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,[8] 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–EDGA–2010–14 and should be submitted on or before November 4, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–25743 Filed 10–13–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63040; File No. SR–NASDAQ–2010–128]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Requirements To Qualify for Credits as a Designated Liquidity Provider Under Rule 7018(i)

October 5, 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 October 1, 2010, The NASDAQ Stock Market LLC ("NASDAQ") 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 NASDAQ. 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 the Substance of the Proposed Rule Change

NASDAQ proposes to modify the requirements to qualify for credits as a designated liquidity provider under Rule 7018(i) and to make a minor technical change. NASDAQ will implement the proposed change on October 1, 2010. The text of the proposed rule change is below. Proposed new language is *italicized*. Deleted language is **[**bracketed**]**.

* * * * *

7018. Nasdaq Market Center Order Execution and Routing

(a)–(h) No change.

(i) Notwithstanding the foregoing, the following charges shall apply to transactions in a Qualified Security by one of its Designated Liquidity Providers:

Charge to Designated Liquidity Provider entering Order that executes in the Nasdaq Market Center or attempts to execute in the Nasdaq Market Center prior to routing:	$0.003 per share executed for securities priced at $1 or more per share (For securities priced at less than $1 per share, the normal execution fee under 7018(a) will apply).
Credit to Designated Liquidity Provider providing *displayed* liquidity through the Nasdaq Market Center:	$0.004 per share executed (or $0, in the case of executions against Quotes/Orders in the Nasdaq Market Center at less than $1.00 per share), *up to 10 million shares average daily volume. Normal credits under 7018(a) apply to shares greater than 10 million average daily volume and non-displayed liquidity.*

For purposes of this paragraph:

(1) A security may be designated as a "Qualified Security" if:

(A) it is an exchange-traded fund or index-linked security listed on Nasdaq pursuant to Nasdaq Rules 5705, 5710, or 5720;

(B) **[**there has been no time at which its average daily volume on Nasdaq has exceeded 10,000,000 shares during two calendar months of any three calendar-month period; and

(C)**]** it has at least one Designated Liquidity Provider.

[The security will cease to be a Qualified Security at the end of the second calendar month that causes the condition described in paragraph (B) not to be satisfied.**]**

(2) A "Designated Liquidity Provider" *or* "*DLP*" is a registered Nasdaq market maker for a Qualified Security that has committed to maintain minimum performance standards. **[**Designated Liquidity Providers**]***A DLP* shall be selected by Nasdaq based on factors including, but not limited to, experience with making markets in exchange-traded funds and index-linked securities, adequacy of capital, willingness to promote Nasdaq as a marketplace, issuer preference, operational capacity, support personnel, and history of adherence to Nasdaq rules and securities laws. Nasdaq may limit the number of Designated Liquidity Providers in a security, or modify a previously established limit, upon prior written notice to members.

The minimum performance standards applicable to a *DLP***[**Designated Liquidity Provider**]** may be determined from time to time by Nasdaq and may vary depending on the price, liquidity, and volatility of the Qualified Security in which the *DLP***[**Designated Liquidity Provider**]** is registered. The performance measurements will include (A) percent of time at the national best bid (best offer) ("NBBO"); (B) percent of executions better than the NBBO; (C) average displayed size; and (D) average quoted spread.

(3) If a DLP does not meet the performance measurements for a given month, fees and credits will revert to the normal schedule under 7018(a). If a DLP does not meet the stated performance measurements for 3 out of the past 4 months, the DLP is subject to forfeit of DLP status for that instrument, at NASDAQ's discretion. A DLP must provide 30 days written notice if it wishes to withdraw its registration in a Qualified Security.

(j) No change.

* * * * *

[8] The text of the proposed rule change is available on Exchange's Web site at *http://www.directedge.com,* on the Commission's Web site at *http://www.sec.gov,* at EDGA, and at the Commission's Public Reference Room.

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

In its filing with the Commission, NASDAQ 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. NASDAQ 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

NASDAQ is proposing to modify the criteria required of Designated Liquidity Providers to qualify for credits in transactions involving a Qualified Security.[3] Currently, a Designated Liquidity Provider ("DLP") may receive a credit of $0.004 per share executed (or $0, in the case of executions against Quotes/Orders in the Nasdaq Market Center at less than $1.00 per share) if it provides liquidity in a Qualified Security to the Nasdaq Market Center. A Qualified Security is defined by three criteria in Rule 7018(i)(1): (A) It must be an exchange-traded fund or index-linked security listed on Nasdaq pursuant to Nasdaq Rules 5705, 5710, or 5720; (B) there has been no time at which its average daily volume on Nasdaq has exceeded 10 million shares during two calendar months of any three calendar-month period; and (C) it has at least one Designated Liquidity Provider. A security will cease to be classified as a Qualified Security at the end of the second calendar month that causes the condition described in paragraph (B) not to be satisfied. NASDAQ is eliminating requirement "(B)" of the definition of Qualified Security together with related language under the rule, and will now permit DLPs to qualify for the credit in a Qualified Security with an average daily volume during the month of up to 10 million. Any average daily volume for the month in the Qualified Security in excess of 10 million would be assessed the standard rates found under Rule 7018(a). As such, a DLP will be able to receive the higher $0.004 credit on up to 10 million shares of average daily volume per month in a Qualified Security, even if the DLP exceeds 10 million in average daily volume in a given month.

