

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56454; File No. SR-Phlx-2007-43)

September 18, 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, Relating to Elimination of Calculation Methodology from Generic Listing Standards

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 June 15, 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 September 6, 2007, the Exchange submitted Amendment No. 1 to the proposed rule change. This order provides notice of the proposed rule change, as modified by Amendment No. 1, and approves the proposed rule change as amended on an accelerated basis.

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

Phlx proposes to amend its existing Rule 803 (Criteria for Listing – Tier I) to eliminate the requirement that indexes underlying certain Trust Shares and Index Fund Shares (collectively, “ETFs” or “Exchange Traded Funds”)³ are calculated following a specific methodology.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See definitions of Trust Shares and Index Fund Shares in Phlx Rules 803(i) and 803(l), respectively.

The text of the proposed rule change is available at Phlx, the Commission's Public Reference Room, and <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 amend Phlx Rule 803 (Criteria for Listing – Tier I) regarding Phlx's generic listing standards pursuant to Rule 19b-4(e) under the Act ("Rule 19b-4(e)")⁴ for ETFs to eliminate the requirement that an underlying index be calculated following one of five specified methodologies.

The Exchange currently has generic listing standards which permit the listing and trading of various ETFs subject to the procedures contained in Rule 19b-4(e) (without the need to file a rule change for each security). By amending its generic listing standards, the Exchange intends to reduce the time frame for listing ETFs based on indexes that utilize methodologies not currently identified in the generic listing standards and thereby reduce the burdens on issuers and other market participants.

⁴ 17 CFR 240.19b-4(e).

The generic listing standards for ETFs presently provide that their underlying indexes be calculated based on the market capitalization, modified market capitalization, price, equal-dollar, or modified equal-dollar weighting methodology.⁵ The proposed rule change would eliminate this standard and, as a result, the Exchange would no longer consider index methodology in its review of an ETF's eligibility for listing and trading pursuant to Rule 19b-4(e).

The Exchange notes that, as the market for Trust Shares and Index Fund Shares in particular and exchange traded funds in general has grown and the relevant product lines have matured, there has been an increase in the number of methodologies used to calculate the underlying indexes. To accommodate this development, the Exchange proposes to eliminate any calculation methodology for the underlying index from generic listing standards, as has been done by other exchanges, including the American Stock Exchange LLC (“Amex”).⁶

The Exchange believes that the proposed elimination of any index methodology from its generic listing standards for ETFs would potentially reduce the time frame for bringing products based on indexes with nontraditional weighting techniques to the market, thereby reducing the burdens on issuers and other market participants and promoting competition. The Exchange notes that the indexes underlying ETFs would continue to be subject to the other requirements of the generic listing standards pursuant

⁵ See Phlx Rule 803(i)(11)(d) and (l)(6)(D) regarding Trust Shares and Index Fund Shares, respectively.

⁶ See Securities Exchange Act Release No. 55544 (March 27, 2007), 72 FR 15923 (April 3, 2007) (SR-Amex-2007-07) (order approving the elimination from the Amex’s generic listing standards for portfolio depositary receipts of the requirement that an eligible index be calculated and weighted following a specified methodology).

to Rule 19b-4(e). For example, the generic listing standards for Trust Shares will continue to require, without limitation: that the most heavily weighted component stock of an index not exceed 25% of the weight of the index where the index is comprised solely of Non-U.S. Component Stocks or of both U.S. Component Stocks and Non-U.S. Component Stocks (“Combination Stocks”) or 30% where the index is comprised solely of U.S. Component Stocks;⁷ that the five most heavily weighted component stocks of an index not exceed 60% of the weight of the index where the index is comprised solely of Non-U.S. Component Stocks or of Combination Stocks or 65% of the weight of the index where the index is comprised solely of U. S. Component Stocks; and that an index include a minimum of 20 component stocks where the index is comprised solely of Non-U.S. Component Stocks or of Combination Stocks or 13 component stocks where the index is comprised solely of U.S. Component Stocks.⁸ The generic listing standards for Index Fund Shares will continue to have similar requirements that are dependent on whether the index is comprised of U.S. Component Stocks, Non-U.S. Component Stocks, or Combination Stocks.⁹ The Exchange believes that such requirements will ensure that the indexes are sufficiently diversified, and that their components are sufficiently liquid to underlie the ETFs.

⁷ A U.S. Component Stock is an equity security that is registered under Sections 12(b) or 12(g) of the Act or an American Depository Receipt (ADR) the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Act. A Non-U.S. Component Stock is an equity security that is not registered under Sections 12(b) or 12(g) of the Act and that is issued by an entity that (a) is not organized, domiciled or incorporated in the United States, and (b) is an operating company (including real estate investment trusts (REITs) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives). See Phlx Rules 803(i)(1) and 803 (l)(2).

⁸ See Phlx Rule 803(i)(11)(a) and (b).

⁹ See Phlx Rule 803(l)(6)(A) and (B).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁰ in general, and with Section 6(b)(5) of the Act,¹¹ 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

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(5).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2007-43 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-2007-43. 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-2007-43 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 consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange¹² and, in particular, the requirements of Section 6 of the Act.¹³ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁴ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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.

As the market for ETFs has grown, the variety of weighting and calculation methodologies for underlying indexes has also expanded, limiting the applicability of Phlx's current generic ETF listing standards. The Commission believes that the proposed elimination of index methodology from its generic listing standards for ETFs would potentially reduce the time frame for bringing ETFs based on indexes with nontraditional weighting techniques to the market, thereby reducing the burdens on issuers and other market participants and promoting competition, without compromising investor protection.

The Commission notes that Phlx's generic listing standards for Trust Shares and

¹² In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(5).

Index Fund Shares based on domestic indexes or portfolios will continue to require, without limitation, that the most heavily weighted component stock of an index not exceed 30% of the weight of the index, the five most heavily weighted component stocks of an index not exceed 65% of the weight of the index, and that an index include a minimum of 13 component stocks.¹⁵ Therefore, the Commission believes that indexes underlying ETFs will continue to be sufficiently broad-based in scope to minimize potential manipulation.

Acceleration

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th 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 a proposed rule change of another exchange recently approved by the Commission.¹⁶ Phlx's proposal does not raise any novel regulatory issues and, therefore, the Commission believes that good cause exists for approving the filing in an expedited basis.

Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,¹⁷ to approve the proposed rule change as amended on an accelerated basis.

¹⁵ See Phlx Rules 803(i)(11)(a) and 803(l)(6)(A). In addition, on July 11, 2007, the Commission approved generic listing standards for ETFs based on international or global indexes. See Securities Exchange Act Release No. 56049 (July 11, 2007), 72 FR 39121 (July 17, 2007) (SR-Phlx-2007-20). These newly adopted generic listing standards require, without limitation, that the most heavily weighted component stock of an index not exceed 25% of the weight of the index, the five most heavily weighted component stocks of an index not exceed 60% of the weight of the index, and that an index include a minimum of 20 component stocks.

¹⁶ See supra note 6.

¹⁷ 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-Phlx-2007-43), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Florence E. Harmon
Deputy Secretary

¹⁸ Id.

¹⁹ 17 CFR 200.30-3(a)(12).