

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57418; File No. SR-Phlx-2008-14)

March 3, 2008

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make Permanent a Pilot Program That Increases Position and Exercise Limits on Equity Options

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 February 28, 2008, the Philadelphia Stock Exchange, Inc. (“Exchange” or “Phlx”) 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 the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change 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

The Exchange seeks to make permanent an existing pilot program (the “Pilot Program”), the terms of which are set forth in Exchange Rule 1001 (Position Limits), which increases the standard position and exercise limits for equity option contracts, including options on the PowerShares QQQ Trust (“QQQQ”). The Pilot Program is scheduled to expire March 1, 2008.<sup>5</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> 15 U.S.C. 78s(b)(3)(A)(iii).

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

<sup>5</sup> See Securities Exchange Act Release Nos. 56267 (August 15, 2007), 72 FR 47114 (August 22, 2007) (SR-Phlx-2007-58); 55285 (February 13, 2007), 72 FR 8053 (February

The text of the proposed rule change is available on the Exchange's Web site (<http://www.phlx.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 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 proposed rule change is to make permanent the Pilot Program, which is scheduled to expire March 1, 2008. The Exchange proposes to amend Rule 1001, Position Limits, to permanently establish the increased position limits of the Pilot Program. Exchange Rule 1002, Exercise Limits (not proposed to be amended), establishes exercise limits for the corresponding options at the same levels as the corresponding security's position limits.<sup>6</sup>

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22, 2007) (SR-Phlx-2007-10); 54387 (August 30, 2006), 71 FR 52842 (September 7, 2006) (SR-Phlx-2006-48); 53388 (February 28, 2006), 71 FR 11458 (March 7, 2006) (SR-Phlx-2006-13); 52261 (August 15, 2005), 70 FR 49004 (August 22, 2005) (SR-Phlx-2005-51); and 51322 (March 4, 2005), 70 FR 12260 (March 11, 2005) (SR-Phlx-2005-17).

<sup>6</sup> Rule 1002 states, in relevant part, "[N]o member or member organization shall exercise, for any account in which such member or member organization has an interest or for the account of any partner, officer, director or employee thereof or for the account of any customer, a long position in any option contract of a class of options dealt in on the Exchange (or, respecting an option not dealt in on the Exchange, another exchange if the member or member organization is not a member of that exchange) if as a result thereof

### Standard Position and Exercise Limit

The Pilot Program increases the standard position and exercise limits for equity options traded on the Exchange and for options on the Powershares QQQ Trust (“QQQQ”). The standardized position limits were last increased nine years ago, on December 31, 1998.<sup>7</sup>

### Violations

The Exchange believes that any findings of violations regarding equity option position and exercise limits since the inception of the Pilot Program were deemed inadvertent—due primarily to miscounting, technical problems, or a misinterpretation of position limit calculation methodologies. No such violations were deemed to be a result of manipulative activities.

### Growth in the Options Market

Since the last increase in standardized position limits, there has been a significant increase in the overall volume of exchange-traded options. Part of this volume is attributable to a corresponding increase in the number of overall market participants. This growth in market participation has in turn brought about additional depth and increased liquidity in exchange-traded options.

### Manipulation

Since the last increase in standardized position limits, and throughout the duration of the Pilot Program, the Exchange has not encountered any regulatory issues regarding the applicable

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such member or member organization, or partner, officer, director or employee thereof or customer, acting alone or in concert with others, directly or indirectly, has or will have exercised within any five (5) consecutive business days aggregate long positions in that class (put or call) as set forth as the position limit in Rule 1001, in the case of options on a stock or on an Exchange-Traded Fund Share . . . .”

<sup>7</sup> See Securities Exchange Act Release No. 40875 (December 31, 1998), 64 FR 1842 (January 12, 1999) (SR-Phlx-98-36).

position limits, and states that there is a lack of evidence of market manipulation schemes, which justifies making permanent the Pilot Program.

As the anniversary of listed options trading approaches its 35<sup>th</sup> year, the Exchange believes that the existing surveillance procedures and reporting requirements at the Exchange, at other options exchanges, and at the several clearing firms are capable of properly identifying unusual and/or illegal trading activity. The Exchange's surveillance procedures include daily monitoring of market movements via automated surveillance techniques to identify unusual activities in both options and their underlying securities.

Accordingly, the Exchange represents that its surveillance procedures (which have been significantly enhanced since the last standardized position limit increase in 1999) and reporting procedures, in conjunction with the financial requirements and risk management review procedures already in place at the clearing firms and the Options Clearing Corporation, will serve to adequately address any concerns the Commission may have respecting account(s) engaging in manipulative schemes or assuming too high a level of risk exposure.

#### Financial Requirements

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address the concerns that a member or its customer may try to maintain an inordinately large unhedged position in an equity option.

#### Inability to Compete; Retreat to OTC Market

The Exchange expects continued options volume growth as opportunities for investors to participate in options markets increase and evolve. The Exchange also believes that the non-pilot position and exercise limits are restrictive, and returning to those limits will hamper fair and effective competition between the listed options markets and over-the-counter markets.

## No Adverse Consequences From Past Increases

Equity option position limits have been gradually expanded from 1,000 contracts in 1973 to the current level of 75,000 contracts for the largest and most actively traded equity options. To date, there have been no adverse effects on the markets as a result of these past increases in the position limits for equity option contracts.

### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>9</sup> in particular, in that it is designed to promote just and equitable principles of trade, 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, by seeking to make permanent the Pilot Program.

#### 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

No written comments were either solicited or received.

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

The Exchange has designated the proposed rule change as one that: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>11</sup> The Exchange notes that the proposed rule change is based on a similar proposal recently approved by the Commission.<sup>12</sup> The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing.

The Pilot Program was scheduled to expire on March 1, 2008. The Commission believes that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because it will allow the position and exercise limits to remain at consistent levels during the transition from the Pilot Program to permanent status.<sup>13</sup> Therefore, the Commission designates the proposal to be operative upon filing.

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

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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 of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

<sup>12</sup> See Securities Exchange Act Release No. 57352 (February 19, 2008), 73 FR 10076 (February 25, 2008) (SR-CBOE-2008-07).

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

#### 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 No. SR-Phlx-2008-14 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-Phlx-2008-14. 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 10:00 a.m. and 3:00 p.m. Copies of such 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-2008-14 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).