

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57871; File No. SR-Phlx-2008-37)

May 27, 2008

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Definition of Exchange-Traded Fund Share

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on May 19, 2008, 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 prepared by the Phlx. The Exchange filed the proposal as a non-controversial proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal 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 Phlx proposes to modify Phlx Rule 1000(b)(42), the definition of Exchange-Traded Fund Share, to conform it to the definition of that term used in Phlx Rule 1009, Commentary .06.

The proposed rule change is available at the Phlx, the Commission’s Public Reference Room, and [www.phlx.com](http://www.phlx.com).

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 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 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 IV 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 update and clarify what may appear to be inconsistent language between Phlx Rule 1000(b)(42) and Phlx Rule 1009, Commentary .06. Phlx Rule 1000(b)(42) defines the term Exchange-Traded Fund Share. Phlx Rule 1009, Commentary .06 states what options are appropriate for options trading on Phlx. Phlx currently utilizes the definition of Exchange-Traded Fund Share as stated in Phlx Rule 1009, Commentary .06 for purposes of determining what options are appropriate for options trading. This proposed rule change is meant to clarify Phlx's rules by correlating the definition of Exchange-Traded Fund Share in Phlx Rule 1000(b)(42) with the meaning of Exchange-Traded Fund Share in Phlx Rule 1009, Commentary .06. It is not intended to change which securities are deemed appropriate for options trading on Phlx.

Phlx Rule 1000(b)(42) was adopted in 2001.<sup>5</sup> The current language in Phlx Rule 1009, Commentary .06 was adopted in 2007.<sup>6</sup> Phlx should have modified Phlx Rule 1000(b)(42) at

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<sup>5</sup> See Securities Exchange Act Release No. 43921 (February 2, 2001), 66 FR 9739 (February 9, 2001).

that time to correlate it to the meaning of Exchange-Traded Fund Share in Phlx Rule 1009, Commentary .06, but inadvertently did not. Therefore, Phlx proposes to amend Phlx Rule 1000(b)(42) to state that the definition of Exchange-Traded Fund Share shall have the meaning assigned to it in Phlx Rule 1009, Commentary .06.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>8</sup> 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 reducing any potential confusion in the Phlx Options Rules by correlating the definition of Exchange-Traded Fund Share in Phlx Rule 1000(b)(42) with Phlx Rule 1009, Commentary .06.

### 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 does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii)

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<sup>6</sup> See Securities Exchange Act Release No. 55951 (June 25, 2007), 72 FR 37298 (July 9, 2007).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

become operative for 30 days from the date on which it was filed (or such shorter time as the Commission may designate),<sup>9</sup> the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change as operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because this proposal is solely intended to correlate the definition of Exchange-Traded Fund Share in the Phlx Options Rules and is not intended to change which securities are deemed appropriate for options trading on Phlx.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such 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. Therefore, the Commission designates the proposal as operative upon filing.<sup>12</sup>

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<sup>9</sup> In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a 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 the designated by the Commission. The Exchange has fulfilled this requirement.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> 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).

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2008-37 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2008-37. 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. 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-2008-37 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

Florence E. Harmon  
Acting Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).