

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58194; File No. SR-Phlx-2008-47)

July 18, 2008

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Disclaimer of Warranties

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 July 16, 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 prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder, which renders it effective upon filing with the Commission.⁴ 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 Phlx proposes to adopt Phlx Rule 1107A (NASDAQ OMX Group, Inc. Indexes) to add a disclaimer regarding the accuracy and/or calculation of the NASDAQ-100 Index[®] (the “Index”)⁵ or options on the Index, warranties of merchantability for purpose or use, and liability for lost profits or damages.

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 The NASDAQ-100 Index[®] is a mark owned by NASDAQ OMX Group, Inc.

The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and on the Exchange's Web site at http://www.phlx.com/regulatory/reg_rulefilings.aspx.

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 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 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 purpose of the proposed rule change is to adopt new Phlx Rule 1107A, which establishes disclaimers in respect of options on the NASDAQ-100 Index[®] (the "Index"). The Exchange is proposing to establish new Phlx Rule 1107A as required by the licensing agreement with NASDAQ OMX that allows the Exchange to license, trade, and market options on the Index (the "Licensing Agreement").⁶

Proposed Rule 1107A, which is similar in nature to disclaimers regarding other index providers at current Phlx Rules 1104A (SIG Indices, LLLP), 1105A (Standard and

⁶ Pursuant to the Licensing Agreement and the immediately effective filing SR-Phlx-2008-36 proposing to list and trade full value and reduced value options on the Index (NDX and MNX, respectively), see Securities Exchange Act Release No. 57936 (June 6, 2008), 73 FR 33481 (June 12, 2008) (SR-Phlx-2008-36), the Exchange began trading NDX and MNX on or about June 16, 2008.

Poor's[®] Index), and 1106A (Lehman Brothers Inc. Indexes)⁷ establishes, among other things, disclaimers about the accuracy and/or uninterrupted calculation of the Index or any data included therein; any warranties of merchantability or fitness for a particular purpose or use; and any liability for any lost profits or damages.

The Exchange believes that proposed Phlx Rule 1107A, being similar in concept to current Phlx Rules 1104A, 1105A, and 1106A as well as current rules of other options exchanges,⁸ should put NASDAQ OMX on similar footing with other licensors of options on indexes to the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁰ in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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

⁷ The Exchange noted in its filings to adopt Rules 1104A, 1105, and 1006A that the proposed disclaimers were appropriate given that they were similar to disclaimer provisions of American Stock Exchange Rule 902C relating to indexes underlying options listed on that exchange. See Securities Exchange Act Release Nos. 48135 (July 7, 2003), 68 FR 42154 (July 16, 2003)(SR-Phlx-2003-21)(adopting Rule 1004A regarding SIG indices); 51664 (May 6, 2005), 70 FR 25641 (May 13, 2005)(SR-Phlx-2005-24)(adopting Rule 1105A regarding S&P 500 and expanding Rule 1104A); and 52102 (July 21, 2005), 70 FR 44144 (August 1, 2005)(SR-Phlx-2005-38)(adopting Rule 1106A regarding Lehman Brothers).

⁸ See for example disclaimers and limitation of liability at AMEX Rule 902C and at CBOE Rule 24.14.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

