

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57737; File No. SR-Phlx-2008-28)

April 29, 2008

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Position and Exercise Limits for Options on the DIAMONDS Trust

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 April 24, 2008, the Philadelphia Stock Exchange, Inc. (“Exchange” or “Phlx”) 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. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 1001 (Position Limits) to establish increased position limits for options on the Diamonds Trust, Series 1 (“DIA” or “DIA Options”).

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange is proposing to amend Phlx Rule 1001 pertaining to position limits for options on DIA. In particular, the Exchange proposes to increase position limits for DIA Options to 300,000 contracts on the same side of the market, which should encourage a more liquid and competitive market environment to the benefit of customers interested in the product. The Commission previously approved a similar proposal of the Chicago Board Options Exchange ("CBOE").⁵

⁵ See Securities Exchange Act Release No. 47346 (February 11, 2003), 68 FR 8316 (February 20, 2003) (SR-CBOE-2002-26) (approving an increase in the position limits and exercise limits to 300,000 for DIA options). The Commission stated that "given the surveillance capabilities of the [CBOE] and the depth and liquidity in both the DIA options and the underlying cash market in DIAs, the Commission believes it is permissible to significantly raise position and exercise limits for DIA options without risk of disruption to the options or underlying cash markets." The Commission also stated that "financial and reporting requirements . . . should allow [CBOE] to detect and deter trading abuses arising from the increased position and exercise limits, and will also allow [CBOE] to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if deemed necessary."

The Exchange also recently made permanent increased position limits for certain equity options on Phlx, which were in effect on a pilot basis.⁶ The Exchange stipulated, as part of its proposal for such permanent approval, that “its surveillance procedures ... and reporting procedures, in conjunction with the financial requirements and risk management review procedures already in place at the clearing firms and the Options Clearing Corporation, will serve to adequately address any concerns the Commission may have respecting account(s) engaging in manipulative schemes or assuming too high a level of risk exposure.”⁷ These representations also apply to the current proposal to increase the position limits for DIA Options. The Exchange now seeks to increase the position and exercise limits for options on DIA on Phlx to the level that such limits are in effect on other options exchanges such as BOX and CBOE (300,000 contracts on the same side of the market).

The Exchange believes that the justifications behind the Commission's approval of CBOE's proposal to increase position limits on DIA Options should support the same increased position limits on such options on Phlx. Specifically, the Exchange believes that the "structure of the DIA options and the considerable liquidity of both the underlying cash and options market for DIA options lessen the opportunity for manipulation of this product and disruption in the underlying market that a lower position limit may protect against.”⁸ The Exchange believes that the reporting requirements imposed under the Phlx rules will help protect against potential manipulation.⁹ Additionally, the Exchange believes that an increase in position limits on DIA Options on Phlx is also required for competitive purposes as well as for purposes of consistency

⁶ See Securities Exchange Act Release No. 57418 (March 3, 2008), 73 FR 12493 (March 7, 2008) (SR-Phlx-2008-14).

⁷ Id.

⁸ See Securities Exchange Act Release No. 47346, supra note 5.

and uniformity among the competing options exchanges. This, taken in conjunction with the permanent establishment of other increased position limits for certain equity options on Phlx,¹⁰ supports the Exchange's proposal related to increased position limits applicable to DIA Options.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act¹² in particular, in that it is designed 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. Specifically, the Exchange believes that the structure of the DIA Options and the considerable liquidity of the market for such options diminish the opportunity for manipulation of this product and for disruption in the underlying market that a lower position limit may protect against.

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.

⁹ See Phlx Rule 1003.

¹⁰ See Securities Exchange Act Release No. 57418, supra note 6. See also Securities Exchange Act Release No. 57597 (April 1, 2008), 73 FR 18846 (April 7, 2008) (SR-Phlx-2008-24) (IWM position limits).

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁴

The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing. The Exchange states that waiving the operative delay will allow the Exchange to immediately use position limits that are currently available to other options exchanges. The Exchange believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest in that it would establish the same position limits that are available to other options exchanges.

The Commission believes that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest.¹⁵ Therefore, the Commission designates the proposal to be operative upon filing.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule 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 fulfilled this requirement.

¹⁵ 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. See 15 U.S.C. 78c(f).

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

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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-2008-28 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-2008-28. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2008-28 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).