contributions and prohibitions on municipal advisory activities); (ii) proposed amendments that would make conforming changes to MSRB Rules G–8 (on books and records), G–9 (on preservation of records), and G–37 (on political contributions and prohibitions on municipal securities business); (iii) proposed Form G–37/G–42 and Form G–37x/G–42x; and (iv) a proposed restatement of a Rule G–37 interpretive notice issued by the MSRB in 1997. Notice of the proposed rule change was published in the **Federal Register** on September 9, 2011.[3] The Commission received no comments on the proposed rule change. On September 9, 2011, the MSRB withdrew the proposed rule change (SR–MSRB–2011–12).[4]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25189 Filed 9–29–11; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* Securities Exchange Act Release No. 65255 (September 2, 2011), 76 FR 55976.

[4] *See* MSRB Notice 2011–51 (September 12, 2011).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65397; File No. SR–MSRB–2011–14]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Withdrawal of Proposed Rule G–36, on Fiduciary Duty of Municipal Advisors, and a Proposed Interpretive Notice Concerning the Application of Proposed Rule G–36 to Municipal Advisors

September 26, 2011.

On August 23, 2011, the Municipal Securities Rulemaking Board (the ''MSRB'') filed with the Securities and Exchange Commission (the ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] consisting of proposed Rule G–36 (on fiduciary duty of municipal advisors) and a proposed interpretive notice concerning the application of proposed Rule G–36 to municipal advisors. Notice of the proposed rule change was published in the **Federal Register** on September 12, 2011.[3] The Commission received no comments on the proposed rule change. On September 9, 2011, the MSRB withdrew the proposed rule change (SR–MSRB–2011–14).[4]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25191 Filed 9–29–11; 8:45 am]

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

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 65282 (September 7, 2011), 76 FR 56254.

[4] *See* MSRB Notice 2011–51 (September 12, 2011).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65399; File No. SR–Phlx–2011–111]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Approving a Proposed Rule Change Requesting Permanent Approval of the Pilot Program Permitting NASDAQ OMX PHLX to Receive Inbound Routes by NOS

September 26, 2011.

I. Introduction

On August 8, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change requesting permanent approval of the Exchange's pilot program to permit the Exchange to accept certain inbound orders that Nasdaq Options Services, LLC (''NOS'') routes from Nasdaq Options Market (''NOM''). The proposed rule change was published for comment in the **Federal Register** on August 19, 2011.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Background

Exchange Rule 985(b) prohibits the Exchange or any entity with which it is affiliated from, directly or indirectly, acquiring or maintaining an ownership interest in, or engaging in a business venture with, an Exchange member or an affiliate of an Exchange member in the absence of an effective filing under Section 19(b) of the Exchange Act.[4] NOS is a broker-dealer that is a member of the Exchange, and currently provides to members of The NASDAQ Stock Market LLC (''Nasdaq'') that are NOM participants optional routing services to other market centers.[5] NOS is owned by The NASDAQ OMX Group, Inc. (''NASDAQ OMX''), which also owns three registered securities exchanges—Nasdaq, the Exchange, and NASDAQ OMX BX, Inc.[6] Thus, NOS is an affiliate of each of these exchanges. Absent an effective filing, Exchange Rule 985(b) would prohibit NOS from being a member of the Exchange.

On July 17, 2008, in connection with the acquisition of the Exchange by NASDAQ OMX, the Commission approved an affiliation between the Exchange and NOS for the limited purpose of permitting NOS to provide routing services for Nasdaq for orders that first attempt to access liquidity on Nasdaq's system before routing to the Exchange, subject to certain other limitations and conditions.[7] On February 26, 2010, the Exchange filed an immediately effective proposed rule change to modify the conditions for the affiliation between NOS and the Exchange, to permit the Exchange to receive certain orders routed by NOS from NOM without first checking the NOM book for liquidity on a one-year pilot basis.[8] Specifically, the Exchange proposed to permit NOS to route from NOM Exchange Direct Orders and orders in NOM Non-System Securities (including Exchange Direct Orders).[9]

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65135 (August 15, 2011), 76 FR 52030 (''Notice'').

