

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57715; File No. SR-Phlx-2008-30)

April 25, 2008

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Criteria for Securities that Underlie Options Traded on the Exchange

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 April 24, 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 the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal 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 proposes to amend Phlx Rule 1009, Criteria for Underlying Securities, and Phlx Rule 1010, Withdrawal of Approval of Underlying Securities or Options, to permit the initial and continued listing and trading of options on Index Multiple Exchange Traded Fund Shares (“Index Multiple ETFs”) and Index Inverse Exchange Traded Fund Shares (“Index

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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).

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

Inverse ETFs”), and the listing and trading of options on shares of certain funds or trusts that hold specified non-U.S. currencies.

The text of the proposed rule change is available at the Exchange’s principal office, 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, 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. 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

An Index Multiple ETF seeks to provide investment results, before fees and expenses, that correspond to a specified multiple of the percentage performance on a given day of a particular foreign or domestic stock index. An Index Inverse ETF seeks to provide investment results, before fees and expenses, that correspond to the inverse (opposite) of the percentage performance on a given day of a particular foreign or domestic stock index by a specified multiple. Index Multiple ETFs and Index Inverse ETFs differ from traditional exchange-traded fund shares or “Units” in that they do not merely correspond to the performance of a given index, but rather attempt to match a multiple or inverse of such underlying index performance. The ProShares Ultra Funds, which currently trade on the American Stock Exchange (“Amex”), are

examples of Index Multiple ETFs. The ProShares Short Funds and the UltraShort Funds, which are also currently listed for trading on Amex, are examples of Index Inverse ETFs.<sup>5</sup>

To achieve investment results that provide either a positive multiple or inverse of the benchmark index, Index Multiple ETFs or Index Inverse ETFs may hold a combination of financial instruments, including, among other things: stock index futures contracts; options on futures; options on securities and indexes; equity caps, collars, and floors; swap agreements; forward contracts; repurchase agreements; and reverse repurchase agreements (collectively “Financial Instruments”). The underlying portfolio of an Index Multiple ETF generally will hold at least 85% of its assets in the component securities of the underlying relevant benchmark index. The remainder is devoted to Financial Instruments that are intended to create the additional exposure to the underlying index necessary to pursue its investment objective. Normally, 100% of the value of the portfolio underlying an Index Inverse ETF will be devoted to Financial Instruments and money market instruments, including U.S. government securities and repurchase agreements (“Money Market Instruments”).

#### Initial Listing Standards

Currently, Commentary .06 to Phlx Rule 1009 provides that securities deemed appropriate for options trading shall include shares or other securities (“Exchange-Traded Fund

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<sup>5</sup> The Ultra Funds are expected to gain, on a percentage basis, approximately twice (200%) as much as the underlying benchmark index and should lose approximately twice (200%) as much as the underlying benchmark index when such prices decline. The Short Funds are expected to achieve investment results, before fees and expenses, that correspond to the inverse or opposite of the daily performance (-100%) or an underlying benchmark index. Lastly, the UltraShort Funds are expected to achieve investment result, before fees and expenses, that correspond to twice the inverse or opposite of the daily performance (-200%) of the underlying benchmark index. See Securities Exchange Act Release Nos. 52553 (October 3, 2005), 70 FR 59100 (October 11, 2005) (SR-Amex-2004-62) (approving the listing and trading of Ultra Funds and Short Funds) and 54040 (June 23, 2006), 71 FR 37629 (June 30, 2006) (SR-Amex-2006-41) (approving the listing and trading of the UltraShort Funds).

Shares” or “ETFs”) that are traded on a national securities exchange or through the facilities of a national securities association and reported as a national market security, and that: (1) represent interests in a registered investment company organized as an open-end management investment company, a unit investment trust, or a similar entity that holds securities constituting or otherwise based on or representing investments in index or portfolio of securities; or (2) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts, and/or options on physical commodities and/or non-U.S. currency (“Commodity Pool ETFs”).

The Exchange proposes to amend Commentary .06 to Phlx Rule 1009 to include the listing and trading of options based on Index Multiple ETFs and Index Inverse ETFs that may hold or invest in any combination of securities, Financial Instruments, and/or Money Market Instruments. Index Multiple ETFs and Index Inverse ETFs must continue to otherwise satisfy the listing standards in Phlx Rule 1010. In addition, the Exchange proposes to make non-substantive, technical changes to Commentary .06 such as, for example, removal of the reference to a “national securities association” to conform Phlx’s rule to other options exchange rules.

