

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56626; File No. SR-Phlx-2007-60)

October 5, 2007

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to Structured Equity Products

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 August 14, 2007, 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 substantially prepared by the Exchange. 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 update its rules regarding the listing of equity securities. Specifically, the Exchange proposes to modify Phlx Rule 802, Rule 806 (Initial Public Offerings), Rule 807 (Registration Under the Exchange Act), and Rule 837 (Annual Reports). The Phlx Fee Schedule will also be amended to add initial and continued listing fees for certain structured equity securities on the Exchange (“Structured Equity Products”).³ The text of the proposed rule change is available at the Commission’s Public Reference Room, at the Exchange, and at <http://www.Phlx.com>.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ For purposes of this proposed rule change, Structured Equity Products are securities listed pursuant to the categories in Phlx Rule 803 entitled Other Securities, Equity Linked Notes, Basket Linked Notes, Index Linked Exchangeable Notes and Index Linked Securities. See Phlx Rule 803(f), (h), (k), (m) and (n).

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

The purpose of the proposed rule change is to permit the Exchange to update certain of its listing rules and fees in order to attract the listing of Structured Equity Products. Currently, the vast majority of equity securities that trade on the Phlx are listed on other exchanges and traded on the Phlx pursuant to unlisted trading privileges ("UTP"). This allows the Exchange to compete for the trading volume of a security. However, the Phlx now intends to actively pursue serving as the listing market for certain Structured Equity Products.

The Phlx has long had a series of rules (the "800 Series") that create standards regarding both the security to be listed and traded on Phlx, as well as regarding the issuer of the security. In order to attract the listing of the Structured Equity Products, Phlx proposes modifications to the 800 Series to accommodate the specific attributes of many structured equity securities.

Phlx Rule 802. Phlx Rule 802 identifies factors to be evaluated by the Exchange when reviewing and preparing its confidential listing opinion as to the eligibility of an applicant's securities. Among other things, Phlx Rule 802 currently states that the applicant company must

be a “going concern.”⁴ The proposed rule change would delete the “going concern” requirement in order to remove uncertainty as to whether a Structured Equity Product qualifies as a “going concern.” The Exchange believes that the existing listing standards in Phlx Rule 803(a)(2) for traditional operating companies should sufficiently satisfy the “going concern” requirement for such other equity products that may become listed on the Exchange.

Phlx Rule 806. Phlx Rule 806 permits new issues of securities to be listed on the Exchange on the day that the registration statement is effective with the SEC, or upon effectiveness of the registration statement or equivalent document if registration with the SEC is not required. However, the issuer must meet certain initial listing criteria.

The proposed rule change would classify the two paragraphs of Phlx Rule 806 as (a) and (b). In addition, the proposed rule change would provide an exclusion for Structured Equity Products from Phlx Rule 806(b), which includes certain requirements relating to the distribution of new issues. This amendment would reflect the fact that distributors of Structured Equity Products generally make informal arrangements with dealers prior to going effective to provide assurance that sufficient creation units will be purchased from the issuer to meet the minimum listing requirements.

Phlx Rule 807. Phlx Rule 807 requires that securities approved for listing by the Exchange must be registered under Section 12(b) of the Act.⁵ In addition, Phlx Rule 807

⁴ “Going concern” refers to the ability of the applicant to meet its current obligations with cash or other assets that can be quickly converted into cash. If the applicant is not able to meet its current obligations, the ability of that applicant being able to continue to operate is in doubt. See email from John Dayton, Director and Counsel, Phlx, to Ronesha Butler, Special Counsel, Division of Market Regulation, Commission, dated September 14, 2007.

⁵ 15 U.S.C. 781(b).

provides that securities registered under 12(g) of the Act,⁶ or that have recently been the subject of a public offering registered under the Securities Act of 1933, may be registered for exchange trading under Section 12(b) of the Act through the filing of SEC Form 8-A. The proposed rule change would update Phlx Rule 807 to reflect the fact that registration of securities on Form 8-A automatically becomes effective within 30 days of filing. The Exchange states that the proposed amendments to Phlx Rule 807 are substantially similar to a corresponding provision in Section 210 of the American Stock Exchange (“Amex”) Company Guide.

Phlx Rule 837. Phlx Rule 837 requires listed companies to provide their shareholders with annual reports containing audited financial statements of the company and its subsidiaries at least 10 days prior to the annual meeting of shareholders and not later than four months after the close of the company’s last preceding fiscal year. It further states that three copies of the report must be filed with the Exchange at the time it is distributed to shareholders. The proposed rule change would amend Phlx Rule 837 to provide that any annual report that is required to be sent to the Exchange will be deemed sent if it is filed on EDGAR. The Exchange states that this amendment would make Phlx Rule 837 consistent with the corresponding provision in Section 1101 of the Amex Company Guide.

Fees. For Structured Equity Products, the Exchange will charge an original listing fee of \$5,000, then charge a \$500 per month continuing listing fee for each month thereafter. For example, when an issuer lists a Structured Equity Products, the Exchange will bill the issuer \$5,000 in the month of original listing. Beginning in the subsequent month, the Exchange will invoice the issuer \$500 per month until such time as the product is delisted. Therefore, the maximum listing fee an issuer of a Structured Equity Products could pay in any one calendar

⁶ 15 U.S.C. 78l(g).

year would be \$10,500.⁷ The Exchange believes that its proposed original listing fee and proposed continuing listing fee are reasonable in light of Amex's original listing fee⁸ and annual fee⁹ for Structured Equity Products.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act¹¹ 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 protect investors and the public interest, by modifying Exchange rules relating to the listing of Structured Equity Products. In addition, the Exchange believes that its proposal furthers the objectives of Section 6(b)(4) of the Act¹² in particular, in that the proposed original listing fee

⁷ The Exchange currently lists two Structured Equity Products, Pharmaceutical Basket Opportunity Exchangeable Securities and Biotechnology Basket Opportunity Exchangeable Securities. The issuer for these securities, Morgan Stanley, was invoiced the current annual continuing listing fee of \$1,250 for the first product and \$250 for the second product in January 2007. The Exchange believes that, for these two products, the proposed \$500 per month continuing listing fee should begin in January 2008. The Exchange believes that it is reasonable and appropriate to begin charging the proposed continuing listing fee to Morgan Stanley for these two products in January 2008 (in contrast to new products that would begin to pay the proposed fee in the month subsequent to initial listing) because Morgan Stanley was invoiced the current annual continuing listing fee for 2007 and could have reasonably expected that this current fee would cover their obligation for these two products through the end of 2007.

⁸ Amex's original listing fee for Structured Equity Products (Securities Listed under Section 107 (Other Products)) begins at \$5,000 and may be as much as \$45,000 based on the number of shares to be listed. See Section 140 of the Amex Company Guide.

⁹ Amex's annual fee for Structured Equity Products (Securities Listed under Section 107 (Other Products)) begins at \$15,000 and may be as much as \$30,000 based on the number of shares outstanding. See Section 141 of the Amex Company Guide.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78f(b)(4).

and proposed continuing listing fee are an equitable allocation of reasonable fees and other charges among Exchange members and issuers and other persons using its facilities.¹³

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

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 Exchange 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 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

¹³ See email from John Dayton, Director and Counsel, Phlx, to Christopher W. Chow, Special Counsel, Division of Market Regulation, Commission, dated October 5, 2007.

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2007-60 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 20549-1090.

All submissions should refer to File Number SR-Phlx-2007-60. 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 am and 3:00 pm. Copies of such 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-2007-60 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Nancy M. Morris
Secretary

¹⁴ 17 CFR 200.30-3(a)(12).