

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56049; File No. SR-Phlx-2007-20)

July 11, 2007

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change as Modified by Amendment No. 1 Thereto Adopting Generic Listing Standards for Exchange-Traded Funds Based on International or Global Indexes or Indexes Described in Exchange Rules Previously Approved by the Commission as Underlying Benchmarks for Derivative Securities

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 March 9, 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 Phlx. On June 18, 2007, Phlx filed Amendment No. 1 to the proposal. This order provides notice of the proposal, as amended, and approves the proposal on an accelerated basis.

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

Phlx proposes to revise its listing standards, adopted pursuant to Rule 19b-4(e),<sup>3</sup> in Phlx Rule 803 to include generic listing standards for Trust Shares and Index Fund Shares (“IFSs”) (which together with Trust Shares are referred to as “exchange-traded funds” or “ETFs”) that are based on international or global indexes, or on indexes described in exchange rules that have been previously approved by the Commission for the trading of ETFs or other specified index-based securities.

---

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

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

<sup>3</sup> 17 CFR 240.19b-4(e).

The text of the proposed rule change is available at Phlx, from the Commission's Public Reference Room, and on Phlx's Web site (<http://www.Phlx.com>).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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. 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 provide for the more efficient and timely listing and trading of ETFs. This proposal would enable the Exchange to list and trade ETFs pursuant to Rule 19b-4(e) under the Act<sup>4</sup> if each of the conditions set forth in Phlx Rules 803(i) and (l) is satisfied. 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-4,<sup>5</sup> if the Commission has approved, pursuant to Section 19(b) of the Act, the trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product

---

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

<sup>5</sup> 17 CFR 240.19b-4(c)(1).

class.<sup>6</sup>

### Background

Currently, Phlx Rule 803(i) provides standards for listing Trust Shares on Phlx. A Trust Share is a security based on a unit investment trust registered under the Investment Company Act of 1940 (“1940 Act”),<sup>7</sup> which holds the securities that comprise an index or portfolio underlying a series of Trust Shares. Phlx Rule 803(l) provides standards for listing IFSs, which are securities issued by an open-end management investment company registered under the 1940 Act (i.e., an open-end mutual fund) based on a portfolio of stocks that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index.

Pursuant to Phlx Rule 803(i), Trust Shares that are eligible for listing on the Exchange must be issued in a specified aggregate minimum number in return for a deposit of specified securities and/or a cash amount. When aggregated in the same specified minimum number, the Trust Shares must be redeemable from the Trust for the securities and/or cash. Pursuant to Phlx Rule 803(l), IFSs that are eligible for listing on the Exchange must be issued in a specified aggregate minimum number in return for a deposit of specified securities and/or a cash amount, with a value equal to the next determined net asset value (“NAV”). When aggregated in the same specified minimum number, IFSs must be redeemable by the issuer for the securities and/or cash, with a

---

<sup>6</sup> When relying on Rule 19b-4(e), the SRO must submit Form 19b-4(e) to the Commission within five business days after it begins trading the new derivative securities products. See 17 CFR 240.19b-4(e)(2)(ii).

<sup>7</sup> 15 U.S.C. 80a.

value equal to the next determined NAV. The NAV is calculated once a day after the close of the regular trading day.<sup>8</sup>

To meet the investment objective of providing investment returns that correspond to the price and the dividend and yield performance of the underlying index, an ETF may use a “replication” strategy or a “representative sampling” strategy with respect to the ETF portfolio.<sup>9</sup> An ETF using a replication strategy will invest in each stock of the underlying index in about the same proportion as that stock is represented in the index itself. An ETF using a representative sampling strategy will generally invest in a significant number but not all of the component securities of the underlying index, and will hold stocks that, in the aggregate, are intended to approximate the full index in terms of key characteristics, such as price/earnings ratio, earnings growth, and dividend yield.

In addition, an ETF portfolio may be adjusted in accordance with changes in the composition of the underlying index or to maintain compliance with requirements applicable to a regulated investment company under the Internal Revenue Code (“IRC”).

#### Generic Listing Standards for Exchange-Traded Funds

The Commission has previously approved generic listing standards for ETFs based on indexes that consist of stocks listed on U.S. exchanges.<sup>10</sup> In general, the

---

<sup>8</sup> See e-mail from John Dayton, Director and Counsel, Phlx, to Natasha Cowen, Special Counsel, Division of Market Regulation (“Division”), Commission, dated July 6, 2007.