NASDAQ is also limiting the availability of the credit to only DLPs providing displayed liquidity through the Nasdaq Market Center. A primary purpose of the credit program in Qualified Securities is to promote an active and liquid trading market in ETFs and ILSs. As currently written, however, Rule 7018(i) provides a credit for any type of liquidity provided by a DLP, even if the liquidity is not-displayed and thus not promoting price discovery through active public display. NASDAQ believes that the program should only award DLPs that make markets in a Qualified Security by providing displayed liquidity.

NASDAQ is adding new rule text describing the consequences of failing to meet the DLP minimum performance criteria described in Rule 7018(i)(2). The minimum performance standards applicable to a DLP are determined by NASDAQ and may vary depending on the price, liquidity, and volatility of a particular Qualified Security. These performance measurements include: (A) Percent of time at the NBBO; (B) percent of executions better than the NBBO; (C) average displayed size; and (D) average quoted spread. NASDAQ may remove DLPs that do not meet performance standards, or that decide to change their status, at any time. NASDAQ is providing clarifying information regarding the consequences of failing to meet the minimum performance standards. Specifically, if a DLP fails to meet minimum performance standards in a given month, fees will revert to the standard schedule of fees and credits under Rule 7018(a). If a DLP fails to meet minimum performance standards for three out of the past four months, it will lose DLP status for that instrument. NASDAQ is imposing a thirty-day prior notice obligation on DLPs seeking to withdraw registration in a Qualified Security. This thirty-day notice requirement will ensure that NASDAQ has adequate time to assign a new DLP, thus avoiding any disruption in market quality that may be caused by the absence of an assigned DLP.

Last, NASDAQ is making a non-substantive technical change to the rule by providing the acronym "DLP" as an alternative to "Designated Liquidity Provider" for use in the rule text.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and Section 6(b)(4) of the Act,[5] in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that NASDAQ operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers. NASDAQ believes that by allocating pricing benefits to market makers that make tangible commitments to enhancing market quality for ETFs and ILSs listed on NASDAQ, the proposal will encourage the development of new financial products, provide a better trading environment for investors in ETFs and ILSs, and encourage greater competition between listing venues for ETFs and ILSs. The changes proposed herein are designed to further promote liquid markets in ETFs and ILSs, and to ensure that DLPs are provided adequate incentives to continue to meet minimum standards to participate in the credit program.

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

NASDAQ believes that the proposed rule change will encourage greater competition among venues that list ETFs and ILSs, and will further strengthen the quality of the NASDAQ market as a venue for transactions in ETFs and ILSs. Accordingly, NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[6] 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

[3] The Designated Liquidity Provider pricing incentive program was implemented in August 2007. *See* Securities Exchange Act Release No. 56130 (July 25, 2007), 72 FR 42163 (August 1, 2007) (SR–NASDAQ–2007–061).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(a)(ii).

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.* Please include File Number SR–NASDAQ–2010–128 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–NASDAQ–2010–128. 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 website 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–NASDAQ–2010–128, and should be submitted on or before November 4, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–25741 Filed 10–13–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63051; File No. SR–Phlx–2010–135]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Collars for Unpriced Orders

October 6, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on September 29, 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 4751 to include system functionality that will cancel any portion of an unpriced order submitted to NASDAQ OMX PSX ("PSX") that would execute at a price that is more than $0.25 or 5 percent worse than the national best bid and offer at the time the order initially reaches the Exchange, whichever is greater. 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.

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 purpose of the proposed rule change is to protect market participants by reducing the risk that unpriced orders, also known as market orders, will execute at prices that are significantly worse than the national best bid and offer ("NBBO") at the time the Exchange receives the order.[3] The Exchange believes that most market participants expect that their order will be executed at its full size at a price reasonably related to the prevailing market. However, participants may not be aware that there is insufficient liquidity at or near the NBBO to fill the entire order, particularly for more thinly-traded securities.

Prior to the launch of trading on PSX, the Exchange is proposing to implement functionality in its trading systems that would cancel any portion of unpriced orders that would execute on PSX at a price that is the greater of $0.25 or 5 percent worse than the NBBO at the time the Exchange receives the order. Unpriced orders that would be subject to this calculation and potential cancellation are defined in Phlx Rule 3301(f)(9) as "Unpriced Orders."

The following example illustrates how the Unpriced Order process would work. A market participant submits a Market Peg order to buy 500 shares. The NBBO is $6.00 bid by $6.05 offer, with 100 shares available on each side. PSX has 100 shares available at the $6.05 to sell at the offer price and also has reserve orders to sell 100 shares at $6.32 and 400 shares at $6.40. No other market center is publishing offers to sell the security at prices in the range of $6.05 to $6.40.

In this example, the Unpriced Order would be executed in the following manner:

- 100 shares would be executed by PSX at the $6.05;
- 100 shares would be executed by PSX at $6.32 (more than $0.25 but less than 5 percent worse than the NBBO); and
- 200 shares, representing the remainder of the Unpriced Order, would be cancelled because the remaining

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] It should be noted that the circumstances under which it is possible to enter a market order in PSX are limited to market peg orders that are entered when PSX has some liquidity at the NBBO on the side of the market to which the order pegs.