

securities are issued by a foreign issuer. The ADR is registered under the Securities Act on Form F-6. ADR trades occur either on an Exchange or off-exchange. Rule 6620 of the Financial Industry Regulatory Authority ("FINRA") requires all off-exchange transactions in ADRs to be reported within 90 seconds and ADR trade reports to be disseminated on a real-time basis. With respect to GDRs, the depositary may be foreign or a U.S. entity, and the underlying securities may have a foreign or a U.S. issuer. All GDRs are sponsored and trade on a foreign exchange. No affiliated persons of applicants will serve as the depositary for any Depositary Receipts held by a Fund. A Fund will not invest in any Depositary Receipts that the Adviser deems to be illiquid or for which pricing information is not readily available.

4. Applicants also seek to amend the terms and conditions of the Prior Applications to provide that all representations and conditions contained in the Prior Applications that require a Fund to disclose particular information in the Fund's prospectus and/or annual report shall remain effective with respect to the Fund until the time the Fund complies with the disclosure requirements adopted by the Commission in the Summary Prospectus Rule. Applicants believe that the proposal to supersede the representations and conditions requiring certain disclosures in the Prior Applications is warranted because the Commission's amendments to Form N-1A with respect to ETFs as part of the Summary Prospectus Rule reflect the Commission's view with respect to the appropriate types of prospectus and annual report disclosures for an ETF.

5. Applicants also wish to amend the Prior Order to permit the personnel of the Adviser or any Sub-Adviser who are responsible for the designation and dissemination of Deposit Securities or Fund Securities to also select securities for purchase or sale by actively-managed accounts of the Adviser or Sub-Adviser. The Prior Applications currently state that such personnel will have no responsibilities for the selection of securities for purchase or sale by any actively-managed accounts of the Adviser or Sub-Adviser. Applicants state that the Codes of Ethics adopted by the Adviser and Distributor, among other procedures, adequately address any conflicts of interest. Applicants also note that the Commission more recently has granted exemptive relief with respect to index-based ETFs that does not contain the prohibition on adviser personnel designating securities for a

creation or redemption with respect to such ETFs and also managing actively-managed accounts for the adviser.

#### Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the same conditions as those imposed by the Prior Order, except for condition 5 to the Prior Order, which will be deleted.<sup>8</sup>

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

**Florence E. Harmon,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63050; File No. SR-Phlx-2010-137]

#### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Anti-Internalization Functionality for NASDAQ OMX PSX

October 6, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on September 30, 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 3307 to provide an optional anti-internalization functionality on NASDAQ OMX PSX ("PSX"). The text of the proposed rule change is available from the Exchange's Web site at <http://>

<sup>8</sup> As noted above, all representations and conditions contained in the application and the Prior Applications that require a Fund to disclose particular information in the Fund's prospectus and/or annual report shall remain effective with respect to the Fund until the time that the Fund complies with the disclosure requirements adopted by the Commission in the Summary Prospectus Rule.

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

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

[nasdaqomxphlx.cchwallstreet.com](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. 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 is proposing to provide a voluntary anti-internalization function for the PSX System. Under the proposal, market participants entering orders under a specific market participant identifier ("MPID") may voluntarily direct that they not execute against other orders entered into the System under the same MPID.

Under the proposal, the System, if requested, will not execute orders entered under the same MPID against each other. Instead, the System will execute against all eligible trading interest of other market participants, in accordance with PSX's price-size execution priority, up to the point where an incoming order would interact with a resting order having the same MPID. In such a case, share amounts equal to the size of the portion of an incoming order that is designated by the order execution algorithm to interact with an order already in the System with the same MPID will be decremented from each order.

For example, if market participant ABCD had an order to sell 1,000 shares at \$10 on the book, entered an order to buy 1,000 shares at \$10, and the System allocated 100 shares of the incoming order to the resting ABCD order and 900 shares to other market participants' orders, the System would execute the 900 shares allocated to other market participants and would decrement, without execution, the remaining 100 shares of the incoming order as well as 100 shares from ABCD's resting order. Similarly, if ABCD had a resting order to sell 2,000 shares at \$10, entered an order to buy 500 shares at \$10, and the System allocated all 500 shares to the resting ABCD order, the System would cancel the incoming order and

decrement the resting order by 500 shares.

Anti-internalization functionality is designed to assist market participants in complying with certain rules and regulations of the Employee Retirement Income Security Act ("ERISA") that preclude and/or limit managing broker-dealers of such accounts from trading as principal with orders generated for those accounts. It can also assist market participants in reducing execution fees potentially resulting from the interaction of executable buy and sell trading interest from the same firm. The Exchange notes that use of the functionality does not relieve or otherwise modify the duty of best execution owed to orders received from public customers. As such, market participants using anti-internalization functionality will need to take appropriate steps to ensure that public customer orders that do not execute because of the use of anti-internalization functionality ultimately receive the same execution price (or better) that they would have originally obtained if execution of the order was not inhibited by the functionality.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>3</sup> in general, and with Sections 6(b)(5) of the Act,<sup>4</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. The Exchange notes that similar functionality has previously been approved for The NASDAQ Stock Market LLC (the "NASDAQ Exchange").<sup>5</sup>

### 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: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) 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 Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>8</sup> However, Rule 19b-4(f)(6)<sup>9</sup> 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 so that the benefits of this functionality to PSX market participants expected from the rule change can be implemented on or about October 8, 2010, when the Exchange expects to launch trading on PSX and have the technological changes in place to support the proposed rule change. The Commission notes that the proposal is similar to rules adopted by other exchanges.<sup>10</sup> For these reasons, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay, and hereby grants such waiver.<sup>11</sup>

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6). In addition, Phlx has given 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 on which the Exchange filed the proposed rule change.

