

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).

interest. The Exchange believes that the proposed rule change should encourage NASDAQ OMX to continue maintaining the Index upon which options may be traded on the Exchange, thereby providing investors with enhanced investment opportunities.

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 that 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

No written comments were either solicited or received.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² Because the 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 prior to 30 days from the date on which it was filed, 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)(iii) thereunder.¹³

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(6).

¹³ Rule 19b-4(f)(6) also requires the Exchange to give the Commission 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 of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. Phlx has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes such waiver is consistent with the protection of investors and the public interest because it would allow for the immediate implementation of a rule similar to rules already in place at the Phlx and at other options exchanges. For this reason, the Commission designates the proposal to be operative upon filing with the Commission.¹⁵

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:

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ For purposes only of waiving the 30-day pre-operative period, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2008-47 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-2008-47. 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 such filing will also 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-2008-47 and should be submitted on or before [insert date 21 days after publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon
Acting Secretary

¹⁶ 17 CFR 200.30-3(a)(12).