

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55211; File No. SR-Phlx-2006-79)

January 31, 2007

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, Relating to an Amendment to the Generic Listing Standards for Trust Shares

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 29, 2006, 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. On January 29, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is granting accelerated approval to the proposed rule change as modified by Amendment No. 1.

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

The Exchange proposes to amend Phlx Rule 803 – Criteria for Listing – Tier 1, regarding generic listing standards for Trust Shares. The text of the proposed Phlx Rule is set forth below, with new text underlined and deleted text [bracketed].

Rule 803 Criteria for Listing – Tier I

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange supplemented the rationale for its request for accelerated approval and made technical changes to the proposed rule text.

(a)-(h) No Change.

(i) Trust Shares

(1)-(10) No Change.

(11) The Exchange may approve a series of Trust Shares for trading, whether by listing or pursuant to unlisted trading privileges, pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided each of the following criteria is satisfied:

(a) Eligibility Criteria for Index Components. Upon the initial listing of a series of Trust Shares on the Exchange, the component stocks of an index or portfolio underlying such series of Trust Shares shall meet the following criteria as of the date of the initial deposit of cash and securities into the trust:

(i)-(ii) No Change.

(iii) The most heavily weighted component stock cannot exceed [25]30% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio;

(iv)-(v) No Change.

(b)-(h) No Change.

(j)-(m) No Change.

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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 III below. The Exchange has prepared summaries, substantially 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 conform Phlx's generic listing standards for Trust Shares, specifically Rule 803(i)(11)(a)(iii), to the standards of other exchanges. Phlx Rule 803 provides generic listing standards for Trust Shares to permit listing and trading of these securities pursuant to Rule 19b-4(e) under the Act.⁴ Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4,⁵ if the Commission has approved, pursuant to Section 19(b) of the Act,⁶ the self-regulatory organization's trading rules, procedures and listing standards for the product class that would include the new derivative securities product, and the self-regulatory organization has a surveillance program for the product class.⁷

⁴ 17 CFR 240.19b-4(e).

⁵ 17 CFR 240.19b-4(c)(1).

⁶ 15 U.S.C. 78s(b).

⁷ See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

These generic listing standards are intended to ensure that stocks with substantial market capitalization and trading volume account for a substantial portion of the weight of an index or portfolio. Phlx Rule 803 provides that, upon the initial listing of a series of Trust Shares under Rule 19b-4(e), component stocks that in the aggregate account for at least 90 percent of the weight of the index or portfolio must have a minimum market value of at least \$75 million. In addition, the component stocks in the index must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90 percent of the weight of the index or portfolio. Currently, Rule 803(i)(11)(a)(iii) provides that the most heavily weighted component stock in an underlying index cannot exceed 25 percent of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65 percent of the weight of the index or portfolio. The Exchange proposes to increase from 25 percent to 30 percent the permissible weight of the most heavily weighted component stock in an underlying index. The Exchange is not amending the existing requirement that the five most heavily weighted stocks cannot exceed 65 percent of the weight of the index or portfolio. According to the Exchange, this change will provide additional flexibility to unit investment trusts to be listed pursuant to Rule 19b-4(e) in structuring their products and will help reduce possible concerns associated with a single stock exceeding the 25 percent threshold immediately prior to initial listing and trading due to a spike in the price of the most heavily weighted index stock. The Exchange notes that, notwithstanding this change, unit investment trusts (including Trust Shares) are subject to Internal Revenue Code Subchapter M requirements applicable to regulated investment companies. In order to maintain regulated investment company status, these entities

would be required to rebalance their portfolios quarterly to avoid any one stock exceeding a 25 percent weighting in the trust's portfolio.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act⁹ 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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 this 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 states that written comments were neither solicited nor 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:

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

- 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 No. SR-Phlx-2006-79 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-2006-79. 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. 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-2006-79 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

IV. Commission Findings and Order Granting Accelerated Approval of a Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Exchange Act,¹¹ which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The Commission believes that the proposed rule change is reasonably designed to provide additional flexibility in the listing of Trust Shares under the Exchange's generic listing standards. Further, the Commission believes that the proposed rule change will serve to protect investors and the public interest by maintaining the size and liquidity requirements applicable to the securities underlying the relevant index or portfolio.

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. The Commission has previously approved similar proposals by the American Stock Exchange LLC ("Amex"), Chicago Board Options Exchange, Incorporated

¹⁰ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(5).

(“CBOE”) and New York Stock Exchange LLC (“NYSE”).¹² Therefore, the proposed rule change does not raise any new issues.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act¹³ that the proposed rule change (SR-Phlx-2006-79), as modified by Amendment No. 1, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Florence E. Harmon
Deputy Secretary

¹² See Securities Exchange Act Release Nos. 44532 (July 10, 2001), 66 FR 37078 (July 16, 2001) (SR-Amex-2001-25) (approving an increase for indexes underlying Portfolio Depositary Receipts and Index Fund Shares listed on the Amex); 44908 (October 4, 2001), 66 FR 52161 (October 12, 2001) (SR-CBOE-2001-38) (approving an increase for indexes underlying Index Portfolio Receipts and Index Portfolio Shares listed on the CBOE); 53934 (June 1, 2006), 71 FR 33326 (June 8, 2006) (SR-NYSE-2006-39) (approving an increase for indexes underlying Investment Company Units).

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).