<sup>8</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>9</sup> *Id.*

<sup>10</sup> NASDAQ Exchange Rule 4757(a)(4), BATS Exchange Rule 11.9(f) and NYSE ArcaEquities Rule 7.31(qq).

<sup>11</sup> For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2010-137 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-2010-137. 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,<sup>12</sup> 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 a.m. and 3 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

<sup>12</sup> The text of the proposed rule change is available on Exchange's Web site at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, on the Commission's website at <http://www.sec.gov>, at Phlx, and at the Commission's Public Reference Room.

<sup>3</sup> 15 U.S.C. 78f.

<sup>4</sup> 15 U.S.C. 78f(b)(5).

<sup>5</sup> NASDAQ Exchange Rule 4757(a)(4).

information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2010-137 and should be submitted on or before November 4, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63054; File No. SR-EDGX-2010-13]

### Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

October 6, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 30, 2010, the EDGX Exchange, Inc. (the "Exchange" or the "EDGX") 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 self-regulatory organization. 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

EDGX Exchange, Inc. ("Exchange" or "EDGX") proposes to amend its fees and rebates applicable to Members<sup>3</sup> of the Exchange pursuant to EDGX Rule 15.1(a) and (c).

All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at <http://www.directedge.com>.

#### 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 Exchange proposes to make several amendments to its fee schedule. First, it proposes to increase the fee for removing liquidity from \$0.0029 per share to \$0.0030 per share. Conforming amendments have been made to the B, V, Y, 3, and 4 Flags ("add liquidity" flags) to reflect this change. Secondly, it proposes to decrease the rebate for adding liquidity from \$0.0029 per share to \$0.0026 per share. Conforming amendments have been made to the N, W, and 6 flags ("remove liquidity" flags) to reflect this change. The Exchange believes that these rate changes will enable it to maintain a competitive position with regards to other away market centers.

Secondly, the Exchange proposes to incorporate a three tier rebate structure. The Exchange proposes to introduce the Mega Tier, which modifies the rebate incorporated in footnote 1 of the fee schedule. There are two alternative ways a Member can qualify for the Mega Tier rebate. First, footnote 1 of the fee schedule currently provides that Members can qualify for a rebate of \$0.0032 per share for all liquidity posted on EDGX if they add or route at least 5,000,000 shares of average daily volume prior to 9:30 AM or after 4:00 PM (includes all flags except 6) AND add a minimum of 50,000,000 shares of average daily volume on EDGX in total. The Exchange proposes to amend the 50,000,000 share minimum to 25,000,000 shares. Secondly, footnote 1 further provides that Members will be provided a \$0.0031 rebate per share for liquidity added on EDGX if the Member on a daily basis, measured monthly, posts 0.75% of the Total Consolidated Volume ("TCV") in average daily volume. TCV is defined as volume reported by all exchanges and trade

reporting facilities to the consolidated transaction reporting plans for Tapes A, B and C securities. The Exchange proposes to increase this rebate to \$0.0032 per share.

Next, the Exchange proposes to introduce the Ultra Tier, in which a Member will be provided a \$0.0031 rebate per share for liquidity added on EDGX if the Member posts 0.50% of TCV in average daily volume to EDGX, as measured on a monthly basis.

Finally, the Exchange propose to introduce the Super Tier, in which a Member will be provided a \$0.0030 rebate per share for liquidity added on EDGX if the Member posts 10,000,000 shares or more of average daily volume to EDGX, as measured on a monthly basis.

The Exchange believes that the above pricing is appropriate since higher rebates are directly correlated with more stringent criteria. The Mega Tier rebate (\$0.0032 per share) has the most stringent criteria, and is \$0.0001 greater than the Ultra Tier rebate (\$0.0031 per share) and \$0.0002 greater than the Super Tier rebate (\$0.0030 per share). For example, based on average TCV for August 2010 (7.2 billion), in order for a Member to qualify for the Mega Tier, the Member would have to post 54 million shares on EDGX. In order to qualify for the Ultra Tier, which has less stringent criteria than the Mega Tier, the Member would have to post 36 million shares on EDGX. Finally, the Super Tier has the least stringent criteria. In order for a Member to qualify for this rebate, the Member would have to post 10 million shares on EDGX. In addition, these rebates also result, in part, from lower administrative costs associated with higher volume.

Finally, the Exchange proposes to make a clarifying amendment to the price guarantee language found in footnote 1 of the schedule to clarify that the share amounts are based upon average daily volume.

EDGX Exchange proposes to implement these amendments to the Exchange fee schedule on October 1, 2010.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>5</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The

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

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>13</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.

<sup>3</sup> A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.