

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34–56145A; File No. SR–NASD–2007–023]

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.); Order Approving Proposed Rule Change To Amend the By-Laws of NASD To Implement Governance and Related Changes To Accommodate the Consolidation of the Member Firm Regulatory Functions of NASD and NYSE Regulation, Inc.**

May 30, 2008.

**Amended**

In Part V of Securities Exchange Act Release No. 56145 (“Release No. 34–56145”), issued July 26, 2007,<sup>1</sup> the Securities and Exchange Commission (“Commission”) is adding, immediately after the following sentence:

Accordingly, after reviewing the record in this matter, the Commission believes that NASD has provided sufficient basis on which the Commission can find that, under the Exchange Act, NASD complied with its Certificate of Incorporation and By-Laws with respect to the proxy approval process and that the proposed amendments to its By-Laws were properly approved by NASD members.

the following paragraph:

This finding as to NASD compliance and members’ approval is not a definitive adjudication under state law, such as a trial court would make after an evidentiary hearing, regarding the claim that the proxy statement was misleading. Except to the extent that state law informs the Commission’s finding that, as a federal matter under the Exchange Act, NASD complied with its Certificate of Incorporation and By-Laws with respect to the proxy approval process and that the proposed amendments to its By-Laws were properly approved by NASD members, the Commission is not purporting to decide a question of state law. The Commission does not intend that its determination regarding the NASD’s uncontradicted prima facie showing before the Commission that the proxy statement was not misleading be binding on a court in a claim based on state law.

In adding this clarifying language, the Commission is not vacating, nullifying or rendering void Release No. 34–56145, which approved NASD’s proposed rule change to amend the By-Laws of NASD to implement governance and related changes to accommodate the consolidation of the member firm

regulatory functions of NASD and NYSE Regulation, Inc. Release No. 34–56145, as amended herein, remains in effect as of July 26, 2007, the date it was issued by the Commission.

By the Commission.  
 Florence E. Harmon,  
*Acting Secretary.*  
 [FR Doc. E8–12631 Filed 6–5–08; 8:45 am]  
 BILLING CODE 8010–01–P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34–57906; File No. SR–NYSEArca–2008–40]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of Shares of the NETS Tokyo Stock Exchange REIT Index Fund**

June 2, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on May 22, 2008, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (“NYSE Arca Equities”), 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 substantially 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 list and trade shares (“Shares”) of the NETS™ Tokyo Stock Exchange REIT Index Fund (“Fund”) issued by the NETS Trust (“Trust”). The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and <http://www.nyse.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 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 Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 5.2(j)(3), the Exchange’s listing standards for Investment Company Units (“ICUs”).<sup>3</sup>

The Fund seeks to provide investment results that correspond generally to the price and yield performance, before fees and expenses, of publicly-traded securities in the aggregate in the Japanese market, as represented by the Tokyo Stock Exchange REIT Index (“Underlying Index” or “Index”). The Underlying Index is a market capitalization weighted index consisting of stocks of all of the real estate investment trusts traded primarily on the Tokyo Stock Exchange.

The Exchange is submitting this proposed rule change because the Underlying Index does not meet all of the “generic” listing requirements of Commentary .01(a)(B) to NYSE Arca Equities Rule 5.2(j)(3) applicable to listing of ICUs based on international or global indexes. The Underlying Index meets all such requirements except for those set forth in Commentary .01(a)(B)(2).<sup>4</sup> The Exchange represents that: (1) Except for Commentary .01(a)(B)(2) to NYSE Arca Equities Rule 5.2(j)(3), the Shares currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3); (2) the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to ICUs shall apply to the Shares; and (3) the Trust is required to comply with Rule 10A–3<sup>5</sup> under the Act for the initial and continued listing of the Shares. In addition, the Exchange represents that

<sup>3</sup> An Investment Company Unit is a security that represents an interest in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities). See NYSE Arca Equities Rule 5.2(j)(3)(A).

<sup>4</sup> Commentary .01(a)(B)(2) to NYSE Arca Equities Rule 5.2(j)(3) provides that component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares.

