

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61812; File No. SR-Phlx-2010-49)

March 31, 2010

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by NASDAQ OMX PHLX, Inc. to Establish \$2.50 Strike Price Intervals for Options on the NASDAQ Internet Index<sup>SM</sup>

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 March 29, 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 is filing with the Commission a proposal to amend: Phlx Rule 1101A (Terms of Options Contracts) regarding listing options on the NASDAQ Internet Index<sup>SM</sup> trading under the symbol QNET at \$2.50 strike-price intervals below \$200; and Phlx Rule 1107A (NASDAQ OMX Group, Inc. Indexes) regarding disclaimer of express or implied warranties in respect of NASDAQ OMX Group, Inc. (“NASDAQ”) indexes.

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).<sup>3</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> 17 CFR 240.19b-4(f)(6)(iii).

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/>, 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 proposal is to amend Rule 1101A regarding listing options on the NASDAQ Internet Index<sup>SM</sup> trading under the symbol QNET (the "Index") at \$2.50 strike-price intervals below \$200; and to amend Rule 1107A regarding disclaimer of express or implied warranties in respect of NASDAQ Indexes.

The NASDAQ Internet Index<sup>SM</sup> has been listed and maintained by NASDAQ OMX continuously since November 27, 2007.<sup>4</sup> The Index is designed to track the performance of the largest and most liquid U.S.-listed companies engaged in internet-related businesses that are listed on a U.S. stock exchange. The Index includes companies engaged in a broad range of internet-related services including, but not limited

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<sup>4</sup> For a description of the Index, Index Methodology, and Index pricing, see <https://indexes.nasdaqomx.com/>. An Exchange-Traded Fund denominated The PowerShares Nasdaq Internet Portfolio (PNQI), which is based on the Index, was initiated last year.

to internet software, internet access providers, internet search engines, web hosting, website design, and internet retail commerce. The Exchange intends to list options on the Index per subsection (b) of Rule 1009A (Designation of the Index).<sup>5</sup>

Phlx Rule 1101A currently indicates in subsection (a) that the Exchange shall determine fixed point strike price intervals for index options at no less than \$5.00, provided that for indexes that are listed in Rule 1101A, the Exchange may determine to list strike prices at no less than \$2.50 intervals if the strike price is less than \$200. The rule provides also that such options may be listed at no less than \$2.50 strike price intervals on indexes delineated in this rule, and in response to demonstrated customer interest or specialist request. Demonstrated customer interest includes institutional (firm) corporate or customer interest expressed directly to the Exchange or through the customer's floor brokerage unit, but not interest expressed by a Registered Options Trader (“ROT”) with respect to trading for the ROT's own account.<sup>6</sup>

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<sup>5</sup> No options are currently traded on the Index. Rule 1009A establishes generic listing standards for options on narrow-based and broad-based indexes pursuant to Rule 19b-4(e) of the Act. See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998). The listing standards in Rule 1009A are similar to those of other options exchanges such as, for example, Chicago Board Options Exchange, Incorporated (“CBOE”); International Stock Exchange LLC (“ISE”); and The NASDAQ Stock Market LLC (“NASDAQ Market”).

<sup>6</sup> Subsection (b) of Rule 1014 states that an ROT is a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account, and includes a Streaming Quote Trader and a Remote Streaming Quote Trader as defined in Rule 1014.

The proposed rule change adds the NASDAQ Internet Index<sup>SM</sup> to the list of indexes in Rule 1101A upon which the Exchange may list options at \$2.50 strike price intervals.<sup>7</sup>

Phlx Rule 1107A currently provides that NASDAQ does not guarantee the accuracy and/or uninterrupted calculation of the NASDAQ-100 Index® (the “index”) or any data included therein; makes no warranty, express or implied, as to results to be obtained by the Exchange, owners of the options on the index, or any other person or entity from the use of the index or any data included therein; and makes no express or implied warranties, and expressly disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to the index or any data included therein. The rule also provides, without limiting any of the foregoing, that in no event shall NASDAQ have any liability for any lost profits or special, incidental, punitive, indirect, or consequential damages, even if notified of the possibility of such damages. In proposing adoption of Rule 1007A, the Exchange stated that Rule 1107A, being similar in concept to current Rules 1104A, 1105A, and 1106A, as well as rules of other options exchanges, should put NASDAQ on similar footing with other licensors of options on indexes to the Exchange.<sup>8</sup>

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<sup>7</sup> For recent rule change proposals wherein the Exchange similarly added other indexes to Rule 1101A, see Securities Exchange Act Release Nos. 57899 (June 2, 2008), 73 FR 32379 (June 6, 2008) (SR-Phlx-2008-40) (notice of filing and immediate effectiveness); and 57515 (March 18, 2008), 73 FR 15554 (March 24, 2008) (SR-Phlx-2008-21) (notice of filing and immediate effectiveness).

<sup>8</sup> See Securities Exchange Act Release No. 58194 (July 18, 2008), 73 FR 43275 (July 24, 2008) (SR-Phlx-2003-21) (notice of filing and immediate effectiveness regarding adoption of Rule 1107A). See also disclaimers and limitation of liability at NYSE Amex (formerly “AMEX”) Rule 902C and at CBOE Rule 24.14.

The proposed rule change expands the coverage of Rule 1107A to include the NASDAQ Internet Index<sup>SM</sup>.

The Exchange believes that its proposal to modify Rules 1101A and 1107A should encourage listing and trading options on the NASDAQ Internet Index<sup>SM</sup> at appropriate strike price intervals and should encourage maintenance of the index so that overlying options may be available for listing and trading, thereby expanding investment and hedging opportunities for investors and other market participants.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>10</sup> in particular, in that it 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by encouraging listing options on the NASDAQ Internet Index<sup>SM</sup> at appropriate strike price intervals and encouraging maintenance of the index so that options overlying the index may be available for trading and hedging.

### 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.

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

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.

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

The Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)<sup>11</sup> of the Act and Rule 19b-4(f)(6)(iii) thereunder<sup>12</sup> 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.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2010-49 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-2010-49. 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 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-2010-49 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>13</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).