

include a mandatory ban prohibiting members from seeking or providing investment banking services to a company for a period of 12 months following any allocation of IPO shares to an account of an executive officer or director of such company and whether such a ban would facilitate compliance. One commenter strongly supported a 12-month prohibition.⁴³ However, another commenter opposed such a prohibition, saying that it “would—by rule—impose an automatic sanction for even inadvertent allocations of IPO securities” and “would, in all cases, be financially disproportionate to the value of the securities involved in any violation, would not take into account the specific facts of each situation, deprive the FINRA member of its statutory right to a fair hearing before the imposition of any disciplinary sanction, and would unfairly deprive the company of the right to select the services of the FINRA member.”⁴⁴ According to this commenter, in each case, the imposition of a mandatory ban, as suggested by the Commission, would be an excessive penalty in light of the facts and circumstances underlying the potential violation of the proposed rule.⁴⁵ Nevertheless, this commenter noted that the 12-month prohibition “should not in any event be approved without an opportunity for review of and comment on the text of the proposed rule,” with commenter requesting that the Commission republish for comment any proposal to adopt such a mandatory ban on investment banking services with a sixty-day comment period. In light of these comments, the Commission will continue to consider the commenters’ recommendations and concerns in considering whether any future action is warranted. However, the Commission does not believe this issue should preclude approval of the proposal.

V. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁴⁶ for approving the proposed rule change, as modified by Amendment Nos. 1 through 4 thereto, prior to the 30th day after the date of publication of Amendment No. 4 in the **Federal Register**. The changes proposed in Amendment No. 4 respond to specific concerns raised. Moreover, accelerating approval of this proposal should benefit FINRA members by aiding them in avoiding misconduct in new issue

distributions and should benefit investors by taking a step to enhance investor protection in the capital raising process.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 4, 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. Please include File Number SR–NASD–2003–140 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–NASD–2003–140. 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, 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 FINRA. 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–NASD–2003–140 and should be submitted on or before October 26, 2010.

VII. Conclusion

It is therefore ordered pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASD–2003–140), as modified by Amendment Nos. 1 through 4, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁷

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63004; File No. SR–Phlx–2010–126]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Individual Stock Trading Pauses

September 29, 2010.

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 September 22, 2010, NASDAQ OMX PHLX LLC (“PHLX” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 PHLX Rule 3100(a)(4) to add securities included in the Russell 1000® Index (“Russell 1000”) and specified Exchange Traded Products (“ETP”) to the definition of Circuit Breaker Securities. The text of the proposed rule change is available from the Exchange’s Web site at <http://nasdaqomxphlx.cchwallstreet.com>, at the Exchange’s principal office, and at the Commission’s Public Reference Room.

⁴⁷ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

⁴³ See Regal.

⁴⁴ See ABA.

⁴⁵ See *id.*

⁴⁶ 15 U.S.C. 78s(b)(2).

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. The text of these statements may be examined at the places specified in Item IV below, and is set forth in Sections A, B, and C below.

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

1. Purpose

The Exchange proposes to amend Rule 3100(a)(4) to add securities included in the Russell 1000[®] Index ("Russell 1000") and specified Exchange Traded Products ("ETPs") to the definition of Circuit Breaker Securities. For purposes of this filing, ETPs include Exchange Traded Funds ("ETFs"),³ Exchange Traded Vehicles ("ETVs"),⁴ and Exchange Traded Notes ("ETNs").⁵

The primary listing markets for U.S. stocks recently amended their rules so that they may, from time to time, issue a trading pause for an individual security if the price of such security moves 10% or more from a sale in a preceding five-minute period.⁶ In connection with its resumption of trading of NMS Stocks through the NASDAQ OMX PSX ("PSX") system, the Exchange recently adopted Rule 3100(a)(4)⁷ to pause trading in an

³ 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 investment results that, before fees and expenses, generally correspond to the price and yield performance of the underlying benchmark index.

⁴ An ETV tracks the underlying performance of an asset or index, allowing investor's exposure to underlying assets such as futures contracts, commodities, and currency without actually trading futures or taking physical delivery of the underlying asset. An ETV is traded intraday like an ETF. An ETV is an open-ended trust or partnership unit that is registered under the Securities Act of 1933.

⁵ An ETN is a senior unsecured debt obligation designed to track the total return of an underlying index, benchmark or strategy, minus investor fees. ETNs are registered under the Securities Act of 1933 and are redeemable to the issuer.

⁶ Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR-BATS-2010-014; SR-EDGA-2010-01; SR-EDGX-2010-01; SR-BX-2010-037; SR-ISE-2010-48; SR-NYSE-2010-39; SR-NYSEAmex-2010-46; SR-NYSEArca-2010-41; SR-NASDAQ-2010-061; SR-CHX-2010-10; SR-NSX-2010-05; SR-CBOE-2010-047).