The Exchange also proposes to modify Commentary .06 regarding interests in a fund or trust that holds a specified non-U.S. currency or currencies, and surveillance agreements in respect thereof, by conforming this part of the commentary to the rules of Amex, Chicago Board Options Exchange (“CBOE”), International Securities Exchange (“ISE”), and NYSE Arca.<sup>6</sup> Thus, Phlx proposes to amend its Commentary .06 at (iii) to expand the options that may be

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<sup>6</sup> See Commentary .06(ii) and (b)(iv) to Amex Rule 915; Interpretation and Policy .06(ii) and (D) to CBOE Rule 5.3; ISE Rule 502(h)(ii) and (h)(B)(4); NYSE Arca Rule 5.3(g). The Exchange notes that these rules are substantially similar to the rules being proposed by the Exchange in this filing.

listed on the Exchange to include options on a fund (trust) that represents an interest in a trust or other similar entity that holds specified non-U.S. currency or currencies deposited with the trust or similar entity (“Fund”). The Exchange is also proposing to require in Commentary .06 at (b)(v) that, for any Fund that holds specified non-U.S. currencies deposited with the trust, the Exchange will have entered into a comprehensive surveillance sharing agreement with the marketplace or marketplaces with last-sale reporting that represent(s) the highest volume in derivatives (options or futures) on the non-U.S. currency or currencies, which are utilized by the national securities exchange where the underlying Fund is listed and traded.

As set forth in proposed amended Commentary .06 to Phlx Rule 1009, an underlying Index Multiple ETF, Index Inverse ETF, or Fund must be traded on a national securities exchange and must be an “NMS stock” as defined under Rule 600 of Regulation NMS. In addition, an Index Multiple ETF, Index Inverse ETF, or Fund must meet either: (1) the criteria and guidelines under Commentary .01 to Phlx Rule 1009; or (2) be available for creation or redemption each business day in cash or in kind from the investment company, commodity pool, or other entity at a price related to net asset value. In addition, the investment company, commodity pool, or other entity shall provide that shares may be created even though some or all of the securities and/or cash (in lieu of the Financial Instruments) needed to be deposited have not been received by the unit investment trust or the management investment company, provided the authorized creation participant has undertaken to deliver the shares and/or cash as soon as possible and such undertaking has been secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the fund which underlies the option, as described in the prospectus.

## Continued Listing Standards

The Exchange states that its current continuing listing standards for options in its Rule 1010 will continue to apply.

The Exchange proposes to amend Commentary .08 to Phlx Rule 1010 to indicate that the index or portfolio underlying the ETF or fund on which an option is based may consist of various securities, Financial Instruments, and/or Money Market Instruments. The Exchange also seeks to delete the reference to “national securities association.” Under the applicable continued listing criteria in Commentary .08 to Phlx Rule 1010, options on ETFs may be subject to the suspension of opening transactions as follows: (1) following the initial 12-month period beginning upon the commencement of trading of the ETFs, there are fewer than 50 record and/or beneficial holders of the ETFs for 30 or more consecutive trading days; (2) the value of the index or portfolio of securities, non-U.S. currency, or portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts, and/or options on physical commodities, and/or Financial Instruments and Money Market Instruments on which ETFs are based is no longer calculated or available; or (3) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable.<sup>7</sup> Additionally, the Exchange proposes to clarify that the relevant instruments have to be an “NMS stock” under Rule 600 of Regulation NMS.

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<sup>7</sup> The Exchange will not open for trading any additional series of equity options already approved for trading that do not meet the requirements for continued approval and may determine to delist the entire class of options for inadequate volume. See Commentary .11 to Phlx Rule 1010.

The expansion of the types of investments that may be held by Index Multiple ETFs, Index Inverse ETFs, or Funds under Commentary .06 to Rule 1009 will not have any effect on the rules pertaining to position and exercise limits or margin.<sup>8</sup>

The Exchange believes that this proposal is necessary to enable the Exchange to list and trade options on the shares of the Ultra Fund, Short Fund, and UltraShort Fund of the ProShares Trust. The proposed amendment is also necessary to enable the Exchange to list and trade interests in Funds that hold specified non-U.S. currencies. The Exchange believes that the ability to trade options on these products would provide investors with greater risk management tools.

The Exchange represents that its existing surveillance procedures applicable to trading in options are adequate to properly monitor the trading in Index Multiple ETF options and Index Inverse ETF options and the trading of options on Funds that hold a specified non-U.S. currency or currencies.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</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 to protect investors and the public interest.

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<sup>8</sup> See Phlx Rule 1001, Position Limits; Phlx Rule 1002, Exercise Limits; Phlx Rule 722, Margin Limits.

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

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

The Exchange does not believe that the proposed rule change would 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>12</sup>

The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change as operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposed rule change is substantially similar to those of other options exchanges that have been previously approved by the Commission<sup>13</sup> and does not appear to present any

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). The Exchange has satisfied the five-day pre-filing requirement of Rule 19b-4(f)(6)(iii).

<sup>13</sup> See Securities Exchange Act Release Nos. 54983 (December 20, 2006), 71 FR 78476 (December 29, 2006)(Amex-2006-87); 56715 (October 29, 2007), 72 FR 62287 (November 2, 2007)(SR-CBOE-2007-119); 56871 (November 30, 2007), 72 FR 68924 (December 6, 2007)(SR-ISE-2007-87); and 57226 (January 29, 2008), 73 FR 6762 (February 5, 2008) (SR-NYSEArca-2008-03).



novel regulatory issues. Therefore, the Commission designates the proposal operative upon filing.<sup>14</sup>

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

#### 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-Phlx-2008-30 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-2008-30. 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

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<sup>14</sup> For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2008-30 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).