

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57806; File No. SR-Phlx-2008-34)

May 9, 2008

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Consolidating into a Single Rule Certain Requirements for Products Traded on the Exchange Pursuant to Unlisted Trading Privileges

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 May 5, 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. This order provides notice of the proposed rule change and approves the proposal on an accelerated basis.

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

The Exchange proposes to amend its rules to consolidate into a single rule certain requirements for products traded on the Exchange pursuant to unlisted trading privileges (“UTP”) that have been established in various new products proposals previously approved by the Commission. The text of the proposed rule change is available at the Exchange’s principal office, on the Exchange’s Web site (www.phlx.com), 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, Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 proposes to amend its rules to consolidate into a single rule certain requirements for products traded on the Exchange pursuant to UTP. Many of these products have been established in various new products proposals previously approved by the Commission. The Exchange proposes to amend Phlx Rule 803 to set forth a new rule, Phlx Rule 803(o), regarding the extension of UTP to an NMS stock that is listed on another national securities exchange. Any such security will be subject to all Exchange trading rules applicable to NMS stocks, unless otherwise noted. The Exchange will file with the Commission a Form 19b-4(e) with respect to any such security that is a "new derivative securities product" ("NDSP") as defined in Rule 19b-4(e) under the Act.³ In addition, any NDSP traded on the Exchange pursuant to proposed Phlx Rule 803(o) will be subject to the following criteria.

Proposed Phlx Rule 803(o)(2)(A) provides that the Exchange will distribute an information circular prior to the commencement of trading in such NDSP which generally will include the same information as the information circular provided by the listing exchange, including: (1) the special risks of trading the NDSP; (2) the Exchange's rules that will apply to the NSDP, including the suitability rule; (3) information about dissemination of the value of the underlying assets or indexes; and (4) the risks of trading during the Pre Market and Post Market

³ 17 CFR 240.19b-4(e).

Sessions⁴ due to the lack of calculation or dissemination of the underlying index value, the Intraday Indicative Value, the Indicative Optimized Portfolio Value, or other comparable estimate of the value of a share of the NDSP.

Proposed Phlx Rule 803(o)(2)(B) reminds members and member organizations that they are subject to the prospectus delivery requirements under the Securities Act of 1933, unless the NDSP is the subject of an order by the Commission exempting the product from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940, the product is not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange shall inform its members and member organizations regarding the application of the provisions of this subparagraph to an NDSP by means of an information circular.

Phlx Rule 136(c)-(e) addresses trading halts in NDSPs traded on the Exchange pursuant to UTP. Phlx Rule 136(e)(1) would be amended to state that the term “Derivative Securities Product” is modified to “New Derivative Securities Product” and shall have the same meaning as new derivative securities product in Rule 803(o). The term “New Derivative Securities Product” is intended to include any products that are included in the current term “Derivative Securities Product.” In addition, throughout Phlx Rule 136(c)-(e), the term “Derivative Securities Product” is modified to “New Derivative Securities Product” to reflect the change in Phlx Rule 136(e)(1).

Phlx Rule 136(d)(1) provides that, if an NDSP begins trading on XLE in the Pre Market Session and subsequently a temporary interruption occurs in the calculation or wide dissemination of an applicable Required Value,⁵ XLE may continue to trade the NDSP for the

⁴ See Phlx Rule 101, Supplementary Material .02(1), (3).

⁵ Proposed Phlx 136(e)(2) states that “‘Required Value’ shall mean (1) the value of any security or index underlying a New Derivative Securities Product, and (2) the Intraday

remainder of the Pre Market Session. Phlx Rule 136(d)(2) provides that, during the Core Session,⁶ if a temporary interruption occurs in the calculation or wide dissemination of an applicable Required Value, and the listing market halts trading in the NDSP, Phlx, upon notification by the listing market of a halt due to such temporary interruption, also shall immediately halt trading in the NDSP on XLE. Phlx 136(d)(3) provides that, if an applicable Required Value continues not to be calculated or widely disseminated after the close of the Core Session, XLE may trade the NDSP in the Post Market Session only if the listing market traded the NDSP until the close of its regular trading session without a halt. Further, if an applicable Required Value continues not to be calculated or widely disseminated as of the beginning of the Pre Market Session on the next trading day, XLE shall not commence trading of the NDSP in the Pre Market Session that day. If an interruption in the calculation or wide dissemination of an applicable Required Value continues, XLE may resume trading in the NDSP only if calculation and wide dissemination of the applicable Required Value resumes or trading in the NDSP resumes in the listing market. Finally, proposed Phlx Rule 136(d)(4) provides that, for an NDSP where a net asset value (and, in the case of managed fund share or actively managed exchange-traded fund, a “disclosed portfolio”) is disseminated, Phlx will immediately halt trading in such security upon notification by the listing market that the net asset value and if applicable, such disclosed portfolio is not being disseminated to all market participants at the same time. Phlx may resume trading in the NDSP only when trading in the NDSP resumes on the listing market.