<sup>9</sup> In either case, an ETF, by its terms, may be considered invested in the securities of the underlying index to the extent the ETF invests in sponsored American Depositary Receipts (“ADRs”), Global Depositary Receipts (“GDRs”), or European Depositary Receipts (“EDRs”) that trade on exchanges with last-sale reporting representing securities in the underlying index.

<sup>10</sup> See Securities Exchange Act Release No. 43717 (December 13, 2000), 65 FR 80976 (December 22, 2000) (SR-Phlx-00-54) (approving Phlx Rule 803(i), which sets forth the rules related to the listing and trading of Trust Shares); Securities

proposed criteria for the underlying component securities in the international and global indexes are similar to those for the domestic indexes, but with modifications for the issues and risks associated with non-U.S. securities.

In addition, the Commission has previously approved generic listing standards of exchanges governing the listing and trading of ETFs based on indexes composed of non-U.S. Component Stocks as well as indexes based on both non-U.S. Component Stocks and U.S. Component Stocks.<sup>11</sup> The Commission has also approved generic listing standards for index-based derivative securities products based on indexes described in exchange rules that have been previously approved by the Commission under Section 19(b)(2) of the Act for the trading of ETFs or other index-based securities, on the condition that all of the standards set forth in those orders, including surveillance sharing agreements, continue to be satisfied.<sup>12</sup>

The Exchange believes that adopting generic listing standards and applying Rule 19b-4(e) should fulfill the intended objective of that rule by allowing those ETFs that satisfy the proposed generic listing standards to commence trading, without the need for a public comment period and Commission approval. The proposed rules have the potential

---

Exchange Act Release No. 43912 (January 31, 2001), 66 FR 9401 (February 7, 2001) (SR-Phlx-00-91) (approving Phlx Rule 803(l), which sets forth the rules including generic listing standards for the listing and trading of Index Fund Shares under Phlx Rule 803(l)).

<sup>11</sup> See Securities Exchange Act Release No. 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR-NYSEArca-2006-86); Securities Exchange Act Release No. 55269 (February 9, 2007), 72 FR 7490 (February 15, 2007) (SR-NASDAQ-2006-50); Securities Exchange Act Release No. 55113 (January 17, 2007), 72 FR 3179 (January 24, 2007) (SR-NYSE-2006-101).

<sup>12</sup> See, e.g. Securities Exchange Act Release No. 51563 (April 15, 2005) 70 FR 21257 (April 25, 2005) (SR-Amex-2005-001); Securities Exchange Act Release No. 52204 (August 3, 2005), 70 FR 46559 (August 10, 2005) (SR-PCX-2005-63).

to reduce the time frame for bringing ETFs to market, thereby reducing the burdens on issuers and other market participants. The failure of a particular ETF to comply with the proposed generic listing standards under Rule 19b-4(e) would not, however, preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2) requesting Commission approval to list and trade a particular ETF.

#### Proposed Listing and Trading Requirements

ETFs that are listed pursuant to the proposed generic listing standards or that are traded pursuant to UTP would be traded, in all other respects, under the Exchange's existing trading rules and procedures that apply to ETFs and would be covered under Exchange's surveillance program for ETFs.<sup>13</sup>

To list a Trust Share or IFS pursuant to the proposed generic listing standards for international and global indexes, the index underlying the Trust Share or IFS must satisfy all the conditions contained in proposed Phlx Rules 803(i)(11)(b) or (I)(6)(B). As with the existing generic standards for ETFs based on domestic indexes, these generic listing standards are intended to ensure that stocks with substantial market capitalization and trading volume account for a substantial portion of the weight of an index or portfolio. While the standards in this proposal are based on the standards contained in the current generic listing standards for ETFs based on domestic indexes, they have been adapted as appropriate to apply to international and global indexes.

