

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55817; File No. SR-Phlx-2007-07)

May 25, 2007

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to 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 January 25, 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 and II below, which Items have been substantially prepared by the Exchange. On May 9, 2007, Phlx filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and approves the proposal on an accelerated basis.

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

The Phlx proposes to amend Phlx Rule 803 – Criteria for Listing – Tier 1, for the purpose of adopting generic listing standards pursuant to Rule 19b-4(e) under the Act³ in connection with index-linked securities (“Index Securities”). The text of the proposed rule change is available on Phlx’s Web site at <http://www.phlx.com>, at Phlx’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(e).

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 III 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

Under Rule 803(f), the Exchange may approve for listing and trading securities that cannot be readily categorized under the listing criteria for common and preferred securities, bonds, debentures, or warrants.⁴ The Exchange proposes to add a new section (n) to Phlx Rule 803 to provide generic listing standards to permit the listing and trading of Index Securities pursuant to Rule 19b-4(e) under the Act.⁵ Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4⁶ if the Commission has

⁴ See Securities Exchange Act Release No. 30466 (March 11, 1992), 57 FR 9301 (March 17, 1992) (SR-Phlx-92-01).

⁵ 17 CFR 240.19b-4(e). The Exchange has previously received Commission approval to list and trade certain index options, exchange-traded funds and trust issued receipts pursuant to Rule 19b-4(e). See Securities Exchange Act Release Nos. 43683 (December 6, 2000), 65 FR 78235 (December 14, 2000) (SR-Phlx-00-67) (Index Options); 45178 (December 20, 2001), 66 FR 67610 (December 31, 2001) (SR-Phlx-00-68) (Trust Shares); and 44826 (September 20, 2001), 66 FR 49990 (October 1, 2001) (SR-Phlx-2001-75) (TIRs).

⁶ 17 CFR 240.19b-4(c)(1).

approved, pursuant to Section 19(b) of the Act,⁷ the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivatives product, and the SRO has a surveillance program for the product class.⁸

Index Securities are designed for investors who desire to participate in a specific market segment or combination of market segments through index products. Each Index Security is intended to provide investors with exposure to an identifiable underlying market index. Despite the fact that Index Securities are linked to an underlying index, each will trade as a single, exchange-listed security.

The Exchange proposes that generic listing standards appropriate for Index Securities provide that each index or combination of indexes (the "Underlying Index" or "Underlying Indexes") meet the criteria set forth in proposed Phlx Rule 803(n) or an index previously approved for the trading of options or other derivative securities by the Commission under Section 19(b)(2) of the Act and rules thereunder. In all cases, an Underlying Index is required to have a minimum of (10) component securities. The specific criteria for each underlying component security in proposed Phlx Rule 803(n) are set forth below in the section entitled "Eligibility Standards for Underlying Component Securities." In general, the criteria for the underlying component securities of an Underlying Index is substantially similar to the requirements for index options set forth in Phlx Rule 1009A(a).

⁷ 15 U.S.C. 78s(b).

⁸ When relying on Rule 19b-4(e), the SRO must submit Form 19b-4(e) to the Commission within 5 business days after the SRO begins trading the new product(s). See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

Index-Linked Securities

Index 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. The issuer of an Index Security may or may not provide for periodic interest payments to holders based on dividends or other cash distributions paid on the securities comprising the Underlying Index or Indexes during a prescribed period.⁹ The holder of an Index Security may or may not be fully exposed to the appreciation and/or depreciation of the underlying component securities. For example, an Index Security may be subject to a “cap” on the maximum principal amount to be repaid to holders or a “floor” on the minimum principal amount to be repaid to holders at maturity. The proposed generic listing standards may provide for accelerated returns based on a multiple of the positive performance of an index, but will not be applicable to Index Securities where the payment at maturity may be based on a multiple of negative performance of an underlying index or indexes. The structure of an Index Security may provide “principal protection,” *i.e.*, a minimum guaranteed amount to be repaid, or provide that the principal amount is fully exposed to the performance of a market index. An Index Security may also provide “contingent” protection of the principal amount, whereby the principal protection may disappear if the Underlying Index at any point in time during the life of such security reaches a certain pre-determined level. The Exchange believes that the flexibility to list a variety of Index Securities will offer investors the opportunity to more precisely focus their specific investment strategies.

