

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57834; File No. SR-Phlx-2008-33)

May 19, 2008

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Equity Linked Notes

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 2, 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 prepared substantially by the Exchange. On May 16, 2008, the Exchange submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is granting accelerated approval to the proposed rule change.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 803(h) to clarify that the listing and trading of Equity Linked Notes (“ELNs”) on the Exchange is subject to Rule 19b-4(e) under the Act.<sup>3</sup> The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.phlx.com](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,

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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(e).

and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Phlx 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 states that the purpose of the proposed rule change is to clarify that the listing and trading of ELNs on the Exchange is subject to Rule 19b-4(e) under the Act. Rule 19b-4(e) under the Act permits an exchange to list and trade a new derivative securities product, such as an ELN, without filing a proposed rule change on Form 19b-4, if the exchange has, among other things, listing standards for the product class.<sup>4</sup> Rule 19b-4(e) further provides that an exchange shall file Form 19b-4(e) within five business days after commencement of trading a new derivative securities product. Therefore, upon the acceptance of an ELN for listing and trading on the Exchange pursuant to the listing standards in Rule 803(h), Phlx will file a Form 19b-4(e) with the Commission within five business days after the commencement of trading.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>5</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5),<sup>6</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to

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<sup>4</sup> See 17 CFR 240.19b-4(e)(1). Phlx Rule 803(h) contains the listing standards for ELNs.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

protect investors and the public interest, by clarifying that the listing and trading of ELNs on the Exchange is subject to Rule 19b-4(e) under the Act.

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. 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 ([www.sec.gov/rules/sro.shtml](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-Phlx-2008-33 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-2008-33. 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 ([www.sec.gov/rules/sro.shtml](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 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-2008-33 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, 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.<sup>7</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, 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.

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<sup>7</sup> In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

The Commission finds good cause for approving this proposal before the 30th day after the publication of notice thereof in the Federal Register. The proposal seeks to clarify that the Exchange's listing and trading of ELNs under Rule 803(h) is subject to Rule 19b-4(e) under the Act. The Commission does not believe that this clarification raises any novel regulatory issues. Therefore, the Commission believes that accelerating approval of this proposal is appropriate and would ensure that the Exchange's rules clearly reflect the standards for listing and trading of ELNs and conform the Phlx's rules to those of other exchanges without delay.<sup>9</sup>

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<sup>9</sup> See e.g., Chicago Board Options Exchange Rule 31.5(I) and NYSE Arca Rule 5.2(j)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change, as amended (SR-Phlx-2008-33), be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).