As proposed, Phlx Rule 803(i)(1)(iii) and (iv) and Phlx Rule 803(I)(2)(C) and (D) would be revised to include definitions of "U.S. Component Stock" and "Non-U.S. Component Stock." These new definitions would provide the basis for the standards for

---

<sup>13</sup> See Phlx Rule 803(i)(11)(i) and (I)(6)(I).

indexes with either domestic or international stocks, or a combination of both. A “Non-U.S. Component Stock” would mean an equity security that is not registered under Section 12(b) or 12(g) of the Act,<sup>14</sup> and that is issued by an entity that (1) is not organized, domiciled, or incorporated in the United States; and (2) is an operating company (including a real estate investment trust (REIT) or income trust, but excluding an investment trust, unit trust, mutual fund, or derivative). This definition is designed to create a category of component stocks that are issued by companies that are not based in the United States, are not subject to oversight through Commission registration, and would include sponsored GDRs and EDRs. A “U.S. Component Stock” would mean an equity security that is registered under Section 12(b) or 12(g) of the Act or an ADR the underlying equity security of which is registered under Section 12(b) or 12(g) of the Act. An ADR with an underlying equity security that is registered pursuant to the Act is considered a U.S. Component Stock because the issuer of that security is subject to Commission jurisdiction and must comply with Commission rules.

The Exchange proposes that, to list a Trust Share or an IFS based on an international or global index or portfolio pursuant to the generic listing standards, such index or portfolio must meet the following criteria:

- Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each must have a minimum market value of at least \$100 million (Phlx Rules 803(i)(11)(b)(i) and (l)(6)(B)(I));
- Component stocks representing at least 90% of the weight of the index or portfolio each must have a minimum worldwide monthly trading volume during

---

<sup>14</sup> 15 U.S.C. 78l(b) or (g).

each of the last six months of at least 250,000 shares (Phlx Rules 803(i)(11)(b)(ii) and (1)(6)(B)(II));

- The most heavily weighted component stock may not exceed 25% of the weight of the index or portfolio and the five most heavily weighted component stocks may not exceed 60% of the weight of the index or portfolio (Phlx Rules 803(i)(11)(b)(iii) and (1)(6)(B)(III));
- The index or portfolio shall include a minimum of 20 component stocks (Phlx Rules 803(i)(11)(b)(iv) and (1)(6)(B)(IV)); and
- Each U.S. Component Stock must be listed on a national securities exchange and be an NMS stock as defined in Rule 600 of Regulation NMS under the Act, and each Non-U.S. Component Stock must be listed on an exchange that has last-sale reporting (Phlx Rules 803(i)(11)(b)(v) and (1)(6)(B)(V)).

The Exchange believes that these proposed standards are reasonable for international and global indexes, and, when applied in conjunction with the other listing requirements, would result in the listing and trading on the Exchange of ETFs that are sufficiently broad-based in scope and not readily susceptible to manipulation. The Exchange also believes that the proposed standards would result in ETFs that are adequately diversified in weighting for any single security or small group of securities to significantly reduce concerns that trading in an ETF based on an international or global index could become a surrogate for the trading of securities not registered in the United States.

The Exchange further notes that, while these standards are similar to those for indexes that include only U.S. Component Stocks, they differ in certain important



respects and are generally more restrictive, reflecting greater concerns over portfolio diversification with respect to ETFs investing in components that are not individually registered with the Commission. First, in the proposed standards, component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least \$100 million, compared to a minimum market value of at least \$75 million for indexes with only U.S. Component Stocks. (Market value is calculated by multiplying the total shares outstanding by the price per share of the component stock.) Second, in the proposed standards, the most heavily weighted component stock cannot exceed 25% of the weight of the index or portfolio, in contrast to a 30% standard for an index or portfolio comprised of only U.S. Component Stocks. Third, in the proposed standards, the five most heavily weighted component stocks shall not exceed 60% of the weight of the index or portfolio, compared to a 65% standard for indexes comprised of only U.S. Component Stocks. Fourth, the minimum number of stocks in the proposed standards is 20, in contrast to a minimum of 13 in the standards for an index or portfolio with only U.S. Component Stocks. Finally, the proposed standards require that each Non-U.S. Component Stock included in the index or portfolio be listed and traded on an exchange that has last-sale reporting.

