

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50727; File No. SR-Phlx-2004-66)

November 23, 2004

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Concentration Limit Listing Standards in Phlx Rule 1009A

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 October 7, 2004, 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 prepared by the Phlx. On October 25, 2004, 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, as amended, 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 1009A, Designation of the Index, which applies to the listing of index options. Specifically, the Exchange proposes to increase certain concentration limit listing standards set forth in Phlx Rule 1009A(b) pursuant to which the Exchange may list certain narrow-based index options pursuant to Commission Rule 19b-4(e).⁴ The text of the proposed rule change is set forth below. Proposed new language is italicized; proposed deletions are [in brackets].

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Carla Behnfeldt, Director, Legal Department New Product Development Group, Phlx to Nancy Sanow, Assistant Director, Division of Market Regulation (“Division”), Commission, dated October 22, 2004 (“Amendment No. 1”), in which the Phlx provided rationale for and requested accelerated approval of the proposed rule change.

⁴ 17 CFR 240.19b-4(e).

Rule 1009A

(a) No Change.

(b) Notwithstanding paragraph (a) above, the Exchange may trade options on a narrow-based index pursuant to Rule 19b-4(e) of the Exchange Act, if each of the following conditions is satisfied:

(1)– (5) No Change

(6) No single component security represents more than [25%] 30% of the weight of the index, and the five highest weighted component securities in the index do not in the aggregate account for more than 50% ([60%] 65% for an index consisting of fewer than 25 component securities) of the weight of the index;

- (i) With respect to the Gold/Silver Index, no single component shall account for more than 35% of the weight of the Index and the three highest weighted components shall not account for more than 65% of the weight of the Index. If the Index fails to meet this requirement, the Exchange shall reduce position limits to 8000 contracts on the Monday following expiration of the farthest-out, then trading, non-LEAP series.

(7) – (12) No Change

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, as amended, 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 increase certain concentration limit listing standards in Phlx Rule 1009A. On December 6, 2000, the Commission approved a Phlx proposed rule change adopting Phlx Rule 1009A(b)⁵ that provides generic listing standards for the listing and trading of narrow-based index options in accordance with the Commission's New Product Release.⁶ Under Phlx Rule 1009A(b) the Exchange may trade options on a narrow-based index without filing a proposed rule change under Section 19(b)(2) of the Act if certain conditions are satisfied.⁷ One of these conditions is set forth in Phlx Rule 1009A(b)(6), which prescribes certain concentration limits applicable to the most highly weighted component of the index and to the top five most highly weighted components combined. Specifically, the rule currently requires that no single component security represents more than 25% of the weight of the index, and that the five highest weighted component securities in the index do not in the aggregate account for more than 50% (60% for an index consisting of fewer than 25 component securities) of the weight of the index. The Exchange is now proposing to amend Phlx Rule 1009A(b)(6) by increasing the 25% concentration limit for the highest weighted component stock to 30%. The amendment would also increase the 60% concentration limit for the five

⁵ See Securities Exchange Act Release No. 43683 (December 6, 2000), 65 FR 78235 (December 14, 2000).

⁶ See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) ("New Product Release").

⁷ The Commission approved an amendment to Phlx Rule 1009A to provide that certain narrow-based index options that meet generic listing standards may be listed and traded on the Exchange without a filing pursuant to Rule 19b-4(e) under the Act. See Securities Exchange Act Release No. 43683 (December 6, 2000), 65 FR 78235 (December 14, 2000) (SR-Phlx-2000-67).

mostly highly weighted stocks in an index consisting of fewer than 25 component securities from 60% to 65%.

The proposed rule change would result in increased flexibility in the Exchange's ability to list narrow-based index options. The proposal will also reduce the instances in which the addition of new series is restricted pursuant to Phlx Rule 1009A(c), the maintenance listing standards applicable to options listed under Phlx Rule 1009A(b), because changes in the market value of underlying index components has caused them to exceed the current 25% or 60% limits by a very slight amount as has occasionally occurred in the past. The Exchange believes that these changes are appropriate because they are minor in nature, such that the concentration limit listing standards will continue to serve the purpose for which they were originally intended of not permitting a single security or small number of securities to dominate the index.

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 should increase the availability for listing of narrow-based index options, thus enhancing the number of investment choices for investors.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve such proposed rule change; or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2004-66 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-Phlx-2004-66. 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 the filing also will be available for inspection and copying at the principal office of the 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-2004-66 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).