The original public offering price of Index Securities may vary with the most common offering price expected to be \$10 or \$1,000 per unit. The initial offering price for an Index Security will be established on the date the security is priced for sale to the public. The

⁹ Interest payments may be based on a fixed or floating rate.

Exchange states that the final value of an Index Security will be determined on the valuation date at or near maturity consistent with the mechanics detailed in the prospectus for such Index Security. The Exchange states that Index Securities are expected to trade at a lower cost than the cost of trading each of the underlying component securities separately because of reduced commission and custody costs and are also expected to give investors the ability to maintain index exposure without the corresponding management or administrative fees and ongoing expenses.

The Index Securities do not give the holder any right to receive a portfolio security, dividend payments, or any other ownership right or interest in the portfolio or index of securities comprising the Underlying Index. Index Securities may or may not be structured with accelerated upside returns based on the performance of the Underlying Index.¹⁰ For example, an Index Security may provide for an accelerated return of 3-to-1 if the Underlying Index achieves a positive return at maturity.

The Exchange submits that Index Securities are “hybrid” securities whose rates of return are largely the result of the performance of Underlying Index or Indexes comprised of component securities. In connection with the listing and trading or the trading pursuant to unlisted trading privileges (“UTP”) of Index Securities, the Exchange will issue an Memorandum to members detailing the special risks and characteristics of each Index Security that it will list or trade.¹¹ Accordingly, the particular structure and corresponding risk of any

¹⁰ See telephone conference between John Dayton, Director and Counsel, Phlx, and Jan Woo, Attorney, Division of Market Regulation, Commission, on May 25, 2007.

¹¹ Id.

Index Security traded on the Exchange will be highlighted and disclosed.¹² In particular, the Information Memorandum will set forth the Exchange's suitability rule that requires every member, either personally or through a general partner or an officer who is a holder of voting stock in his organization to use due diligence to learn the essential facts relative to every customer and to every order or account accepted by his organization.¹³

Proposed Listing Criteria for Index-Linked Securities

Eligibility Standards for Issuers

The following standards are proposed for each issuer of Index Securities:

- (1) Both the issue and the issuer of such security meet the criteria set forth in Phlx Rule 803(f) except that the minimum public distribution and minimum public shareholders requirement will not be applicable to an issue traded in thousand dollar denominations. In addition, the minimum public shareholders requirement will not apply if the securities are redeemable at the option of the holders thereof on at least a weekly basis.
- (2) The issue has a minimum term of one (1) year but not greater than thirty (30) years.
- (3) The issue must be the non-convertible debt of the issuer.

¹² The Exchange notes that members that carry customer accounts must be members of the NASD and would therefore be subject to the rules and regulations of the NASD, including NASD Rule 2310(a) and (b). Accordingly, NASD Notice to Members 03-71 (November 2003) ("Notice 03-71") regarding non-conventional investments or "NCIs" applies to Exchange members recommending/selling index-linked securities to public customers. Notice 03-71 specifically reminds members in connection with NCIs (such as index-linked securities) of their obligations to: (1) conduct adequate due diligence to understand the features of the product; (2) perform a reasonable-basis suitability analysis; (3) perform customer-specific suitability analysis in connection with any recommended transactions; (4) provide a balanced disclosure of both the risks and rewards associated with the particular product, especially when selling to retail investors; (5) implement appropriate internal controls; and (6) train registered persons regarding the features, risk and suitability of these products.

¹³ See Phlx Rule 746.

(4) The payment at maturity may or may not provide for a multiple of the positive performance of an underlying index or indexes; however, in no event will payment at maturity be based on a multiple of the negative performance of an underlying index or indexes.