The Exchange also proposes new Phlx Rules 803(i)(11)(e) and (l)(6)(E) to require that the index value for an ETF listed pursuant to the proposed standards for international and global indexes be widely disseminated by one or more major market data vendors at least every 60 seconds during the time when the ETF shares trade on the Exchange. If the index value does not change during some or all of the period when trading is occurring on the Exchange, the last official calculated index value must remain available

throughout Exchange trading hours. In contrast, the index value for an ETF listed pursuant to the existing standards for domestic indexes must be disseminated at least every 15 seconds during the trading day. This modification reflects limitations, in some instances, on the frequency of intra-day trading information with respect to Non-U.S. Component Stocks and that, in many cases, trading hours for overseas markets overlap only in part, or not at all, with Exchange trading hours.

In addition, proposed Phlx Rules 803(i)(11)(e) and (l)(6)(E) would define the term “Intraday Indicative Value” (“IIV”) as the estimate of the value of a share of each ETF that is updated at least every 15 seconds during the Core Session<sup>15</sup> and during any Pre Market Session<sup>16</sup> for the ETF. Phlx also proposes to clarify in these rules that the IIV would be updated at least every 15 seconds during the Core Session on Phlx’s XLE equities trading platform and during any Pre Market Session on XLE for the ETF to reflect changes in the exchange rate between the U.S. dollar and the currency in which any component stock is denominated. If the IIV does not change during some or all of the period when trading is occurring on XLE because the underlying components of an index or portfolio are not trading, then the last official calculated IIV must remain available throughout XLE’s trading hours.

As set forth in proposed Phlx Rules 803(i)(11)(l) and (l)(6)(H), Phlx may designate an ETF for trading during XLE’s Pre Market Session and/or the Post Market

---

<sup>15</sup> The Core Session on XLE shall take place for each security from 9:30 a.m. until 4:00 P.M., except for specified ETFs, for which it shall last until 4:15 p.m. See Phlx Rule 101 Supplementary Material .02(2).

<sup>16</sup> The Pre Market Session on XLE begins at 8:00 a.m. and concludes at the commencement of the Core Session. See Phlx Rule 101 Supplementary Material .02(1).

Session<sup>17</sup> as long as the index value and IIV dissemination requirements of proposed Phlx Rules 803(i)(11)(e) and (l)(6)(E) are met. If there is no overlap with the trading hours of the primary market trading the underlying components of an ETF, Phlx may designate the ETF for the Pre Market Session as long as the last official calculated IIV remains available.<sup>18</sup> Although the IIV does not need to be calculated during XLE's current Post Market Session, the last official calculated IIV must also remain available during such post-market trading session.

The Exchange is also proposing to add provisions, proposed Phlx Rules 803(i)(11)(k) and (l)(6)(K), regarding the creation and redemption process for ETFs and compliance with federal securities laws for ETFs listed pursuant to the new generic listing standards. These new provisions would require that the statutory prospectus or the application for exemption from provisions of the 1940 Act for the ETF state that the ETF must comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.<sup>19</sup>

The Commission has approved generic listing standards providing for the listing, pursuant to Rule 19b-4(e), of derivative securities products based on indexes described in rules previously approved by the Commission under Section 19(b)(2) of the Act.<sup>20</sup> The

---

<sup>17</sup> The Post Market Session on XLE shall begin following the conclusion of the Core Session and conclude at 6:00 p.m. See Phlx Rule 101 Supplementary Material .02(3).

<sup>18</sup> See Phlx Rule 803(i)(11)(l) and (l)(6)(H).

<sup>19</sup> 15 U.S.C. 77a et seq.

<sup>20</sup> See supra note 12.

Exchange would include in its proposed generic listing standards indexes described in exchange rules that have been approved by the Commission in connection with the listing of options, ETFs, index-linked exchangeable notes, or index-linked securities. The Exchange believes that the application of this standard to ETFs is appropriate because the underlying index would have been subject to detailed and specific Commission review in the context of the approval of listing of those other derivatives. This new generic standard would be limited to stock indexes and would require that each component stock be either: (1) a U.S. Component Stock that is listed on a national securities exchange and is an NMS Stock as defined in Rule 600 of Regulation NMS; or (2) a Non-U.S. Component Stock that is listed and traded on an exchange that has last-sale reporting.

The Exchange also proposes to include additional continued listing standards relating to ETFs. The Exchange proposes to adopt Phlx Rules 803(i)(5)(D) and (l)(5)(D) to formalize in the rules existing best practices for providing equal access to material information about the value of ETFs. Prior to approving an ETF for listing, the Exchange would obtain a representation from the ETF issuer that the NAV per share would be calculated daily and made available to all market participants at the same time. The Exchange would commence delisting proceedings for an ETF if the value of the index or portfolio of securities on which the ETF is based is no longer calculated or disseminated.

