

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50945; File No. SR-Phlx-2004-66)

December 29, 2004

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Accelerated Approval to Proposed Rule Change Relating to Concentration Limit Listing Standards in Phlx Rule 1009A

I. Introduction

On October 7, 2004, the Philadelphia Stock Exchange, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Phlx Rule 1009A, Designation of the Index, which applies to the listing of index options. On October 25, 2004, Phlx filed Amendment No. 1. The proposed rule change, as amended, was published for notice and comment in the Federal Register on December 1, 2004.³ The Commission received no comments on the proposal. This order approves the proposed rule change on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to amend Phlx Rule 1009A, Designation of the Index, which applies to the listing of index options. Specifically, the Exchange proposes to increase certain concentration limit listing standards in Phlx Rule 1009A. Currently, under Phlx Rule 1009A(b), the Exchange may trade options on a narrow-based index without filing a proposed rule change under Section 19(b)(2) of the Act if certain conditions are satisfied.⁴ One of these conditions, set

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 50727 (November 23, 2004), 69 FR 69974.

⁴ The Commission approved an amendment to Phlx Rule 1009A to provide that certain narrow-based index options that meet generic listing standards may be listed and traded

forth in Phlx Rule 1009A(b)(6), is that no single component security may represent more than 25% of the weight of the index, and that the five highest weighted component securities in the index may not, in the aggregate, account for more than 50% (60% for an index consisting of fewer than 25 component securities) of the weight of the index. The Exchange proposes to amend Phlx Rule 1009A(b)(6) to increase the 25% concentration limit for the highest weighted component stock to 30%, and to increase the concentration limit for the five mostly highly weighted stocks in an index consisting of fewer than 25 component securities from 60% to 65%.

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change, as amended, and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ In particular, the Commission finds that the proposed rule change, is consistent with Section 6(b)(5) of the Act,⁶ which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national securities system, and, in general, protect investors and the public interest.

The Commission believes that this proposed rule change should provide additional flexibility to the Exchange in listing and trading narrow-based index options and reduce the instances in which the addition of a new series is restricted pursuant to Phlx Rule 1009A. The proposed rule change should also reduce instances where an index option listed on the Exchange

on the Exchange without a filing pursuant to Rule 19b-4(e) under the Act. See Securities Exchange Act Release No. 43683 (December 6, 2000), 65 FR 78235 (December 14, 2000) (SR-Phlx-2000-67).

⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

is temporarily out of compliance with the concentration limits set forth under Phlx Rule 1009A because of changes in the market value of the underlying index components. Lastly, the Commission believes that that the concentration limit listing standards should continue to serve the purpose for which they were originally intended of not permitting a single security or small number of securities to dominate an index.

The Exchange has requested accelerated approval of the proposed rule change. The Commission notes that the proposed rule change is similar to rules previously approved for other derivative products.⁷ The Commission also notes that this proposed rule change was subject to the full comment period, with no comments received, and acceleration by two days would facilitate the Exchange's trading of certain index options.

Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁸ for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the Federal Register.

⁷ See Securities Exchange Act Release No. 44532 (July 10, 2001), 66 FR 37078 (July 16, 2001) (SR-Amex-2001-25); Securities Exchange Act Release No. 45920 (May 13, 2002), 67 FR 35605 (May 20, 2002) (SR-NASD-2002-45).

⁸ 15 U.S.C. 78s(b)(2).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (File No. SR-Phlx-2004-66) be, and it hereby is, approved, on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland
Deputy Secretary

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).