(5) The issuer will be expected to have a minimum tangible net worth in excess of \$250,000,000, and to otherwise substantially exceed the earnings requirements set forth in Phlx Rule 803(a)(2).

In the alternative, the issuer will be expected: (A) to have a minimum tangible net worth of \$150,000,000 and to otherwise substantially exceed the earnings requirement set forth in Phlx Rule 803(a)(2), and (B) not to have issued securities where the original issue price of all the issuer's other index-linked note offerings (combined with index-linked note offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth.

(6) The issuer is in compliance with Rule 10A-3 under the Act.

Description of Underlying Indexes

Each Underlying Index will either be (i) an index meeting the specific criteria set forth in proposed Phlx Rule 803(n); or (ii) an index approved for the trading of options or other derivative securities by the Commission under Section 19(b)(2) of the Act and rules thereunder. However, in all cases, an Underlying Index must contain at least ten (10) component securities.

The Exchange will require that all changes to an Underlying Index, including the deletion and addition of underlying component securities, index rebalancings and changes to the calculation of the index, will be made in accordance with the proposed generic criteria or the Commission's Section 19(b)(2) order approving a similar derivative product based on the Underlying Index.

If a broker-dealer is responsible for maintaining (or has a role in maintaining) the Underlying Index, such broker-dealer is required to erect and maintain a “firewall,” in a form satisfactory to the Exchange, to prevent the flow of information regarding the Underlying Index from the index production personnel to the sales and trading personnel.¹⁴ In addition, an Underlying Index that is maintained by a broker-dealer is also required to be calculated by an independent third party who is not a broker-dealer.

Eligibility Standards for Underlying Securities

Index Securities will be subject to the criteria in proposed Phlx Rule 803(n)(7) and (8) for initial and continued listing. For an Underlying Index to be appropriate for the initial listing of an Index Security, such Index must either be approved for the trading of options or other derivative securities by the Commission under Section 19(b)(2) of the Act and rules thereunder or meet the following requirements:

- Each component security must have a minimum market value of at least \$75 million, except that for each of the lowest weighted Underlying Securities in the index in the aggregate account for no more than 10% of the weight of the index, the market value can be at least \$50 million;
- Each component security must have a trading volume in each of the last six months of not less than 1,000,000 shares, except that for each of the lowest weighted Underlying Securities in the index that in the aggregate account for no more than 10% of the weight

¹⁴ For certain indexes, an index provider, such as Dow Jones, may select the components and calculate the index, but overseas broker-dealer affiliates of U.S. registered broker-dealers may sit on an “advisory” committee that recommends component selections to the index provider. In such case, the Exchange would ensure that appropriate information barriers and insider trading policies exist for this advisory committee.

of the index, the trading volume shall be at least 500,000 shares in each of the last six months;

- In the case of a capitalization-weighted index, the lesser of the five highest weight Underlying Securities in the index or the highest weighted Underlying Securities in the index that in the aggregate represent at least 30% of the total number of Underlying Securities in the index, each have an average monthly trading volume of at least 2,000,000 shares over the previous six months;
- No component security will represent more than 25% of the weight of the index, and the five highest weighted component securities in the index will not in the aggregate account for more than 50% of the weight of the index (60% for an index consisting of fewer than 25 Underlying Securities);
- 90% of the index's numerical index value and at least 80% of the total number of component securities will meet the then current criteria for standardized options trading set forth in Exchange Rule 1009;
- Each component security shall be (A) securities (other than foreign country securities and American Depository Receipts ("ADRs")), that are (1) issued by an Act reporting company which is listed on a national securities exchange and (2) NMS stocks, as defined in Rule 600 of Regulation NMS,¹⁵ or (B) foreign country securities or ADRs, provided that foreign country securities or foreign country securities underlying ADRs having their primary trading market outside the United States on foreign trading markets that are not members of the Intermarket Surveillance Group ("ISG") or parties to

¹⁵ See 17 CFR 242.600(b)(47).

comprehensive surveillance sharing agreements with the Exchange will not, in the aggregate, represent more than 20% of the dollar weight of the index.