Phlx's proposed amendments to Phlx Rule 136 would expand the application of the trading halt provisions of Rule 136(c) and (d) from index-linked securities to a broader range of derivative securities products listed or traded on Phlx on a UTP basis. Current Phlx Rule 136, among other things, sets out the trading halt rules for a Derivative

Securities Product<sup>21</sup> in the event that there is a temporary interruption in the calculation and dissemination of the index value or the IIV. Phlx Rule 136(c) sets forth the trading halt requirement when Phlx is the primary listing market while Phlx Rule 136(d) sets forth the trading halt requirement when Phlx is trading an ETF pursuant to UTP. The proposed amendments to Phlx Rule 136(e) would expand the definition of a Derivative Securities Product to include Trust Shares, IFSs, and other derivative securities, thus applying Phlx trading halt rules to such securities if there is a temporary interruption in the calculation and dissemination of the index value or the IIV. Phlx is also proposing to clarify and expand the definition of “Required Value” to include the Indicative Optimized Portfolio Value, which is used in connection with certain derivative securities products, and other comparable values.<sup>22</sup>

The Exchange proposes to amend Phlx Rule 803 to stipulate that, as provided by Commission Rule 12f-5,<sup>23</sup> the Exchange may extend UTP to any security, such as an ETF, for which the Exchange has in effect rules providing for transactions in such class or type of security. Provisions of Phlx Rule 803 that govern trading hours and surveillance procedures, and that relate to information circulars and prospectus delivery, also would apply to securities traded on a UTP basis (as do applicable proposed trading halt provision of Phlx Rule 136). The Exchange would not, however, apply quantitative listing standards to securities traded on a UTP basis. Accordingly, introductory language in Phlx Rules 803(i)(11) and (l)(6) that could be read to require unlisted securities to meet

---

<sup>21</sup> Current Phlx Rule 136 defines a “Derivative Securities Product” as “a series of Index-Linked Securities.”

<sup>22</sup> Phone conversation between John Dayton, Director and Counsel, Phlx, with Natasha Cowen, Special Counsel, Division, Commission, on July 10, 2007 (clarifying the implications of proposed changes to Rule 136).

<sup>23</sup> 17 CFR 240.12f-5.

Phlx's quantitative listing standards for Trust Shares or IFSs in order to trade on a UTP basis is being deleted.

The Exchange is proposing other minor and clarifying changes to Phlx Rules 803(i) and (l). Phlx proposed to amend Rules 803(i)(11)(d)(ii)-(iii) and (l)(6)(D)(II)-(III) to make sure that an entity that advises an index provider or calculator and related entities has in place procedures designed to prevent the use and dissemination of material non-public information regarding the index underlying the ETF. Phlx Rules 803(i)(11)(g) and (l)(6)(G) would be amended to clarify that the trading increments for ETFs are set in Phlx Rule 125. Phlx Rule 803(l)(6)(H) would be amended and Phlx Rule 803(i)(11)(l) would be added to, among other things, clarify that the trading hours for ETFs are set in Phlx Rule 101. Phlx Rule 803(l)(6)(A)(III), which sets forth one of the listing requirements for a series of IFSs that are based on U.S. Component Stocks, would be amended to change the maximum weighting requirement for the most heavily weighted component stock of the underlying index from 25% to 30%.<sup>24</sup> Phlx Rule 803(l)(3) would be amended to harmonize its provisions with those in Phlx Rule 803(l)(7).

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of Trust Shares and IFSs that would be listed pursuant to the proposed listing standards or traded on a UTP basis. Specifically, Phlx will rely on its existing surveillance procedures governing equities, options, and ETFs. The Exchange states that it will closely monitor activity in ETFs to identify and deter any potential improper trading activity in ETFs. In addition, the Exchange has a general policy prohibiting the dissemination of material, non-public information by its employees.

---

<sup>24</sup> See Securities Exchange Act Release Nos. 44532 (July 10, 2001), 66 FR 37078 (July 16, 2001) (SR-Amex-2001-25).

