

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56717; File No. SR-Phlx-2007-73)

October 29, 2007

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto to List and Trade Options Already Listed on Another National Securities Exchange

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 September 21, 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 October 18, 2007, Phlx filed Amendment No. 1 to the proposed rule change.³ 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

The Phlx proposes to amend Phlx Rule 1009 to enable it to list and trade equity options that are otherwise ineligible for listing and trading on the Exchange if such options are listed and traded on another national securities exchange and the security or securities underlying such options meet Phlx’s continued listing requirements.

The text of the proposed rule change is available at on Phlx’s Web site (<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 Amendment No. 1 supercedes the original filing and replaces it in its entirety.

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 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

The purpose of the proposed rule change is to revise the options listing standards in Phlx Rule 1009 so that as long as the options maintenance listing standards set forth in Phlx Rule 1010 are met and the option is listed and traded on another national securities exchange, Phlx would be able to list and trade the option. Phlx Rule 1009 sets forth the requirements that an underlying equity security must meet before the Exchange may initially list options on that security. Phlx notes that these requirements are uniform among the options exchanges.

Commentary .01(4) to Phlx Rule 1009 relates to the minimum market price at which an underlying security must trade for an option to be listed on it, and applies to the listing of individual equity options on both “covered” and “uncovered” underlying securities. In the case of an underlying security that is a “covered security” as defined under section 18(b)(1)(A) of the Securities Act of 1933 (“1933 Act”),⁴ the closing market price of the underlying security must be

⁴ Section 18(b)(1)(A) of the 1933 Act provides that “[a] security is a covered security if such security is...listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed or authorized for listing on the National Market

at least \$3 per share for five previous consecutive business days prior to the date on which Phlx submits an option class certification to The Options Clearing Corporation (“OCC”). In connection with underlying securities deemed to be “uncovered,” Phlx’s rules require that the closing price of such underlying security be at least \$7.50 for the majority of business days during the three calendar months preceding the date of selection for such listing. In addition, an alternative listing procedure for “uncovered” securities also permits the listing of such options so long as: (1) the underlying security meets the guidelines for continued approval contained in Phlx Rule 1010; (2) options on such underlying security are traded on at least one other registered national securities exchange; and (3) the average daily trading volume (“ADTV”) for such options over the last three calendar months preceding the date of selection has been at least 5,000 contracts. Subparagraphs (1) through (4) of Commentary .01 to Phlx Rule 1009 further set forth minimum requirements for an underlying security such as shares outstanding, number of holders and trading volume.

When Phlx first commenced operations, if an option failed to meet the Exchange’s original listing requirements, Phlx could not list that option, even if the option met the continued listing requirements of one or more other exchanges and traded on those exchanges. In order to somewhat remedy this situation, in 2002, the Exchange proposed, and the Commission approved, amendments to Phlx’s original listing criteria that permitted Phlx to list options where the underlying “uncovered” security did not meet the \$7.50 share price requirement so long as (i) the underlying security met Phlx’s continued listing criteria, (ii) such options were traded on at least

System of the Nasdaq Stock Market (or any successor to such entities)....” See 15 U.S.C. 77r(b)(1)(A).

one other exchange, and (iii) during the three preceding calendar months, the options had ADTV across all exchanges of at least 5,000 contracts.⁵

The Exchange notes that the 2002 Filing, while permitting the Phlx to list some of the more actively-traded options, does not permit the listing of non-active options that are currently trading at other options exchanges. The options exchange (or exchanges) that may be fortunate enough to list an option that at first met the original listing criteria, but subsequently fails to do so, is provided a trading monopoly inconsistent with the multiple trading of options, fostering competition and the maintenance of a national market system. Under this proposed rule change, an option may be multiply-listed and traded as long as one other options exchange is trading the particular option and such underlying security of the option meets the Exchange's continued listing requirements.

Phlx notes that the requirements for listing additional series of an existing listed option (i.e., continued listing guidelines) are less stringent, largely because, in total, the Exchange's guidelines assure that options will be listed and traded on securities of companies that are financially sound and subject to adequate minimum standards.