Proposed Phlx Rule 803(o)(2)(C) provides for restrictions for any XLE Participant registered as a Market Maker (“Restricted Market Maker”) in an NDSP that derives its value

Indicative Value (as defined in Rule 803), or the Indicative Optimized Portfolio Value or other comparable estimate of the value of a share of a New Derivative Securities Product updated regularly during the trading day.”

⁶ See Phlx Rule 101, Supplementary Material .02(2).

from one or more currencies, commodities, or derivatives based on one or more currencies or commodities, or is based on a basket or index comprised of currencies or commodities (collectively, “Reference Assets”). Specifically, proposed Phlx Rule 803(o)(2)(C)(i) provides that a Restricted Market Maker in an NDSP is prohibited from acting or registering as a market maker in any Reference Asset of that NDSP or any derivative instrument based on a Reference Asset of that NDSP (collectively, with Reference Assets, “Related Instruments”). Proposed Phlx Rule 803(o)(2)(C)(ii) provides that a Restricted Market Maker shall, in a manner prescribed by Phlx, file with Phlx and keep current a list identifying any accounts (“Related Instrument Trading Accounts”) for which Related Instruments are traded: (1) in which the Restricted Market Maker holds an interest; (2) over which it has investment discretion; or (3) in which it shares in the profits and/or losses. In addition, a Restricted Market Maker may not have an interest in, exercise investment discretion over, or share in the profits and/or losses of a Related Instrument Trading Account which has not been reported to Phlx as required by this rule. Proposed Phlx Rule 803(o)(2)(C)(iii) provides that, in addition to the existing obligations under Phlx rules regarding the production of books and records, a Restricted Market Maker shall, upon request by Phlx, make available to Phlx any books, records, or other information pertaining to any Related Instrument Trading Account or to the account of any registered or non-registered employee affiliated with the Restricted Market Maker for which Related Instruments are traded. Finally, proposed Phlx Rule 803(o)(2)(C)(iv) provides that a Restricted Market Maker shall not use any material nonpublic information in connection with trading a Related Instrument.

Lastly, Phlx represents that the Exchange's surveillance procedures for NDSPs traded on the Exchange pursuant to UTP will be similar to the procedures used for equity securities traded on the Exchange and will incorporate and rely upon existing Exchange surveillance systems.

The Exchange will closely monitor activity in NDSPs traded on the Exchange pursuant to UTP and deter any potential improper trading activity. Proposed Phlx Rule 803(o)(2)(D) also provides that the Exchange will enter into a comprehensive surveillance sharing agreement (“CSSA”) with a market trading components of the index or portfolio on which the new derivative securities product is based to the same extent as the listing exchange's rules require the listing market to enter into a CSSA with such market.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act⁸ 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 providing for the trading of securities, including NDSPs, on Phlx pursuant to UTP, subject to consistent and reasonable standards.

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

The Exchange believes that the proposed rule change does not 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 comments were either solicited or received.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2008-34 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.

All submissions should refer to File Number SR-Phlx-2008-34. 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 Phlx. 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-2008-34 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 review, 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.⁹ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act 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, 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.

This proposal would consolidate into a single rule various provisions related to UTP that have been established in other new products proposals previously approved by the Commission.

¹⁰ The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the Federal Register. Phlx's proposal does not raise any novel issues, and accelerated approval thereof will expedite the

⁹ 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).

¹⁰ See ISE Rule 2101 and Securities Exchange Act Release No. 57387 (February 27, 2008), 73 FR 11965 (March 5, 2008) (SR-ISE-2007-99); NSX Rule 15.9 and Securities Exchange Act Release No. 57448 (March 6, 2008), 73 FR 13597 (March 13, 2008)(SR-NSX-2008-05); NYSE Arca Equities Rule 5.2(j)(6), Commentary .01(a)-(d) and Securities Exchange Act Release No. 54189 (July 21, 2006), 71 FR 43263 (July 31, 2006) (NYSEArca-2006-17) (in connection with Phlx Rule 803(o)(2)(C)).

trading of additional products by the Exchange, subject to consistent and reasonable standards. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act, to approve the proposed rule change on an accelerated basis.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-Phlx-2008-34) is hereby approved on an accelerated basis.

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

Florence E. Harmon
Deputy Secretary

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).