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>25</sup> in general, and with Section 6(b)(5) of the Act,<sup>26</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change would result in 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

Written comments were neither solicited nor 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

---

<sup>25</sup> 15 U.S.C. 78f.

<sup>26</sup> 15 U.S.C. 78f(b)(5).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2007-20 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-2007-20. 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 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-2007-20 and should be submitted on or before [insert date 21 days from publication in the Federal Register].



IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, 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.<sup>27</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act<sup>28</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.

Currently, the Exchange must file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act<sup>29</sup> and Rule 19b-4 thereunder<sup>30</sup> to list and trade any ETF based on an index comprised of foreign securities. The Exchange also must file a proposed rule change to list and trade ETFs based on indexes or portfolios described in rule changes that have previously been approved by the Commission as underlying benchmarks for derivative securities. However, Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by an 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

---

<sup>27</sup> In approving this 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).

<sup>28</sup> 15 U.S.C. 78f(b)(5).

<sup>29</sup> 15 U.S.C. 78s(b)(1).

<sup>30</sup> 17 CFR 240.19b-4.

standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class. Phlx's proposed rules for the listing and trading of ETFs pursuant to Rule 19b-4(e) based on (1) certain indexes with components that include foreign securities or (2) indexes or portfolios described in exchange rules that have been previously approved by the Commission as underlying benchmarks for derivative securities, fulfill these requirements. Use of Rule 19b-4(e) by the Exchange to list and trade such ETFs should promote competition, reduce burdens on issuers and other market participants, and make such ETFs available to investors more quickly.<sup>31</sup>

The Commission previously has approved generic listing standards for other exchanges that are substantially similar to those proposed here by the Exchange.<sup>32</sup> This proposal does not appear to raise any novel regulatory issues. Therefore, the Commission finds that Phlx's proposal is consistent with the Act on the same basis that it approved the other exchange's generic listing standards for ETFs based on international or global indexes or on indexes or portfolios described in exchange rules that have been previously approved by the Commission as underlying benchmarks for derivative securities.

---

<sup>31</sup> The Commission notes, however, that the failure of a particular ETF to meet these generic listing standards would not preclude the Exchange from submitting a separate proposed rule change to list and trade the ETF.

<sup>32</sup> See, e.g., Securities Exchange Act Release No. 55269 (February 9, 2007), 72 FR 19571 (February 15, 2007) (SR-NASDAQ-2006-50); Securities Exchange Act Release No. 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR-NYSEArca-2006-86); Securities Exchange Act Release No. 55113 (January 17, 2007), 72 FR 3179 (January 24, 2007) (SR-NYSE-2006-101); Securities Exchange Act Release No. 54739 (November 9, 2006), 71 FR 66993 (November 17, 2007) (SR-Amex-2006-78)

Proposed Phlx Rules 803(i)(11)(b) and (1)(6)(B) establish standards for the composition of indexes and portfolios underlying ETFs. These requirements are designed, among other things, to require that components of an index or portfolio underlying an ETF are adequately capitalized and sufficiently liquid, and that no one security dominates the index. The Commission believes that, taken together, these standards are reasonably designed to ensure that securities with substantial market capitalization and trading volume account for a substantial portion of any underlying index or portfolio, and that when applied in conjunction with the other applicable listing requirements will permit the listing and trading of only ETFs that are sufficiently broad-based in scope to minimize potential manipulation. The Commission further believes that the proposed listing standards are reasonably designed to preclude Phlx from listing and trading ETFs that might be used as surrogate for trading in unregistered securities. The requirement that each component security underlying an ETF be an NMS Stock (in the case of a U.S. Component Stock) or listed on an exchange and subject to last-sale reporting (in the case of a Non-U.S. Component Stock) also should contribute to the transparency of the market for these ETFs.

The proposed generic listing standards will permit the Exchange to list and trade an ETF if the Commission has previously approved an SRO rule change that contemplates listing and trading a derivative product based on the same underlying index. Phlx would be able to rely on that earlier approval order, provided that: (1) the securities comprising the underlying index consist of U.S. Component Stocks or Non-U.S. Component Stocks; and (2) Phlx complies with the commitments undertaken by the other

SRO set forth in the prior order, including any surveillance-sharing arrangements with a foreign market.

