

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58571; File No. SR-Phlx-2008-60)

September 17, 2008

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the NASDAQ OMX PHLX, Inc. to Enable the Listing and Trading of Options on Index-Linked Securities

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 September 12, 2008, the NASDAQ OMX PHLX, 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. Phlx filed the proposal pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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 Exchange, pursuant to Section 19(b)(1) of the Act⁵ and Rule 19b-4 thereunder,⁶ proposes to amend Phlx Rules 1009, Criteria for Underlying Securities, and 1010, Withdrawal of Approval of Underlying Securities or Options, to enable the listing and trading on the Exchange of options on Index-Linked Securities, as defined below. The text of the proposed rule change is available on the Exchange’s Website at http://www.phlx.com/regulatory/reg_rulefilings.aspx, the

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 15 U.S.C. 78s(b)(1).

⁶ 17 CFR 240.19b-4.

principal office of the Exchange, and at the Commission's Public Reference Room.

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 IV below. The Exchange 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

This proposed rule change is based on recent Chicago Board Options Exchange, Incorporated ("CBOE") and NYSE Arca, Inc. ("NYSE Arca") filings.⁷

The purpose of the proposed rule change is to revise Phlx Rules 1009 and 1010 to enable the listing and trading of options on equity index-linked securities ("Equity Index-Linked Securities"), commodity-linked securities ("Commodity-Linked Securities"), currency-linked securities ("Currency-Linked Securities"), fixed income index-linked securities ("Fixed Income Index-Linked Securities"), futures-linked securities ("Futures-Linked Securities") and multifactor index-linked securities ("Multifactor Index-Linked Securities")(the six types of index-linked securities are collectively known as "Index-Linked Securities") that are principally

⁷ See Securities Exchange Act Release Nos. 58204 (July 22, 2008), 73 FR 43807 (July 28, 2008)(SR-CBOE-2008-64) and 58203 (July 22, 2008), 73 FR 43812 (July 28, 2008)(SR-NYSEArca-2008-57). In addition, the Exchange is making minor changes to Commentary .06 to Phlx Rule 1009 to conform the Exchange's rules to those of CBOE and NYSE Arca.

traded on a national securities exchange and are "NMS Stock" (as defined in Rule 600 of Regulation NMS under the Act).

Index-Linked Securities are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments or market indexes of the foregoing ("Underlying Index" or "Underlying Indexes"). Index-Linked Securities are the non-convertible debt of an issuer that have a term of at least one (1) year but not greater than thirty (30) years. Despite the fact that Index-Linked Securities are linked to an underlying index, each trades as a single, exchange-listed security. Accordingly, rules pertaining to the listing and trading of standard equity options will apply to Index-Linked Securities. The Exchange does not propose any changes to rules pertaining to Index Options.

Listing Criteria

The Exchange will consider listing and trading options on Index-Linked Securities provided the Index-Linked Securities meet the criteria for underlying securities set forth in Phlx Rule 1009 (a) to (c) and Commentary .01 to Rule 1009.

The Exchange proposes that Index-Linked Securities deemed appropriate for options trading represent ownership of a security that provides for the payment at maturity, as described below:

- Equity Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes of equity securities ("Equity Reference Asset");
- Commodity-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more physical commodities or commodity futures,

options or other commodity derivatives or Commodity-Based Trust Shares or a basket or index of any of the foregoing ("Commodity Reference Asset");

- Currency-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more currencies, or options or currency futures or other currency derivatives or Currency Trust Shares⁸ or a basket or index of any of the foregoing ("Currency Reference Asset");

- Fixed Income Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of one or more notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities ("Treasury Securities"), government sponsored entity securities ("GSE Securities"), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof or a basket or index of any of the foregoing ("Fixed Income Reference Asset");

- Futures-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an index of (a) futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign country or a subdivision thereof, or options or other derivatives on any of the foregoing; or (b) interest rate futures or options or derivatives on the foregoing in this subparagraph (b) ("Futures Reference Asset"); and

- Multifactor Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of any combination of two or more Equity Reference

⁸ See proposed Commentary .06 to Phlx Rule 1009. The term "Currency Trust Shares" is defined as a security that (a) holds a specified non-U.S. currency deposited with the trust or similar entity; (b) when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency or currencies; and (c) pays the beneficial owner interest and other distributions on deposited non-U.S. currency or currencies, if any, declared and paid by the trust.

Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets or Futures Reference Assets ("Multifactor Reference Asset").

For the purposes of Commentary .09 to Phlx Rule 1009, Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets, Futures Reference Assets and Multifactor Reference Assets, will be collectively referred to as "Reference Assets."

Index-Linked Securities must meet the criteria and guidelines for underlying securities set forth in Commentary .01 to Phlx Rule 1009, or the Index-Linked Securities must be redeemable at the option of the holder at least on a weekly basis through the issuer at a price related to the applicable underlying Reference Asset. In addition, the issuing company is obligated to issue or repurchase the securities in aggregation units for cash or cash equivalents satisfactory to the issuer of Index-Linked Securities which underlie the option as described in the Index-Linked Securities prospectus.

Continued Listing Requirements

Options on Index-Linked Securities will be subject to all Exchange rules governing the trading of equity options. The current continuing or maintenance listing standards for options traded on the Exchange will continue to apply.

The Exchange proposes to establish Commentary .12 to Rule 1010 which will include criteria related to the continued listing of options on Index-Linked Securities.

Under the applicable continued listing criteria in proposed Commentary .12 to Rule 1010, options on Index Linked Securities initially approved for trading pursuant to proposed Commentary .09 to Rule 1009 may be subject to the suspension of opening transactions as follows: (1) non-compliance with the terms of Commentary .09 to Rule 1009; (2) non-

compliance with the terms of Commentary .01 to Rule 1010, except in the case of options covering Index Linked Securities approved pursuant to Commentary .09(c)(ii) to Rule 1009 that are redeemable at the option of the holder at least on a weekly basis, then option contracts of the class covering such Securities may only continue to be open for trading as long as the Securities are listed on a national securities exchange and are an "NMS stock" as defined in Rule 600 of Regulation NMS; (3) in the case of any Index-Linked Security trading pursuant to Commentary .09 to Rule 1009, the value of the Reference Asset is no longer calculated or available; or (4) such other event shall occur or condition exist that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable.

The Exchange represents that the listing and trading of options on Index-Linked Securities under Commentary .09 to Rule 1009 will not have any effect on the rules pertaining to position and exercise limits⁹ or margin.¹⁰

The Exchange will implement surveillance procedures for options on Index- Linked Securities, including adequate comprehensive surveillance sharing agreements with markets trading in non-U.S. components, as applicable. The Exchange represents that these procedures will be adequate to properly monitor Exchange trading of options on these the securities and to deter and detect violations of Exchange rules.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹² in particular, in that it is

⁹ See Phlx Rules 1001, 1001A, 1002, and 1002A.

¹⁰ See Phlx Rules 721 through 725.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rules applicable to trading pursuant to generic listing and trading criteria, together with the Exchange's surveillance procedures applicable to trading in the securities covered by the proposed rules, serve to foster investor protection.

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 solicited nor received.

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 Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

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. 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 Exchange requests that the Commission waive the 30-day operative delay as well as the five business-day pre-filing requirement so that the Exchange is able to compete with other options exchanges that are currently permitted to list and trade options on Index-Linked Securities. The Commission believes that waiving the 30-day operative delay and five business-day pre-filing requirement is consistent with the protection of investors and the public interest.¹⁵ The Commission notes the proposal is substantively identical to proposals that were recently approved by the Commission, and does not raise any new regulatory issues.¹⁶ For these reasons, the Commission designates the proposed rule change as operative upon filing.

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:

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

¹⁶ See Securities Exchange Act Release Nos. 58203 (July 22, 2008), 73 FR 43812 (July 28, 2008) (SR-NYSEArca-2008-57) and 58204 (July 22, 2008), 73 FR 43807 (July 28, 2008) (SR-CBOE-2008-64).

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-2008-60 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-2008-60. 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 the 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-2008-60 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Florence E. Harmon
Acting Secretary

¹⁷ 17 CFR 200.30-3(a)(12).