

### Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies and companies controlled by them.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquired company and acquiring company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1-2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance

on rule 12d1-1 under the Act. For the purposes of rule 12d1-2, "securities" means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1-2 under the Act, but for the fact that the Applicant Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1-2(a) to allow the Applicant Funds to invest in Other Investments while investing in Underlying Funds. Applicants assert that permitting the Applicant Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

### Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1-2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Applicant Fund from investing in Other Investments as described in the application.

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

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2010-9400 Filed 4-22-10; 8:45 am]

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### SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

#### **ULH Corp. (n/k/a UniHolding Corp.), Unapix Entertainment, Inc., Unicom, Inc., and Unidyne Corp.; Order of Suspension of Trading**

April 21, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ULH Corp. (n/k/a UniHolding Corp.) because it has not filed any periodic reports since it filed a Form 10-K for the period ended May 31, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Unapix Entertainment, Inc. because it has not filed any periodic reports since it filed a Form 10-Q for the period ended June 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Unicom, Inc. because it has not filed any periodic reports since it filed a Form 10-Q/A for the period ended November 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Unidyne Corp. because it has not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 1999.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on April 21, 2010, through 11:59 p.m. EDT on May 4, 2010.

By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2010-9568 Filed 4-21-10; 4:15 pm]

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61935; File No. SR-CBOE-2010-036]

#### **Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Proposed Rule Change To Permit \$1 Strikes for Options on Trust Issued Receipts**

April 16, 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 13, 2010, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") 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.

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

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

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**

CBOE proposes to amend its Rule 5.5 to allow the Exchange to list options on Trust Issued Receipts in \$1 strike price intervals. The text of the rule proposal is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary and at the Commission.

### **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 self-regulatory organization 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 those 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 parts of such statements.

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

##### **1. Purpose**

The purpose of the proposed rule change is to amend Rule 5.5, *Series of Option Contracts Open for Trading*, by adding new Interpretation and Policy .17 that would allow the Exchange to list options on the Trust Issued Receipts ("TIRs"), including Holding Company Depository Receipts ("HOLDRS"), as defined under Interpretation and Policy .07 to Rule 5.3, in \$1 or greater strike price intervals, where the strike price is \$200 or less and \$5 or greater where the strike price is greater than \$200.<sup>3</sup>

Currently, the strike price intervals for options TIRs are as follows: (1) \$2.50 or greater where the strike price is \$25.00 or less; (2) \$5.00 or greater where the strike price is greater than \$25.00; and (3) \$10.00 or greater where the strike price is greater than \$200.<sup>4</sup>

The Exchange is seeking to permit \$1 strikes for options on TIRs (where the

strike price is less than \$200) because TIRs have characteristics similar to exchange-traded funds ("ETFs"). Specifically, TIRs are exchange-listed securities representing beneficial ownership of the specific deposited securities represented by the receipts. They are negotiable receipts issued by a trust representing securities of issuers that have been deposited and held on behalf of the holders of the TIRs. TIRs, which trade in round-lots of 100, and multiples thereof, may be issued after their initial offering through a deposit with the trustee of the required number of shares of common stock of the underlying issuers. This characteristic of TIRs is similar to that of ETFs which also may be created on any business day upon receipt of the requisite securities or other investment assets comprising a creation unit. The trust only issues receipts upon the deposit of the shares of the underlying securities that are represented by a round-lot of 100 receipts. Likewise, the trust will cancel, and an investor may obtain, hold, trade or surrender TIRs in a round-lot and round-lot multiples of 100 receipts.

CBOE believes the marketplace and investors expect options on TIRs to trade in a similar manner to ETF options. Strike prices for ETF options are permitted in \$1 or greater intervals where the strike price is \$200 or less and \$5 or greater where the strike price is greater than \$200.<sup>5</sup> Accordingly, the Exchange believes that the rationale for permitting \$1 strikes for ETF options equally applies to permitting \$1 strikes for options on TIRs and the Exchange believes that investors will be better served if \$1 strike price intervals are available for options on TIRs (where the strike price is less than \$200).