The Commission believes that Phlx's proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>33</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Phlx's proposal requires the value of the index or portfolio underlying an ETF based on a global or international index to be disseminated at least once every 60 seconds during the time when the ETF shares trade on the Exchange.<sup>34</sup> Phlx has represented that, if an underlying index or portfolio value is no longer calculated or available, it would commence delisting proceedings for the associated ETF.

In addition, an IIV, which represents an estimate of the value of a share of each ETF, must be updated and disseminated at least once every 15 seconds during Phlx XLE's Core Session. If the underlying components are trading during the same hours as the XLE's Pre Market Session, Phlx may not trade the ETF unless an updated IIV is being calculated and disseminated. The IIV must reflect changes in the exchange rate between the U.S. dollar and the currency in which any index or portfolio component stock is denominated. When there is no overlap with the trading hours of the primary market or markets trading the underlying components of an ETF, Phlx may trade such

---

<sup>33</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>34</sup> See Phlx Rules 803(i)(11)(e) and (l)(6)(E). In the underlying components of an index or portfolio are not trading and the index or portfolio value is therefore static, the last official calculated index or portfolio value must continue to be disseminated during the time that the ETF trades on the Exchange.

ETF during the Pre Market Session, as long as the last official calculated IIV remains available.<sup>35</sup> In those instances, the IIV will not reflect changes associated with the exchange rate. Although the IIV is not calculated during XLE's current Post Market Session, the last official calculated IIV must also remain available during such post-market trading session.

The Commission believes the proposal is reasonably designed to preclude trading of ETFs when transparency is impaired. Existing Phlx Rule 136 sets out the trading halt rules for Derivative Securities Products in the event that there is a temporary interruption in the calculation and dissemination of the index value or the IIV. In the proposed rule change, Phlx would amend its definition of a "Derivative Securities Product" and thereby extend Rule 136 to a broader range of derivative securities products that currently trade on the Exchange, including Trust Shares and IFSs. This proposed rule change is designed to ensure that similar derivative securities products are treated consistently and that the same trading halt rules apply when there is a temporary disruption in the dissemination of the IIV and index value.

In addition, in the proposed rule change, Phlx would clarify that the trading halt rules apply when values that are comparable to the IIV, such as the Indicative Optimized Portfolio Value, are not disseminated as required. The Commission believes that it is reasonable and consistent with the Act for Phlx to apply consistent trading halt rules to similar derivative securities products.

The Commission believes that the proposed rules are reasonably designed to promote fair disclosure of information that may be necessary to price an ETF

---

<sup>35</sup> See Phlx Rule 803(i)(11)(l) and (l)(6)(H).

appropriately. These generic listing standards provide that the issuer of an ETF must represent that it will calculate the NAV and make it available daily to all market participants at the same time.<sup>36</sup> Phlx proposed to amend Rules 803(i)(11)(d)(ii)-(iii) and (1)(6)(D)(II)-(III) to make sure that an entity that advises an index provider or calculator and related entities has in place procedures designed to prevent the use and dissemination of material non-public information regarding the index underlying the ETF.

In approving this proposal, the Commission relied on Phlx's representation that its surveillance procedures are adequate to properly monitor the trading of the Trust Shares and IFSs listed pursuant to the proposed new listing standards or traded on a UTP basis. This approval is conditioned on the continuing accuracy of that representation.

#### Acceleration

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30<sup>th</sup> day after the date of publication of the notice of filing thereof in the Federal Register. The Commission notes that Phlx's proposal is substantially similar to other proposals that have been approved by the Commission.<sup>37</sup> The Commission does not believe that Phlx's proposal raises any novel regulatory issues and, therefore, that good cause exists for approving the filing before the conclusion of a notice-and-comment period. Accelerated approval of the proposal will expedite the listing and trading of additional ETFs by Phlx, subject to consistent and reasonable standards. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>38</sup> to approve the proposed rule change, as amended, on an accelerated basis.

---

<sup>36</sup> See proposed Phlx Rules 803(i)(5)(D) and (1)(5)(D).

<sup>37</sup> See supra note 32.

<sup>38</sup> 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>39</sup> that the proposed rule change (SR-Phlx-2007-20), as amended, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>40</sup>

Florence E. Harmon  
Deputy Secretary

---

<sup>39</sup> Id.

<sup>40</sup> 17 CFR 200.30-3(a)(12).