The proposed continued listing criteria set forth in proposed Rule 803(n)(8)(A) regarding the underlying components of an Underlying Index provides that the Exchange will commence delisting or removal proceedings of an Index Security if any of the standards set forth in the initial eligibility criteria of proposed Rule 803(n)(7) are not continuously maintained, except that:

- The criteria that no single component represent more than 25% of the weight of the index and the five highest weighted components in the index can not represent more than 50% (or 60% for indexes with less than 25 components) of the weight of the Index, need only be satisfied for capitalization weighted and price weighted indexes as of the first day of January and July in each year;
- The total number of components in the index may not increase or decrease by more than 33-1/3% from the number of components in the index at the time of its initial listing, and in no event may be less than ten (10) components;
- The trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted components in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months; and
- In a capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index have had

an average monthly trading volume of at least 1,000,000 shares over the previous six months.

In connection with an Index Security that is listed pursuant to proposed Rule 803(n)(7)(l), the Exchange will commence delisting or removal proceedings if an underlying index or indexes fails to satisfy the maintenance standards or conditions for such index or indexes as set forth by the Commission in its order under Section 19(b)(2) of the Act approving the index or indexes for the trading of options or other derivatives.

As set forth in proposed Rule 803(n)(8)(C), the Exchange will also commence delisting or removal proceedings of an Index Security (unless the Commission has approved the continued trading of the Index Security), under any of the following circumstances:

- If the aggregate market value or the principal amount of the securities publicly held is less than \$400,000;
- If the value of the Underlying Index or composite value of the Underlying Indexes is no longer calculated and widely disseminated on at least a 15-second basis during the time the security is traded on the Exchange; or
- If such other event shall occur or condition exists which is the opinion of the Exchange makes further dealings on the Exchange inadvisable.

The Phlx represents that Index Securities listed and traded on the Exchange will be required to be in compliance with rule 10A-3 under the Act.¹⁵

Exchange Rules Applicable to Index-Linked Securities

Index Securities will be treated as equity instruments and will be subject to all Exchange rules governing the trading of equity securities, including, among others, rule governing XLE,

¹⁵ See Rule 10A-3(c)(7), 17 CFR 240.10A-3(c)(7).

the Exchange's equity trading system, and related trading halt provisions pursuant to Phlx Rule 133. Exchange equity margin rules and the trading hours of 8:00 a.m. to 6:00 p.m. will apply to transactions in Index Securities.

In addition, the Exchange represents that it will prepare and distribute, if appropriate, an Information Memorandum that describes the product to each member organization highlighting the particular structure and corresponding risks of an Index Security. In particular, the Memorandum will set forth the Exchange's suitability rule that sets forth certain requirements for member organizations recommending a transaction in Index Securities. In addition, the Information Memorandum will note that all of the Exchange's equity trading rules will be applicable to trading in the Index Securities. The Memorandum will also reference the member requirements to deliver a prospectus to each investor purchasing newly issued Index Securities prior to or concurrently with the confirmation of a transaction.

The Exchange will closely monitor activity in Index Securities to identify and deter any potential improper trading activity in Index Securities. The Exchange represents that its surveillance procedures will be adequate to properly monitor the trading of Index Securities. Specifically, the Phlx will rely on its existing surveillance procedures governing equities, options and exchange-traded funds. The Exchange will develop procedures to closely monitor activity in the Index Security and related Underlying Securities to identify and deter potential improper trading activity. Proposed Rule 803(n)(10) provides that the Exchange will implement written surveillance procedures for Index Securities.

The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees. For Index Securities where the Underlying Index is maintained by a broker-dealer, the broker-dealer will be required to erect a "firewall" around

the personnel responsible for the maintenance of the Underlying Index or who have access to information concerning changes and adjustments to the Underlying Index, and the Underlying Index will be calculated by a third party who is not a broker-dealer. Any advisory committee, supervisory board, or similar entity that advises an Index Licensor or Administrator or that makes decisions regarding the Underlying Index or portfolio composition, methodology, and related matters would be required to implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the applicable Underlying Index or portfolio.

