

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56369; File No. SR-Phlx-2007-56)

September 6, 2007

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Definition of Common Stock

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 2, 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 August 30, 2007, the Exchange 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.

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

The Exchange proposes to adopt Phlx Rule 800 providing for a definition of the term “common stock,” as used in Phlx Rules 800-899. In those rules, the term “common stock” will include any security of an issuer designated as common stock and any security of an issuer, however designated, which by statute or by its terms, is a common stock (e.g., a security which entitles the holders thereof to vote generally on matters submitted to the issuer's security holders for a vote). This definition is substantially similar to NYSEArca Equities Rule 5.1(b)(12). The text of the proposed rule change is available on the Exchange’s Web site at http://www.Phlx.com/exchange/phlx_rule_fil.html, at the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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. 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 adopt Phlx Rule 800 providing for a definition of the term common stock as used in Phlx Rules 800-899.³ The term common stock is typically used to refer to a security issued by corporations in the United States, whose holders have a residual right to the corporation. However, at times, another name may be given to this security or this type of security may not be issued by a corporation.⁴ Phlx believes that the proposed definition reflects the fact that the term common stock is not always given to a security that has the characteristics of a common stock or that the issuer of this type of security is not always a corporation.

By adopting this new, expanded definition of common stock, Phlx would be permitted to list and trade, pursuant to unlisted trading privileges (“UTP”), securities of issuers that have the

³ The proposed definition in Phlx Rule 800(a) is identical to the definition of common stock in Phlx Rule 812(d)(2), which, by its terms, is limited to Phlx Rule 812. The definition in proposed Phlx Rule 800(a) would be applicable to Phlx Rules 800-899.

⁴ For example, the Blackstone Group, L.P., a limited partnership, recently listed their common units representing limited partner interests on the New York Stock Exchange (“NYSE”). However, the NYSE web site page on Blackstone Group, L.P., <http://www.nyse.com/about/listed/bx.html>, describes the security as common stock.

characteristics of common stock, even though the security is not designated as common stock. Phlx is permitted to trade certain securities that are not listed on Phlx pursuant to provisions of the Act, the rules thereunder, and Phlx Rules. Section 12(f)(1)(A)(i) of the Act states that “any national securities exchange, in accordance with the requirements of this subsection and the rules hereunder, may extend unlisted trading privileges to any security that is listed and registered on a national securities exchange”⁵ Rule 12f-5 under the Act states that “[a] national securities exchange shall not extend unlisted trading privileges to any security unless the national securities exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends unlisted trading privileges.”⁶ Generally, Phlx Rule 801 permits the Exchange to trade securities pursuant to UTP.⁷ In addition, Phlx Rules 160-189 describe the operation of Phlx’s electronic equity trading system, XLE, for transactions in, among other things, common stock and the responsibilities of XLE Participants⁸ using XLE.

Phlx has listing standards for common stock.⁹ The listing standards set forth minimum

⁵ 15 U.S.C. 78l(f)(1)(A)(i).

⁶ 17 CFR 240.12f-5.

⁷ Phlx Rule 801 states “[o]nly such securities as shall have been approved by the Exchange for listing or admission pursuant to unlisted trading privileges shall be dealt in on the Exchange.”

⁸ XLE Participants are Phlx members, Phlx member organizations, their Sponsored Participants (non-members who are sponsored by Phlx member organizations) and individuals authorized by Phlx member organizations or Sponsored Participants to enter orders on XLE. See Phlx Rule 1(nn).

⁹ See Phlx Rule 803(a).

quantitative requirements for both the issuer¹⁰ and the security,¹¹ and standards for the security's voting rights.¹² However, Phlx's current listing standards for common stock would not apply to certain securities covered by the expanded definition of common stock proposed herein. With the adoption of the proposed expanded definition of common stock, the current listing standards for common stock in Rule 803(a) would apply to such securities and accordingly, as described above, such securities would be eligible for trading pursuant to UTP. Further, Phlx would apply the same quantitative criteria in Phlx Rule 803(a) to an issuer, and its security designated as common stock, applying to list under this expanded definition of common stock as it would to a corporation listing its common stock.

¹⁰ Phlx Rule 803(a)(1)-(2) provides:
“The listing criteria for Tier I Issues are as follows:
(a) In the case of Common Stock:

- (1) Net Tangible Assets—Total assets (including the value of patents, copyrights and trademarks but excluding the value of goodwill) less total liabilities of at least \$4,000,000.
- (2) Earnings—Pretax income of \$750,000 and net income of at least \$400,000 in its last fiscal year.”

¹¹ Phlx Rule 803(a)(3)-(4) provides:
“The listing criteria for Tier I Issues are as follows:
(a) In the case of Common Stock:

* * * * *

- (3) Public Distribution—at least 500,000 publicly held shares and at least 800 public shareholders if the issuer has between 500,000 and 1 million shares publicly held, or at least 400 public shareholders if the issuer has either (i) over 1 million shares publicly held or (ii) over 500,000 shares publicly held and average daily trading volume in excess of 2,000 shares per day for a six month period preceding the date of application.
- (4) Stock Price/Market Value of Shares Publicly Held—\$5 per share on each of the five business days prior to the application date and \$3,000,000 aggregate market value.”

¹² See Phlx Rules 803(a)(5) and 812.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ 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 providing an additional venue for the listing and trading, pursuant to UTP, of common stock to which the proposed definition would apply.

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

Because the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest,

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁷ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁸ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Phlx has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed definition of common stock is identical to NYSEArca Equities Rule 5.1(b)(12) and raises no new regulatory issues. Moreover, waiving the operative delay will allow the Exchange, pursuant to its current listing standards and UTP, to immediately list and trade securities that now fall within this new definition of common stock, providing an additional venue for such securities. For these reasons, the Commission designates that the proposed rule change become operative immediately.¹⁹

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day pre-filing requirement.

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

¹⁹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.²⁰

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2007-56 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-2007-56. 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

²⁰ For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, the Commission considers the period to commence on August 30, 2007, the date on which the Exchange filed Amendment No. 1.

available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10:00 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2007-56 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.²¹

Florence E. Harmon
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).