

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57224; File No. SR-Phlx-2008-03)

January 29, 2008

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Listing Standards for Index-Linked Securities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 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, II, and III below, which Items have been substantially prepared by the Exchange. Phlx filed the proposal pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ 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 803(n)(1) to permit the listing of Index-Linked Securities⁵ that do not meet the minimum public holders and/or public distribution requirements when such Index-Linked Securities are redeemable at the option of the holders

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes. Such securities may or may not provide for the repayment of the original principal investment amount. See Phlx Rule 803(n).

thereof on at least a weekly basis. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and 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 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 amend Phlx Rule 803(n), the Exchange's listing standards for Index-Linked Securities, to encourage trading of Index-Linked Securities on the Exchange. The Commission has recently approved a similar proposal by NYSE Arca, Inc. ("NYSE Arca").⁶

Phlx Rule 803(n)(1) generally requires that each issue of Index-Linked Securities have at least one million publicly traded units and that there be at least 400 public holders, provided, however, that the minimum public distribution and public shareholders requirements do not apply to an issue traded in thousand dollar denominations. In addition, Phlx Rule 803(n)(1) provides that the minimum public shareholders requirement does not apply if the Index-Linked Securities are redeemable at the option of the holders thereof on at least a weekly basis. The

⁶ Securities Exchange Act Release No. 56593 (October 1, 2007), 72 FR 57362 (October 9, 2007) (SR-NYSEArca-2007-96) (providing, among other things, that, if an issue of Index-Linked Securities are redeemable at the option of the holders thereof on at least a weekly basis, both the minimum one million publicly held trading units and 400 beneficial holders initial distribution requirements would not apply).

Exchange proposes to add another exception to the general requirements of Phlx Rule 803(n)(1) such that, if an issue of Index-Linked Securities are redeemable at the option of the holders thereof on at least a weekly basis, then both the minimum public holders and public distribution requirements would not apply.

The Exchange believes that, where there is such a weekly redemption right, the same justification exists for an exemption from the requirement to have one million units issued at the time of listing as applies to the 400 public holder requirement. The Exchange believes that a weekly redemption right will ensure a strong correlation between the market price of the Index-Linked Securities and the performance of the underlying index, as holders will be unlikely to sell their securities for less than their redemption value if they have a weekly right to be redeemed for their full value. In addition, in the case of those Index-Linked Securities with a weekly redemption feature that are currently listed on a national securities exchange, as well as all of those that are currently proposed to be listed, the issuer has the ability to issue new Index-Linked Securities from time to time at the indicative value at the time of such sale. The Exchange believes that this provides a ready supply of new Index-Linked Securities, thereby lessening the possibility that the market price of such securities would be affected by a scarcity of available Index-Linked Securities for sale. The Exchange believes that it also assists in maintaining a strong correlation between the market price and the indicative value, as investors will be unlikely to pay more than the indicative value in the open market if they can acquire Index-Linked Securities from the issuer at that price.

The Exchange believes that the ability to list Index-Linked Securities with these characteristics without any minimum number of units issued or holders is important to the successful listing of such securities. Issuers issuing these types of Index-Linked Securities

generally do not intend to do so by way of an underwritten offering. Rather, the distribution arrangement is analogous to that of an exchange-traded fund issuance, in that the issue is launched without any significant distribution event, and the float increases over time as investors purchase additional securities from the issuer at the then indicative value. Investors will generally seek to purchase the securities at a point when the underlying index is at a level that they perceive as providing an attractive growth opportunity. In the context of such a distribution arrangement, it is difficult for an issuer to guarantee its ability to sell a specific number of units on the listing date. However, the Exchange believes that this difficulty in ensuring the sale of one million units on the listing date is not indicative of a likely long-term lack of liquidity in the securities or, for the reasons set forth in the prior paragraph, of a difficulty in establishing a pricing equilibrium in the securities or a successful two-sided market.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5), in particular,⁸ 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.

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.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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

The Exchange states that no written comments on the proposed rule change were either solicited or received.

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

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this 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 Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay and make the proposed rule change operative upon filing because the proposal raises no novel issues and is based on a previously approved proposal filed by NYSE Arca.¹¹ The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the Exchange's proposed amendment would conform its listing

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 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.

¹¹ See supra note 6.

standards for Index-Linked Securities with respect to minimum public holders and public distribution to be substantively identical to the parallel listing standards of other national securities exchanges, which the Commission has previously approved.¹² In addition, the Commission notes that it has also previously approved substantively identical rules for other new derivative security products.¹³ The Commission further believes that the proposal should benefit investors by creating, without undue delay, additional competition in the market for Index-Linked Securities. For these reasons, the Commission designates the proposed rule change as operative upon filing.¹⁴

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 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

¹² See, e.g., Section 107(A)(b) of the Company Guide for the American Stock Exchange LLC (“Amex”); Rule 5.2(j)(1)(A) of NYSE Arca Equities, Inc.; and Section 703.22(B)(1) of the Listed Company Manual for the New York Stock Exchange LLC.

¹³ For example, in addition to applying to Index-Linked Securities, Section 107(A)(b) of the Amex Company Guide applies to other new derivative security products such as Index-Linked Exchangeable Notes.

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2008-03 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-2008-03. 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 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-2008-03 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.¹⁵

Florence E. Harmon
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).