CBOE has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of \$1 strikes (where the strike price is less than \$200) for options on TIRs.

##### **2. Statutory Basis**

The Exchange believes the proposed rule change is consistent with the Act<sup>6</sup> and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.<sup>7</sup> Specifically, the Exchange believes the proposed rule change is consistent with

the Section 6(b)(5)<sup>8</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest by allowing the Exchange to list options on TIRs at \$1 strike price intervals.

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

CBOE 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 solicited or received with respect to the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be 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, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

#### **Electronic Comments**

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2010-036 on the subject line.

<sup>3</sup> HOLDRS are a type of Trust Issued Receipt and the current proposal would permit \$1 strikes for options on HOLDRS (where the strike price is less than \$200).

<sup>4</sup> See CBOE Rule 5.5.01(c)-(e). See also Securities Exchange Act Release No. 43043 (July 17, 2000), 65 FR 46520 (July 28, 2000) (SR-CBOE-2010-36) (approval order for options on TIRs).

<sup>5</sup> See CBOE Rule 5.5.08 (permitting \$1 strikes for options on Units covered under Interpretation and Policy .06 to Rule 5.3, which are also known as ETF options).

<sup>6</sup> 15 U.S.C. 78s(b)(1).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

### 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-2010-036. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room 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 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-CBOE-2010-036, and should be submitted on or before May 10, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Elizabeth M. Murphy,**  
Secretary.

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61932; File No. SR-Phlx-2010-51]

#### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a New Category of Fees for "Professional"

April 16, 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 March 31, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to adopt fees for a new type of participant called "professional."<sup>3</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 on April 1, 2010.

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, at the Commission's Public Reference Room, and on the Commission's Web site at <http://www.sec.gov>.

#### 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.

<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. 61802 (March 30, 2010) (SR-Phlx-2010-05).

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

##### 1. Purpose

The purpose of the proposed rule change is to adopt a new category of fees, "professional." The Exchange believes that the proposed fees for professional orders will allow the Exchange to remain competitive with other options exchanges who apply fees to professional orders.

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)<sup>4</sup> (hereinafter "Professional").

The Exchange proposes to add a "Professional" fee to its fees and rebates for adding and removing liquidity, known as a "maker/taker" model by amending Category I of its Fee Schedule, Fees and Rebates for Adding and Removing Liquidity in Select Symbols, to adopt a \$0.20 rebate for adding liquidity and a \$0.40 fee for removing liquidity for Professional orders. There are currently five categories of participants in Category I: (i) Specialists, Registered Options Traders ("ROT's"), Streaming Quote Traders ("SQT's")<sup>5</sup> and Remote Streaming Quote Traders ("RSQT's");<sup>6</sup> (ii) customers;<sup>7</sup> (iii) specialists, SQTs and RSQTs that receive Directed Orders ("Directed Participants" or "Directed Specialists, RSQTs or SQTs");<sup>8</sup>

<sup>4</sup> A Professional will be treated in the same manner as an off-floor broker-dealer for purposes of Rules 1014(g)(except with respect to all-or-none orders, which will be treated like customer orders), 1033(e), 1064.02 (except professional orders will be considered customer orders subject to facilitation), and 1080.08 as well as Options Floor Procedure Advices B-6, B-11 and F-5. Member organizations must indicate whether orders are for professionals.

<sup>5</sup> An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. See Exchange Rule 1014(b)(ii)(A).

<sup>6</sup> An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Exchange Rule 1014(b)(ii)(B).

<sup>7</sup> This applies to all customer orders, directed and non-directed.

<sup>8</sup> See Exchange Rule 1080(l), " \* \* \* The term 'Directed Specialist, RSQT, or SQT' means a specialist, RSQT, or SQT that receives a Directed Order." A Directed Participant has a higher quoting

Continued

<sup>9</sup> 17 CFR 200.30-3(a)(12).