

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58658; File No. SR-Phlx-2008-64)

September 26, 2008

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Trading Halt Rule in Connection With the Dissemination of Net Asset Value and Disclosed Portfolio for Certain Derivative Securities Products

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 September 18, 2008, NASDAQ OMX PHLX, 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 by the Exchange. 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 136 to state that the Exchange will halt trading in New Derivative Securities Products³ listed on the Exchange for which a net asset value (and in the case of managed fund shares or actively managed exchange-traded funds, a “disclosed portfolio”) is disseminated if the Exchange becomes aware that the net asset value and, if applicable, the disclosed portfolio is not being disseminated to all market participants at the same time. The text of the proposed rule change is available on the Exchange’s Website at www.phlx.com/regulatory/reg_rulefilings.aspx, at the Exchange’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Phlx Rule 136(e)(1).

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 address trading halts for New Derivative Securities Products listed on the Exchange for which a net asset value and/or a disclosed portfolio is disseminated. Net asset values and disclosed portfolios, when applicable, are calculated daily and disseminated to all market participants at the same time. In this proposed rule change, the Exchange is amending its rules to state that the Exchange will halt trading in New Derivative Securities Products listed on the Exchange for which a net asset value and/or a disclosed portfolio is disseminated if the Exchange becomes aware that the net asset value or, if applicable, the disclosed portfolio is not being disseminated to all market participants at the same time. Also, the Exchange will maintain the trading halt until such time as the Exchange becomes aware that the net asset value and, if applicable, the disclosed portfolio is available to all market participants. In addition, the Exchange represents that in the event that the net asset value or the disclosed portfolio, as applicable, for a New Derivative Securities Product ceases to be disseminated altogether, the Exchange will halt trading in such New Derivative Securities Product.

The Exchange notes that it recently filed a proposed rule change in which it adopted a rule, Phlx Rule 136(d)(4), stating that the Exchange would halt trading in New Derivative Securities Products trading on the Exchange pursuant to unlisted trading privileges, if the listing market notifies the Exchange that the net asset value and, if applicable, the disclosed portfolio is not being disseminated to all market participants at the same time.⁴ Also the Exchange is now proposing to clarify the rule text in Phlx Rule 136(d)(4) by changing the word “and” to “or” in the second half of the first sentence of that paragraph to make clear that the Exchange would halt trading upon notification by the listing market of the New Derivative Securities Product that either the net asset value or the disclosed portfolio is not being disseminated to all market participants at the same time. Consistent with the earlier proposed rule change, the Exchange now proposes to adopt a rule, Phlx Rule 136(c)(1)(B), stating that the Exchange will halt trading in New Derivative Securities Products listed on the Exchange for which a net asset value and/or a disclosed portfolio is disseminated if the Exchange becomes aware that the net asset value or, if applicable, the disclosed portfolio is not being disseminated to all market participants at the same time. As a consequence of the additional language proposed in Phlx Rule 136(c), the Exchange is renumbering the existing material to provide more clarity to the section.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁶ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect

⁴ See Securities Exchange Act Release No. 57806 (May 9, 2008), 73 FR 28541 (May 16, 2008) (SR-Phlx-2008-34).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes the proposed rule change is reasonably designed to prevent trading in certain New Derivative Securities Products when the availability of certain information is impaired. Specifically, the proposed rule change is intended to protect investors and the public interest when key information relating to the net asset value or the disclosed portfolio becomes unavailable or available only to some market participants, but not all participants, at the time of dissemination.

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 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

Because the foregoing 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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6) thereunder.⁸ A proposed rule change filed under 19b-4(f)(6) normally does not become operative until 30 days after the date of filing.⁹ However, Rule 19b-

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ Id. In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five

4(f)(6)(iii)¹⁰ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Phlx requests that the Commission waive the 30-day operative delay and make the proposed rule change operative upon filing because this proposal raises no novel issues and is virtually identical to the rule proposals of the American Stock Exchange LLC (“Amex”), the NASDAQ Stock Market LLC (“NASDAQ”), the New York Stock Exchange LLC (“NYSE”) and NYSE Arca, Inc. (“NYSE Arca”), which were recently approved by the Commission.¹¹ The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission therefore grants the Exchange’s request and designates the proposal to be operative upon filing.¹²

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:

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 satisfied this requirement.

¹⁰ 17 CFR 240.19b-4(f)(6)(iii).

¹¹ See Securities Exchange Act Release No. 58111 (July 7, 2008), 73 FR 40643 (July 15, 2008) (SR-Amex-2008-40, SR-NASDAQ-2008-046, SR-NYSE-2008-39, SR-NYSEArca-2008-50).

¹² 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).

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-2008-64 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-Phlx-2008-64. 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-2008-64 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.¹³

Florence E. Harmon
Acting Secretary

¹³ 17 CFR 200.30-3(a)(12).