<sup>5</sup> 17 CFR 240.10A–3.

<sup>1</sup> See Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007) (FR Doc. E7–14855).

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

<sup>2</sup> 17 CFR 240.19b–4.

the Shares will comply with all other requirements applicable to ICUs including, but not limited to, requirements relating to the dissemination of key information such as the Index value and Intraday Indicative Value, rules governing the trading of equity securities, trading hours, trading halts, surveillance, and Information Bulletin to ETP Holders, as set forth in prior Commission orders approving the generic listing rules applicable to the listing and trading of ICUs.<sup>6</sup>

As of April 11, 2008, there were 41 stocks in the Index. For the period of October 2007 up to and including March 2008, component stocks that in the aggregate accounted for at least 90% of the weight of the Index had a minimum worldwide monthly trading volume of 2,918 shares.<sup>7</sup>

In view of the high average price of the Index component stocks, as noted above, the Exchange believes it is appropriate to use global notional volume traded (number of shares traded multiplied by price of security) as a measure of the trading activity of such stocks. For the period of October 2007 up to and including March 2008, component stocks that in the aggregate accounted for 93.42% of the weight of the Index each had global notional volume traded per month of at least \$25,000,000, averaged over the last six months. The Exchange believes that averaged notional volume traded is an appropriate measure of the liquidity of component stocks of the Index. Specifically, notional volume nullifies

the volume discrepancies that generally occur between low priced and high priced stocks<sup>8</sup> and averaging the volume and notional volume over a specific time period (e.g., six months) eliminates seasonal volume fluctuations that may occur in the trading volume of a particular underlying security represented in an index.

Detailed descriptions of the Fund, the Underlying Index, procedures for creating and redeeming Shares, transaction fees and expenses, dividends, distributions, taxes, and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statement<sup>9</sup> or on the Web site for the Fund (<http://www.netsetfs.com>), as applicable.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and Section 6(b)(5) of the Act,<sup>11</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 mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

The Exchange 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.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange states that written comments on the proposed rule change were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2008-40 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2008-40. 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 inspection and copying 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

<sup>6</sup> See, e.g., Securities Exchange Act Release Nos. 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR-NYSEArca-2006-86) (approving generic listing standards for ICUs based on international or global indexes); 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR-PCX-2001-14) (approving generic listing standards for ICUs and Portfolio Depositary Receipts); and 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR-PCX-98-29) (approving rules for the listing and trading of ICUs). See also email from Michael Cavalier, Associate General Counsel, NYSE Euronext, to Christopher W. Chow, Special Counsel, Commission, dated June 2, 2008.

<sup>7</sup> During the same period, component stocks that in the aggregate accounted for at least 90% of the weight of the Index had an average worldwide monthly trading volume of 16,693 shares. The Exchange notes, however, that the average price of the Index stocks was extremely high compared to prices of stocks included in index ETFs generally. As of March 31, 2008, the average price of the stocks in the Index was approximately \$5,350. The total market capitalization of the Index stocks was \$42,391,307,254 and the average market capitalization of the Index stocks was \$1,033,934,323. The average market capitalization of the Index stocks in the top 70% of the Index weight was \$2,015,574,320. There were 15 stocks in the bottom 10% weight of the Index. The highest weighted stock was Nippon Building Fund Inc. REIT, which accounted for 16.25% of the Index weight.

<sup>8</sup> For example, a stock priced at \$10 per share that trades 2,500,000 shares in a month has a notional volume of \$25,000,000. Conversely, a stock priced at \$100 per share that trades 250,000 shares in a month has a notional volume of \$25,000,000.

<sup>9</sup> See the Trust's Registration Statement on Form N-1A, dated February 13, 2008 (File Nos. 333-147077 and 811-22140) ("Registration Statement").

