

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-64150; File No. SR-Phlx-2011-38)

March 30, 2011

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to ETNs

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 22, 2011, 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 Exchange's Fee Schedule to codify the Exchange's existing practice of assessing fees for transactions in exchange-traded note ("ETN")<sup>3</sup> options at the same rates for exchange-traded fund ("ETF") options.<sup>4</sup>

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

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

<sup>3</sup> ETNs are also known as "Index-Linked Securities," which are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments or market indexes of the foregoing. Index-Linked Securities are the non-convertible debt of an issuer that have a term of at least one (1) year but not greater than thirty (30) years. Despite the fact that Index-Linked Securities are linked to an underlying index, each trade as a single, exchange-listed security. Accordingly, rules pertaining to the listing and trading of standard equity options apply to Index-Linked Securities.

<sup>4</sup> An ETF is an open-ended registered investment company under the Investment Company Act of 1940 that has received certain exemptive relief from the Commission to allow secondary market trading in the ETF shares. ETFs are generally index-based products, in that each ETF holds a portfolio of securities that is intended to provide

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on April 1, 2011.

The text of the proposed rule change is available on the Exchange's website 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to codify the Exchange's existing practice of assessing fees for transactions in ETN options at the same rates for ETF options. Specifically, the Exchange is proposing to amend Section II of the Exchange's Fee Schedule, titled Equity Options Fees, and Section III, titled Singly Listed Options, by including references to ETNs in those sections. Sections II of the Exchange's Fee Schedule currently states that it includes options overlying equities, ETFs, HOLDRS<sup>5</sup>,

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investment results that, before fees and expenses, generally correspond to the price and yield performance of the underlying benchmark index.

<sup>5</sup> HOLDRS are Holding Company Depository Receipts.

BKX<sup>6</sup>, RUT<sup>7</sup>, RMN<sup>8</sup>, MNX<sup>9</sup> and NDX.<sup>10</sup> Section III of the Exchange's Fee Schedule currently states that it includes options overlying currencies, equities, ETFs, indexes and HOLDRS not listed on another exchange. The Exchange is proposing to add ETNS to both Sections II and III and assess the same rates that are currently assessed ETFs and other equity options today.

The Exchange is not proposing to amend any fees.<sup>11</sup> The Exchange would apply the same rates that apply to ETFs today to ETNs. A similar proposal was filed by the Chicago Board Options Exchange, Incorporated ("CBOE") to apply the ETF rates to ETNs and include references to ETNs in the fee schedule.<sup>12</sup>

The Exchange is also proposing to make conforming amendments to the Table of Contents and Section IV, titled PIXL Pricing, of the Fee Schedule.

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<sup>6</sup> BKX represents the KBW Bank Index.

<sup>7</sup> RUT represents the options on the Russell 2000® Index (the "Full Value Russell Index" or "RUT").

<sup>8</sup> RMN represents options on the one-tenth value Russell 2000® Index<sup>8</sup> (the "Reduced Value Russell Index" or "RMN").

<sup>9</sup> MNX represents options on the one-tenth value of the Nasdaq 100 Index traded under the symbol MNX ("MNX").

<sup>10</sup> NDX represents options on the Nasdaq 100 Index<sup>10</sup> traded under the symbol NDX ("NDX").

<sup>11</sup> This fee proposal would not impact any equity options transacted in any of the symbols which are listed in Section I of the Exchange's Fee Schedule titled "Rebates and Fees for Adding and Removing Liquidity in Select Symbols."

<sup>12</sup> See Securities Exchange Act Release No. 62579 (July 28, 2010), 75 FR 47329 (August 5, 2010) (SR-CBOE-2010-068).

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>14</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that it is reasonable to add ETNs specifically to Sections II and III because it would codify the Exchange's existing practice of assessing fees for ETN options in a manner similar to ETF options. This proposal would add clarity to the Exchange's Fee Schedule.

The Exchange believes that it is equitable because the fees in Sections II and III would be uniformly applied to all market participants transacting equity options in symbols other than those listed in Section I of the 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.

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<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4).

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.<sup>15</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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2011-38 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.

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<sup>15</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-Phlx-2011-38. 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 website (<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 website 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 10:00 a.m. and 3:00 p.m. Copies of the 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-Phlx-2011-38 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

Cathy H. Ahn  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).