Proposed Phlx Rule 136(c)-(e) sets out Phlx's trading halt parameters for all of the Exchange's derivative securities products, including Index Securities. In particular, proposed Phlx Rule 136(c) sets out that, where the Exchange is the listing market for an Index Security, if the Intraday Indicative Value ("IIV") or the index value applicable to that series of Index Security is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV of the index value occurs. If the interruption to the dissemination of the IIV or the index value persists past the trading day in which it occurred, the Exchange would halt trading no later than the beginning of the trading day following the interruption. Proposed Phlx Rule 136(d) provides how and when the Exchange will halt trading in a series of Index Securities traded pursuant to UTP if the primary listing market halts trading in that series of Shares because the IIV or the index value applicable to that series of Shares is not being disseminated as required. Proposed Phlx Rule 136(e) provides definitions used in Phlx Rule 136.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁷ 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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. 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. Please include File No. SR-Phlx-2007-07 on the subject line.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2007-07. 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-2007-07 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

IV. Discussion and Commission's Findings

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder

applicable to a national securities exchange.¹⁸ In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,¹⁹ which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, 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 interest.

A. Generic Listing Standards for Index Securities

To list and trade Index Securities, the Exchange currently must file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act²⁰ and Rule 19b-4 thereunder.²¹ However, Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a SRO will not be deemed a proposed rule change pursuant to Rule 19b-4(c)(1) if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class. The Exchange's proposed rules for the listing and trading of Index Securities pursuant to Rule 19b-4(e) fulfill these requirements.

The Exchange's ability to rely on Rule 19b-4(e) to list and trade Index Securities that meet the requirements of proposed Phlx Rule 803(n) should reduce the time frame for bringing

¹⁸ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ 15 U.S.C. 78s(b)(1).

²¹ 17 CFR 240.19b-4.

these securities to the market and thereby reduce the burdens on issuers and other market participants, while also promoting competition and making Index Securities available to investors more quickly.

The Commission has previously approved generic listing standards that are substantially similar to the Exchange's proposal.²² In approving these securities for Exchange trading, the Commission considered applicable Exchange rules that govern their trading. The Commission believes that the proposed generic listing standards for Index Securities should fulfill the intended objective of Rule 19b-4(e) and allow Index Securities that satisfy these standards to commence trading without the need for public comment and Commission approval.²³

B. Listing and Trading Index Securities

Taken together, the Commission finds that the Exchange's proposal contains adequate rules and procedures to govern the listing and trading of Index Securities listed pursuant to Rule 19b-4(e) on the Exchange. All Index Securities listed under the proposed generic standards will be subject to the full panoply of Exchange rules and procedures that currently govern the trading of equity securities on the Exchange.

As set forth more fully above, the Exchange has proposed size, earnings, and minimum tangible net worth requirements for each Index Security issuer, as well as minimum distribution and holder, principal amount/market value, and term thresholds for each issuance of Index Securities. The Exchange's proposed listing criteria include minimum market capitalization,

²² See Securities Exchange Act Release Nos. 55687 (May 1, 2007), 72 FR 25824 (May 7, 2007) (SR-NYSE-2007-27) (adopting generic listing standards for index linked securities); and 51563 (April 15, 2005), 70 FR 21257 (April 25, 2005) (SR-Amex-2005-001) (approving the generic listing standards for index-linked securities).

²³ The Commission notes that the failure of a particular product or index to comply with the proposed generic listing standards under Rule 19b-4(e), however, would not preclude the

monthly trading volume, and relative weighting requirements for each Index Security and the components underlying each such security. These requirements are designed to ensure that the trading markets for the Underlying Index components are adequately capitalized and sufficiently liquid, and that no one component dominates the Underlying Index. The Commission believes that these requirements should minimize the potential for manipulation.