Phlx believes that although the continued listing requirements are uniform among the other options exchanges, the application of both the original and continued listing standard in the current market environment have had an anti-competitive effect. Specifically, the Exchange notes that on several occasions it has been unable to list and trade options classes that trade elsewhere because the underlying security of such option did not at that time meet original listing standards. However, the other options exchange(s) may continue to trade such options (and list

⁵ See Securities Exchange Act Release No. 46789 (November 7, 2002), 67 FR 69284 (November 15, 2002) (order granting approval of proposal relating to maintenance listing criteria in Phlx Rule 1010 and original listing criteria in Phlx Rule 1009) (the "2002 Filing").

additional series) based on the lower maintenance listing standards, while Phlx may not list any options on such underlying security. The Exchange believes this clearly is anti-competitive and inconsistent with the aims and goals of a national market system in options.

To address this situation, the Exchange proposes to add new Commentary .01(6) to Phlx Rule 1009 and amend the current listing requirement adopted by the 2002 Filing. Specifically, proposed Commentary .01(6) provides that notwithstanding that a particular underlying security may not meet the requirements set forth in Paragraphs (1) through (4) of Commentary .01, the Exchange nonetheless could list and trade an option on such underlying security if (i) the underlying security meets continued listing requirements under Phlx Rule 1010; and (ii) options on such underlying security are listed and traded on at least one other registered national securities exchange. Consequently, the second half of Commentary .01(4)(ii) to Phlx Rule 1009, which references an alternative original listing requirement for “uncovered securities,” would be deleted. In connection with the proposed changes, the Exchange represents that the procedures currently employed to determine whether a particular underlying security meets the initial listing criteria will similarly be applied to the continued listing criteria.

Phlx believes that this proposal is narrowly tailored to address the circumstances where an options class is currently ineligible for listing on the Exchange while at the same time, such option is trading on another options exchange(s). The Exchange submits that the adoption of the proposal is essential for competitive purposes and to promote a free and open market for the benefit of investors.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5),⁷ specifically, in that it is designed to perfect the mechanism of a free and open market and the national market system, protect investors and the public interest and promotes just and equitable principles of trade. The proposal would achieve this by enabling Phlx to list an option that is listed and traded on another national securities exchange and the underlying security meets Phlx continued listing standards.

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 Number SR-Phlx-2007-73 on the subject line.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

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-2007-73. 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 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-2007-73 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 regulations thereunder applicable to a

national securities exchange.⁸ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁹ which requires that the rules of an 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. The proposal is narrowly tailored to address the circumstances where an equity option class is currently ineligible for initial listing on the Exchange even though it meets the Exchange's continued listing standards and is trading on another options exchange. Allowing Phlx to list and trade options on such underlying securities should help promote competition among the exchanges that list and trade options. The Commission notes, and the Exchange represents, that the procedures that the Exchange currently employs to determine whether a particular underlying security meets the initial equity option listing criteria for the Exchange will similarly be applied when determining whether an underlying security meets the Exchange's continued listing criteria.

The Commission finds good cause, pursuant to Section 19(b)(2)(B) of the Act,¹⁰ for approving the proposed rule change prior to the 30th day after the publication of the notice of the filing thereof in the Federal Register. The Commission notes that the proposed rule change is substantially identical to a proposed rule change submitted by the American Stock Exchange

⁸ 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).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(2)(B).

LLC,¹¹ which was previously approved by the Commission after an opportunity for notice and comment, and therefore does not raise any new regulatory issues.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-Phlx-2007-73), 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.¹³

Florence E. Harmon
Deputy Secretary

¹¹ See Securities Exchange Act Release No. 56598 (October 2, 2007), 72 FR 57615 (October 10, 2007) (SR-Amex-2007-48). See also Securities Exchange Act Release No. 56647 (October 11, 2007), 72 FR 58702 (October 16, 2007) (SR-ISE-2007-80) (substantially identical proposed rule change approved on an accelerated basis).

¹² Id.

¹³ 17 CFR 200.30-3(a)(12).