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

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-NYSEArca-2008-40 and should be submitted on or before June 27, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**  
*Acting Secretary.*

[FR Doc. E8-12705 Filed 6-5-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57899; File No. SR-Phlx-2008-40]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Disclaimer of Warranties and the Listing of \$2.50 Strikes for Options on the SIG KCI Coal Index™

June 2, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 23, 2008, the Philadelphia Stock Exchange, Inc. (“Phlx” or “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 substantially prepared by Phlx. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act <sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. 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

Phlx proposes to add the SIG KCI Coal Index™ (“SIG KCI Coal Index” or

“Index”) to Phlx Rule 1101A, Terms of Options Contracts, regarding listing options at strike price intervals of \$2.50 or greater and to Phlx Rule 1104A, SIG Indices, LLLP, regarding disclaimer of express or implied warranties.<sup>5</sup> The text of the proposed rule change is available at Phlx’s principal office, the Commission’s Public Reference Room, and <http://www.phlx.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, Phlx 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

The purpose of the proposed rule change is to amend Phlx Rules 1101A and 1104A to include the SIG KCI Coal Index that was recently licensed by SIG Indices, LLLP (“Susquehanna”) to the Exchange, which would enable the Exchange to list the index at \$2.50 or greater strike price intervals and limit Susquehanna’s liability with respect to the Index. This proposal should encourage listing such options at appropriate strike price intervals to the benefit of investors and should encourage maintenance of the Index by Susquehanna so that options overlying the index may be available for trading.<sup>6</sup>

Phlx Rule 1101A currently indicates 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 Phlx 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.<sup>7</sup> The rule also provides that such options may be traded at \$2.50

strike price intervals in response to customer interest or specialist request. The proposed rule change adds the SIG KCI Coal Index to the list of indexes in Phlx Rule 1101A upon which the Exchange may list options at \$2.50 strike price intervals.

Phlx Rule 1104A currently provides that Susquehanna makes no warranty, express or implied, as to results to be obtained by any person or entity from the use of Susquehanna proprietary indexes,<sup>8</sup> and that Susquehanna makes no express or implied warranties of merchantability or fitness for a particular purpose for use with respect to any of the named indexes or any data included therein.<sup>9</sup> The proposed rule change expands the coverage of Phlx Rule 1104A to include the Index, as required by the License Agreement.

The Exchange believes that the proposal should benefit investors by effectively encouraging the listing and trading of options on an additional Susquehanna index at more precise strike price intervals, thereby expanding the availability of appropriate investment choices for investors.

###### 2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>11</sup> in particular, in that it is designed 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 believes that the proposed rule change should

<sup>8</sup> The indexes noted in Phlx Rule 1101A include the SIG Investment Managers Index™, the SIG Cable, Media & Entertainment Index™, the SIG Casino Gaming Index™, the SIG Semiconductor Equipment Index™, the SIG Semiconductor Device Index™, the SIG Specialty Retail Index™, the SIG Steel Producers Index™, the SIG Footwear & Athletic Index™, the SIG Education Index™, the SIG Restaurant Index™, the SIG Coal Producers Index™, and the SIG Energy MLP Index™.

<sup>9</sup> The Exchange noted in its filing to adopt Phlx Rule 1104A that the proposed disclaimer was appropriate given that it was similar to disclaimer provisions of American Stock Exchange (“AMEX”) Rule 902C relating to indexes underlying options listed on that exchange. See Securities Exchange Act Release No. 48135 (July 7, 2003), 68 FR 42154 (July 16, 2003) (approving SR-Phlx-2003-21). The Exchange has proposed amendments similar to the current proposal to include a new index in Phlx Rule 1104A. See Securities Exchange Act Release No. 51664 (May 6, 2005), 70 FR 25641 (May 13, 2005) (SR-Phlx-2005-24).

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

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</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> 15 U.S.C. 78s(b)(3)(A)(iii).

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

<sup>5</sup> The SIG Indexes noted herein are trademarks of SIG Indices, LLLP.

<sup>6</sup> The Exchange has recently entered into a licensing agreement with Susquehanna that would, among other things, allow the Exchange to list and trade options on the SIG KCI Coal Index™ (“License Agreement”).

<sup>7</sup> See Securities Exchange Act Release No. 54973 (December 20, 2006), 71 FR 78252 (December 28, 2006) (SR-Phlx-2006-82).