

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53147; File No. SR-Phlx-2006-02)

January 19, 2006

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay Implementation of a Split of the PHLX Housing Sector<sup>SM</sup> Index Option

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 4, 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 prepared by the Phlx. The Phlx filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> As required by Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii), the Phlx submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.

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

The Phlx, pursuant to Section 19(b)(1) of the Act<sup>6</sup> and Rule 19b-4 thereunder,<sup>7</sup> proposes to delay until February 1, 2006<sup>8</sup> the implementation of a split of the PHLX Housing Sector<sup>SM</sup> Index ("Index") option ("HGX")<sup>9</sup> to one-half its present value,<sup>10</sup> so that any open interest in HGX contracts at \$2.50 strike price intervals expire before the split.

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

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<sup>6</sup> 15 U.S.C. 78s(b)(1).

<sup>7</sup> 17 CFR 240.19b-4.

<sup>8</sup> In its proposal, the Phlx requested a delay until February 2006. During a telephone conversation on January 12, 2006, the Exchange specified that it is seeking to delay implementation until February 1, 2006. Telephone conversation between Jurij Trypupenko, Director and Counsel, Phlx, and Christopher Chow, Attorney, Division of Market Regulation, on January 12, 2006.

<sup>9</sup> HGX is a modified capitalization-weighted index composed of 21 companies whose primary lines of business are directly associated with the U.S. housing construction market. The Index encompasses residential builders, suppliers of aggregate, lumber and other construction materials, manufactured housing and mortgage insurers. The Index is currently composed of the following stocks: American Standard Companies, Beazer Homes USA, Inc., Champion Enterprises, Inc., Centex Corp., DR Horton, Inc., Hovnanian Enterprises, Inc., KB Home, Lennar Corp., Masco Corp., MDC Holdings, Inc., OfficeMax, Inc., Pulte Homes, PMI Group, Inc., Radian Group, Inc., Ryland Group, Inc., Standard Pacific Corp., Temple Inland, Inc., Toll Brothers, Inc., USG Corp., Vulcan Materials Company, Weyerhaeuser Company.

<sup>10</sup> The Commission notes that it published notice of a proposed rule change allowing a split of the HGX, which was effective upon filing (September 15, 2005) and which, per the Exchange's request, became operative on September 27, 2005. See Securities Exchange Act Release No. 52512 (September 27, 2005), 70 FR 57919 (October 4, 2005) (SR-Phlx-2005-50).

proposal. 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

Previously, the Exchange filed a proposed rule change to reduce the value of the HGX to one-half its present value.<sup>11</sup> The purpose of the proposed rule change is to delay the implementation of a split of the value of the HGX so that upon splitting the index the Exchange can list new, post-split options series at strike prices of \$2.50 or higher.

The Exchange may now set index option strike price intervals at \$2.50 or higher pursuant to Phlx Rule 1101A. Rule 1101A indicates that the Exchange may determine fixed strike price intervals for index options that may generally be \$2.50 for the three consecutive near-term months, \$5 for the fourth month and \$10 for the fifth month. The rule further allows that the Exchange may determine to list strike prices at \$2.50 intervals in response to demonstrated customer interest or specialist request, and to list strike prices at wider intervals.<sup>12</sup> No Phlx rule accommodates index option strike price intervals lower than \$2.50.

There are several HGX option series priced at \$2.50 strike price intervals that have options contracts with open interest. The open interest in these series would expire by the end of

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<sup>11</sup> See above, at n.10; telephone conversation between Jurij Trypupenko, Director and Counsel, Phlx, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, on January 19, 2006.

<sup>12</sup> The Exchange has filed a rule change (SR-Phlx-2005-43) and amendments thereto proposing to simplify the Rule 1101A procedure for setting option index strike prices so that, among other things, there is no correlation between index strike price intervals and months.

January 2006. Splitting the HGX index at a time when there is open interest in these series would result in strike price intervals smaller than \$2.50.<sup>13</sup> Because index option strike prices that are smaller than \$2.50 (for example \$1.00), are not supported in Phlx rules, the delay in the implementation of the split is necessary.

The Exchange believes that delayed implementation should attract more volume by making option premiums more appealing for retail investors and allowing investors to better utilize the HGX as a trading and hedging vehicle with a smaller capital outlay.<sup>14</sup>

The Exchange will announce the effective date of the implementation of the split on February 1, 2006 by way of an Exchange memorandum to the membership, which will also serve as notice of the strike price and position limit changes.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>15</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>16</sup> 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

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<sup>13</sup> For example, an HGX option series with a \$457.50 pre-split strike price, after a two-for-one split, would change to a \$228.75 strike price, which would require a smaller than \$2.50 strike price interval.

<sup>14</sup> The Exchange notes that to accommodate the two-fold increase in the number of contracts outstanding after the split, the position limits applicable to HGX (currently 31,500 contracts pursuant to Rule 1001A) will be temporarily increased to 63,000 until such time that all pre-split options expire, at which point the position limits will return to the 31,500 position limit specified in Rule 1001A. See Exchange Act Release No. 52512 (September 27, 2005), 70 FR 57919 (October 4, 2005) (SR-Phlx-2005-50).

<sup>15</sup> 15 U.S.C. 78f(b).

<sup>16</sup> 15 U.S.C. 78f(b)(5).

protect investors and the public interest, by delaying the implementation of a split establishing a lower Index value, which should, in turn, facilitate trading in HGX, creating a more liquid trading environment. The Exchange believes that reducing the value of the Index should not raise manipulation concerns and should not cause adverse market impact because the Exchange will continue to employ its surveillance procedures and has proposed an orderly procedure to achieve the Index split, including adequate prior notice to market participants.

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

The Phlx believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Phlx has neither solicited nor received comments on the proposed rule change.

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

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Phlx has asked the Commission to waive the 30-day operative delay. The

Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the additional time may allow the Exchange to list new, post-split options series at strike prices of \$2.50 or higher, as required under the Exchange's rules.<sup>17</sup> For this reason, the Commission designates that the proposal has become effective and operative immediately upon filing with the Commission.

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.<sup>18</sup>

#### 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:

##### 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2006-02 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 20549-9303.

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<sup>17</sup> 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. 15 U.S.C. 78c(f).

<sup>18</sup> See Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii).

All submissions should refer to File Number SR-Phlx-2006-02. 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 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-2006-02 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.<sup>19</sup>

Nancy M. Morris  
Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).