⁷ Securities Exchange Act Release No. 62877 (September 9, 2010), 75 FR 56633 (September 16, 2010) (SR-PHLX-2010-79).

individual stock when the primary listing market for such stock issues a trading pause in any Circuit Breaker Securities, as defined in the rule. The rule is in effect on a pilot basis until December 10, 2010. Originally, the pilot list of Circuit Breaker Securities comprised all securities included in the S&P 500[®] Index ("S&P 500"). On September 10, 2010, the Commission approved filings by exchanges other than the Exchange to expand the list of Circuit Breaker Securities.⁸

Accordingly, the Exchange is submitting this filing to conform its pilot list to the list just approved for other exchanges. Specifically, the Exchange proposes to add the securities included in the Russell 1000 and specified ETPs to the pilot. The pilot list of ETPs is provided in Exhibit 3. The Exchange believes that adding these securities would begin to address concerns raised by some parties that the scope of the original pilot may be too narrow, while at the same time recognizing that during the pilot period, the markets will continue to review whether and when to add additional securities to the pilot and whether the parameters of the rule should be adjusted for different securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁹ in general, and with Sections 6(b)(5) of the Act,¹⁰ 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. The proposed rule change is also designed to support the principles of Section 11A(a)(1)¹¹ of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes uniformity across

⁸ Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR-BATS-2010-018; SR-BX-2010-044; SR-CBOE-2010-065; SR-CHX-2010-14; SR-EDGA-2010-05; SR-EDGX-2010-05; SR-ISE-2010-66; SR-NASDAQ-2010-079; SR-NYSE-2010-49; SR-NYSEAmex-2010-63; SR-NYSEArca-2010-61; SR-NSX-2010-08).

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78k-1(a)(1).

markets concerning decisions to pause trading in a security when there are significant price movements.

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 that is 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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁴ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay as it has recently received approval to initiate trading on PSX and plans to do so on October 8, 2010. In order to ensure that the Exchange's rules on individual stock trading pauses are consistent with the recently approved changes to the rules of other markets, the Exchange wants to be able to implement these pauses concurrent with the initiation of trading on PSX. For this reason, the Commission believes that waiving the

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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 Exchange has satisfied this requirement.

¹⁴ 17 CFR 240.19b-4(f)(6).

30-day operative delay¹⁵ is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal operative upon filing.

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.

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. Please include File Number SR-Phlx-2010-126 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-2010-126. 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 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-2010-126 and should be submitted on or before October 26, 2010.

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

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63000; File No. SR-CBOE-2010-089]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Fee Schedule for the CBOE Stock Exchange

September 28, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 22, 2010, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "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 modify the Fees Schedule for its CBOE Stock Exchange ("CBSX"). The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/legal>), 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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 23, 2010, the Commission published an immediately effective rule filing to modify the transaction fees for 24 securities currently traded on CBSX (the following symbols: BAC, C, DXD, EMC, EWJ, F, FAX, FAZ, GE, INTC, MOT, MSFT, MU, NOK, Q, QID, S, SIRI, SKF, T, TWM, UNG, UWM, XLF).³ On September 9, 2010, the Commission published an immediately effective rule filing to modify the transaction fees for 51 more securities currently traded on CBSX (the following symbols: AA, AMAT, AMD, BGZ, BP, BSX, CMCSA, COCO, CSCO, CX, DELL, DUK, EBAY, EEM, EWT, FAS, FLEX, HBAN, IYR, MDT, MGM, IYR, MDT, MGM, NLY, NVDA, NWSA, ORCL, PFE, QCOM, QQQQ, SBUX, SH, SLV, SMH, SSO, SYMC, TBT, TSM, TXN, UCO, USO, VALE, VWO, WFC, XHB, XLB, XLK, XLP, XLU, XLV, XLY, XRX, YHOO).⁴ The Exchange now proposes to add 50 more securities to that list of securities (the following symbols: ARNA, ATML, BKC, BRCD, CIM, DOW, DRYS, EFA, EWZ, FITB, FXI, GBG, GDX, GLD, GLW, HPQ, IDIX, IWM, JPM, KEY, LVL, LVS, MFE, MO, MRVL, ONNN, PBR, PCBC, QLD, RF, RFMD, RIMM, RRI, RSCR, SDS, SNDK, SPLS, SPY, TEVA, TLT, TNA, TZA, UYG, VXX, VZ, X, XLE, XLI, XOM, XRT).

For those securities already approved for the new transaction fees as well as those that would be added by this proposed rule change, assuming their prices do not drop below \$1, the takers of liquidity will receive a \$0.0014 per share rebate, and makers of liquidity

³ See Securities Exchange Act Release No. 34-62758 (August 23, 2010), 75 FR 166 (August 27, 2010) (SR-CBOE-2010-075).

⁴ See Securities Exchange Act Release No. 34-62878 (September 9, 2010), 75 FR 179 (September 16, 2010) (SR-CBOE-2010-079).

¹⁵ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.