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

[5] NOS operates as a facility of Nasdaq that provides outbound routing from NOM to other market centers, subject to certain conditions. *See* NOM Rules Chapter VI, Section 11(e).

[6] *See* Securities Exchange Act Release No. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR–Phlx–2008–31) (''Phlx Approval Order''). *See also* Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR–BSE–2008–02; SR–BSE–2008–23; SR–BSE–2008–25; SR–BSECC–2008–01).

[7] *See* Phlx Approval Order, 73 FR at 42887.

[8] *See* Securities Exchange Act Release No. 61667 (March 5, 2010), 75 FR 11964 (March 12, 2010) (SR–Phlx–2010–36) (''Phlx Routing Pilot Release''). The inbound routing pilot was subsequently extended and is set to expire on November 25, 2011. *See* Securities Exchange Act Release Nos. 63873 (February 9, 2011), 76 FR 8798 (February 15, 2011) (SR–Phlx–2011–16); and 65140 (August 16, 2011) 76 FR 52374 (August 22, 2011) (SR–Phlx–2011–116).

[9] NOS provides to NOM participants routing services to other market centers. Pursuant to Nasdaq's rules, NOS: (1) Routes orders in options currently trading on NOM, referred to as ''System Securities;'' and (2) routes orders in options that are not currently trading on NOM (''Non-System Securities''). *See* NOM Rules, Chapter VI, Section 1(b) and 11. When routing Non-System Securities, NOS is not regulated as a facility of Nasdaq, but as a broker-dealer regulated by its designated

Continued

The Exchange now seeks permanent approval of this inbound routing pilot.[10]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[12] which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the Exchange. Further, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[13] which requires, among other things, that the rules of a national securities exchange be 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, and 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. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange of which it is a member, the Exchange previously proposed, and the Commission approved, limitations and conditions on NOS's affiliation with the Exchange.[14] Also recognizing that the Commission has expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange previously implemented limitations and conditions to NOS's affiliation with the Exchange to permit the Exchange to accept orders routed inbound to Phlx by NOS from NOM that do not first attempt to access liquidity on the NOM book.[15] The Exchange states it has met these conditions:[16]

- First, the Exchange and FINRA have entered into a regulatory services agreement (''Regulatory Contract'') pursuant to which FINRA has been allocated regulatory responsibilities to review NOS's compliance with the Exchange's rules through FINRA's examination program.[17] The Exchange, however, retained ultimate responsibility for enforcing its rules with respect to NOS except to the extent that they are covered by an agreement with FINRA pursuant to Rule 17d–2 under the Act,[18] in which case FINRA is allocated regulatory responsibility.
- Second, FINRA and the Exchange will monitor NOS for compliance with Phlx's trading rules, and collect and maintain certain related information;[19]
- Third, FINRA will provide a report to the Exchange's Chief Regulatory Officer (''CRO''), on at least a quarterly basis, that: (i) Quantifies all alerts (of which the Exchange and FINRA become aware) that identify NOS as a participant that has potentially violated Commission or Exchange rules and (ii) quantifies the number of investigations that identify NOS as a participant that has potentially violated Exchange or Commission Rules;[20]
- Fourth, the Exchange adopted Rule 985(c), which requires NASDAQ OMX, as the holding company owning NOS and the Exchange, to establish and maintain procedures and internal controls reasonably designed to ensure that NOS does not develop or implement changes to its system on the basis of non-public information regarding planned changes to the Exchange's systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange members in connection with the provision of inbound routing to the Exchange;[21] and
- Fifth, the Exchange proposed that NOS be authorized to route (1) Exchange Direct Orders without checking the NOM book and (2) orders in NOM non-system securities inbound to the Exchange from NOM for a pilot period of twelve months, as further extended to November 25, 2011.[22]