The Commission notes that each component security of an Index Security (other than foreign country securities and ADRs) must be issued by a reporting company under the Act, listed on a national securities exchange, and be an “NMS stock,” as such term is defined in Rule 600 of Regulation NMS.²⁴ The Commission believes that such a requirement will contribute to the transparency of the Underlying Index. Alternatively, such component securities may also be foreign country securities or ADRs, so long as the foreign country securities or foreign country securities underlying ADRs having their primary trading market on foreign markets that are not ISG members or parties to comprehensive surveillance agreements with the Exchange do not, in the aggregate, represent more than 20 percent of the dollar weight of the Underlying Index. The Commission also believes that the requirement that 90 percent of the index’s numerical value and at least 80 percent of the total number of component securities be eligible for standardized options trading should prevent an Index Security from being a vehicle for trading options on a security not otherwise options eligible. The Commission also notes that, by requiring pricing information for the relevant Underlying Index or Indexes and the Index Security to be readily available, the proposed listing standards should help ensure a fair and orderly market for Index Securities listed and traded pursuant to Rule 19b-4(e).

Exchange from submitting a separate filing pursuant to Section 19(b)(2), requesting Commission approval to list and trade such product.

²⁴ 17 CFR 240.600(b)(47).

The Exchange has also developed delisting criteria that will permit it to suspend trading of an Index Security in circumstances that make further dealings in the product on the Exchange inadvisable. The Commission believes that the delisting criteria should help ensure that a minimum level of liquidity exists for each Index Security to allow for the maintenance of fair and orderly markets. Also, in the event that the value of the Underlying Index is no longer calculated and widely disseminated on at least a 15-second basis, the Exchange may halt trading during the day on which the interruption first occurs; however, if the interruption persists past the trading day on which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption and will commence delisting proceedings.

C. Surveillance

The Commission notes that any Index Security approved for listing and trading would be subject to the Exchange's existing surveillance procedures governing equities, options, and exchange-traded funds, as well as procedures the Exchange represents it will develop to closely monitor activity in Index Securities and their underlying components. The Exchange has represented that its surveillance procedures will be adequate to properly monitor the trading of Index Securities listed pursuant to these proposed generic listing standards.

D. Information Memorandum

The Exchange has represented that it will distribute, as appropriate, an Information Memorandum to members describing the product, the structure of the product, and the corresponding risks of the Index Security. In addition, the Information Memorandum will set forth the Exchange's suitability requirements with respect to recommendations in transactions in Index Securities to customers and the prospectus delivery requirements. The Memorandum will also identify the Exchange's trading rules governing the Index Securities.

E. Firewall Procedures

The Exchange has further represented that, if the Underlying Index is maintained by a broker-dealer, such broker-dealer will establish a “firewall” around personnel responsible for the maintenance of the Underlying Index. As an added measure, a third-party who is not a broker-dealer will calculate the Underlying Index. In addition, the Exchange has stated that any advisory committee, supervisory board, or similar entity that advises an Index Licensor or Administrator or that makes decisions regarding the Underlying Index or portfolio composition, methodology, and related matters will be subject to procedures designed to prevent the use and dissemination of material, non-public information.

F. Acceleration

The Commission finds good cause for approving the proposed rule change before the 30th day after the date of publication of notice of filing thereof in the Federal Register. The Exchange requested accelerated approval of the proposal to enable the Exchange to immediately list and trade Index Securities. The Commission notes that the Exchange’s proposed generic listing standards are substantially similar to previously approved listing standards for Index Securities²⁵ and presently is not aware of any regulatory issue that should cause it to revisit that finding or would preclude the trading of such securities on the Exchange. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Index Securities, subject to the standards and representations discussed herein. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,²⁶ to approve the proposed rule change on an accelerated basis.

²⁵ See supra note 22.

²⁶ 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-Phlx-2007-07), as amended, is hereby approved on an accelerated basis.²⁷

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁸

Florence E. Harmon
Deputy Secretary

²⁷ 15 U.S.C. 78s(b)(2).

²⁸ 17 CFR 200.30-3(a)(12).