (DFO), (the Contact Person listed below) by phone or email for the teleconference call in number. The proposed agenda for this teleconference is to follow up on issues raised during the May 10, 2012, OWG meeting. These issues include:

- Discussing the question of on-orbit authority for the FAA and the

<sup>3</sup> Securities Exchange Act Release No. 67004 (May 17, 2012), 77 FR 30581 (May 23, 2012) (SR-Phlx-2012-64).

<sup>4</sup> 15 U.S.C. 78f.

<sup>5</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(a)(i). [sic]

<sup>8</sup> 17 CFR 200.30-3(a)(12).