The Exchange believes that by meeting the above-listed conditions it has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NOS, and has demonstrated that NOS cannot use any information advantage it may have because of its affiliation with the Exchange.[23]

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.[24] Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit NOS to provide inbound routing to the Exchange on a permanent basis instead of a pilot basis, subject to the other conditions described above.[25]

examining authority. *See also* Phlx Routing Pilot Release, 75 FR at 11964. ''Exchange Direct Orders'' are orders that are directed to an exchange other than NOM as directed by the entering party without checking the NOM book. *See* NOM Rules Chapter VI, Section 1(e)(7).

[10] *See* Notice.

[11] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(1).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Phlx Approval Order, 73 FR at 42886–42887.

[15] *See* Phlx Routing Pilot Release.

[16] *See* Notice, 76 FR at 52031.

[17] The Exchange also states that NOS is subject to independent oversight by FINRA, its Designated Examining Authority, for compliance with financial responsibility requirements. *See* Notice, 76 FR at 52031, n.9.

[18] 17 CFR 240.17d–2.

[19] Pursuant to the Regulatory Contract, both the Exchange and FINRA will collect and maintain all alerts, complaints, investigations and enforcement actions in which NOS (in routing orders to the Exchange) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The Exchange and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission's Office of Compliance Inspections and Examinations. *See* Notice, 76 FR at 52031, n.11.

[20] *See id.*

[21] *See* Phlx Rule 985(c)(1). *See also* Notice, 76 FR at 52031.

[22] *See* Notice, 76 FR at 52031. *See also* supra note 8.

[23] *See* Notice, 76 FR at 52031–52032.

[24] *See, e.g.,* Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR–NASDAQ–2006–006) (order approving Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 8, 2008) (SR–Amex–2008–62) (order approving the combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR–ISE–2009–85) (order approving the purchase by ISE Holdings of an ownership interest in DirectEdge Holdings LLC); and 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR–NYSE–2008–120) (order approving a joint venture between NYSE and BIDS Holdings L.P.).

[25] The Commission notes that it recently issued an order granting permanent approval of NASDAQ

The Exchange has proposed four ongoing conditions applicable to NOS's routing activities, which are enumerated above. The Commission believes that these conditions mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that FINRA's oversight of NOS,[26] combined with FINRA's monitoring of NOS's compliance with the Exchange's rules and quarterly reporting to Phlx's CRO, will help to protect the independence of the Exchange's regulatory responsibilities with respect to NOS.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule change (SR–Phlx–2011–111) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25193 Filed 9–29–11; 8:45 am]

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OMX BX, Inc.'s pilot program permitting Boston Options Exchange to accept inbound routes by NOS of (1) NOM Exchange Direct Orders without checking the NOM book prior to routing, and (2) NOM non-system securities orders, including Exchange Direct Orders that NOS routes from NOM. *See* Securities Exchange Act Release No. 65199 (August 25, 2011), 76 FR 54277 (August 31, 2011) (SR–BX–2011–045).

[26] This oversight will be accomplished through the Regulatory Contract between the Exchange and FINRA, and, as applicable, a 17d–2 Agreement.

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65400; File No. SR–NYSEArca–2011–53]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change To Reflect a Change to the Benchmark Index Applicable to the Russell Equity ETF

September 26, 2011.

I. Introduction

On August 3, 2011, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to reflect a change to the benchmark index applicable to the Russell Equity ETF (''Fund,'' formerly known as the ''One Fund''). The proposed rule change was published for comment in the **Federal Register** on August 24, 2011.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Commission previously approved the listing and trading on the Exchange of shares (''Shares'') of ''One Fund,'' a series of U.S. One Trust, under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares.[4] On February 23, 2011, Frank Russell Company (''Russell'') acquired U.S. One, Inc., the previous investment adviser for the Fund, and the Fund's investment adviser became Russell Investment Management Company (''Adviser'').[5] In addition, as of April 15, 2011, the name of ''One Fund'' was changed to Russell Equity ETF, and the name of U.S. One Trust was changed to Russell Exchange Traded Funds Trust (''Trust''). Further, on or about May 2, 2011, the custodian, transfer agent, and administrator for the Fund changed from The Bank of New York to State Street Bank and Trust Company. These administrative changes were implemented as a result of the acquisition by Russell of U.S. One, Inc. The Exchange states that the shareholders of the Fund were notified of the changes to the Fund's name, the Trust's name, the Fund's investment adviser, and the custodian, transfer agent, and administrator in the updated Fund prospectus, dated April 29, 2011, included in the Fund's annual prospectus mailing to shareholders.[6] In this proposed rule change, the Exchange proposes to reflect a change to the benchmark index applicable to the Fund.[7]

As a result of the acquisition of U.S. One, Inc. by Russell, the Fund seeks to change its underlying benchmark to the Russell Developed Large Cap Index (''Index'') from the Fund's current benchmark, the S&P 500 Index.[8] The Index offers investors access to the large-cap segment of the developed equity universe representing approximately 75.4% of the global equity market. The Index includes the largest securities in the Russell Developed Index. As of May 31, 2010, the Index included 2,372 securities in 25 developed countries, with a market capitalization ranging from $238 billion to $1.3 billion; the weighted average market capitalization of Index components was $54.7 billion; and the largest three Index securities and associated Index weights were Exxon Mobil (1.58%); Apple Inc. (1.17%); and Chevron Corp. (0.79%). The current benchmark, the S&P 500 Index, includes 500 leading companies in leading industries of the U.S. economy, capturing 75% coverage of U.S. equities. It focuses on large capitalization securities and represents approximately 75% of the U.S. market capitalization. A committee determines the securities included based on a set of published guidelines. The Index includes the Russell 1000®, which represents 90% of U.S. market capitalization. It also includes an additional 1,372 securities which, as of May 31, 2010, were listed in other developed countries. The Adviser represents that the investment objective of the Fund has not changed, the Index more accurately represents the investment strategy of the Fund, and the change to the Fund's benchmark will not impact the investment objective or

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65161 (August 18, 2011), 76 FR 53004 (''Notice'').

[4] *See* Securities Exchange Act Release No. 61843 (April 5, 2010), 75 FR 18558 (April 12, 2010) (SR–NYSEArca–2010–12) (''One Fund Order''). *See also* Securities Exchange Act Release No. 61689 (March 11, 2010), 75 FR 13181 (March 18, 2010) (SR–NYSEArca–2010–12) (''One Fund Notice,'' and together with the One Fund Order, collectively, the ''One Fund Release'').

[5] The Exchange represents that the Adviser is affiliated with multiple broker-dealers and has implemented a ''fire wall'' with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio, and will continue to be in compliance with Commentary .06 to NYSE Arca Equities Rule 8.600. In the event (a) the Adviser or any sub-adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

[6] *See* Post-Effective Amendment No. 5 to Form N–1A for the Trust, dated April 29, 2011 (File Nos. 333–160877; 811–22320) (''Registration Statement''). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (''1940 Act''). *See* Investment Company Act Release No. 29164 (March 1, 2010) (File No. 812–13815 and 812–13658–01) (''Exemptive Order'').

[7] The Adviser represents that, for one year following implementation of the change to the benchmark index, materials issued by the Fund relating to Fund performance, including materials posted on the Fund's Web site (*http://www.russelletfs.com*), will reference both the current benchmark and the new benchmark index, in accordance with Item 27(b)(7) of Form N–1A under the 1940 Act. The Adviser represents that the benchmark index change will be referenced on Russell's Web site, and that the quarterly fact sheet for the Fund, available on the Fund's Web site, will reference the current benchmark and the new benchmark index for one year.

[8] The change to the Fund's benchmark Index will be effective upon filing with the Commission of an amendment to the Trust's Registration Statement.