

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52572; File No. SR-Phlx-2005-57)

October 7, 2005

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change Relating to Dissemination of the Underlying Index Value for Trust Shares and Index Fund Shares

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 21, 2005, 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change.

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

The Phlx proposes to amend Sections (i) and (l) of Phlx Rule 803, the listing standards for two kinds of exchange traded funds, Trust Shares and Index Fund Shares, to provide that the current value of the underlying index must be widely disseminated by one or more major market data vendors at least every 15 seconds during the time the Trust Share or Index Fund Share trades on the Exchange. The text of the proposed rule change is set forth below.

Proposed new language is in italics; proposed deletions are in brackets.

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

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

Rule 803.

Criteria for Listing --Tier I

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(a) – (h) No Change.

(i) Trust Shares

(1) – (10) No Change.

(11) The Exchange may approve a series of Trust Shares for trading, whether by listing or pursuant to unlisted trading privileges, pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided each of the following criteria is satisfied:

(a) No Change.

(b) Index Methodology and Calculation.

(i) No Change.

(ii) No Change.

(iii) The current index value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Trust Shares trade on the Exchange [over the Consolidated Tape Association's Network B].

(c) – (h) No Change.

(j) No Change.

(k) No Change.

(l) Index Fund Shares

(1) – (5) No Change.

(6) Listing Pursuant to SEC Rule 19b-4(e). The Exchange may approve a series of Index Fund Shares for listing pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided each of the following criteria is satisfied:

(A) No Change.

(B) Index Methodology and Calculation. (I) The index underlying a series of Index Fund Shares will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology; (II) If the index is maintained by a broker-dealer, the broker-dealer shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer; and (III) The current index value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Index Fund Shares trade on the Exchange [over the Consolidated Tape Association's Network B].

(C) – (H) No Change.

(7) – (8) No Change.

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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 had 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

Sections (i)(11) and (l)(6) of Phlx Rule 803 provide listing standards for Trust Shares and Index Fund Shares, respectively, to permit listing and trading of these securities pursuant to Rule 19b-4(e) under the Act.<sup>3</sup> Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to Section 19(b) of the Act, the self-regulatory organization's trading rules, procedures and listing standards for the product class that would include the new derivative securities product, and the self-regulatory organization has a surveillance program for the product class.<sup>4</sup>

The Phlx rules for Trust Shares and Index Fund Shares currently provide that the current index value for the index underlying a series of Trust Shares (in the case of Phlx Rule 803(i)(11)) and Index Fund Shares (in the case of Phlx Rule 803(l)(6)) will be disseminated every 15 seconds over the Consolidated Tape Association's Network B. The Phlx believes that, rather than identifying specifically in their rules the index dissemination service (that is, the Consolidated Tape Association's Network B), it is preferable to reflect in the rules a requirement for wide dissemination of the underlying index values. This proposed rule change would make clear that the value of the underlying index must be widely disseminated by a reputable index

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<sup>3</sup> 17 CFR 240.19b-4(e).

<sup>4</sup> See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

dissemination service, such as the Consolidated Tape Association, Reuters, or Bloomberg. The Phlx believes that the specific identity of the index dissemination service is not necessary, and the purpose of the rule would be achieved, as long as the service used for dissemination is reputable, accepted in the investment community, and effects appropriately wide dissemination of the particular index.

The Exchange therefore proposes to change the generic listing standards for Trust Shares and Index Fund Shares to provide that the value of the underlying index must be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Trust Shares or Index Fund Shares trade on the Exchange.

As currently is the case, if the official index does not change during some or all of the period when trading is occurring (as is typically the case with pre-market-open and after-hours trading, and also with foreign indexes because of time zone differences or holidays in the countries where such indexes' components trade), then the last official calculated index value must remain available throughout the Phlx trading hours.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</sup> in particular, in that it is designed 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 Phlx believes that clarifying the rules helps all market participants.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any inappropriate burden on competition.

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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2005-57 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-Phlx-2005-57. 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 Section, 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the 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 publicly available. All submissions should refer to File Number SR-Phlx-2005-57 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 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 exchange.<sup>7</sup> In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act.<sup>8</sup> The Commission notes that the proposed index dissemination requirement is similar to the index dissemination requirement used in the listing standards for narrow-based index options.<sup>9</sup> The Phlx defines "one or more major market data vendor" to include the Consolidated Tape Association or private vendors, such as Reuters or

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<sup>7</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>9</sup> See e.g., Chicago Board Options Exchange Rule 24.2(b); International Securities Exchange Rule 2002(b); Pacific Exchange Rule 5.13; and Philadelphia Stock Exchange Rule 1009A(b) (listing standards for narrow-based index options requiring that, among other things, the current underlying index value be reported at least once every 15 seconds during the time the index option trades on the exchange).

Bloomberg.<sup>10</sup> The Commission believes, however, that it is critical that such service widely disseminate such index value to market participants.

The Phlx has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the Federal Register. The Commission notes that it has recently approved similar proposals regarding the dissemination of the underlying index value for exchange traded funds traded on Nasdaq, the American Stock Exchange LLC (“Amex”), and the New York Stock Exchange, Inc. (“NYSE”).<sup>11</sup> The Commission believes that granting accelerated approval of the proposal will allow the Phlx to immediately implement these listing standards for dissemination of the underlying index value that are in place on Nasdaq, the Amex, and the NYSE. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register.

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<sup>10</sup> The Commission notes, however, that if a self-regulatory organization designates a data vendor, on an exclusive basis, to disseminate an index value on behalf of the self-regulatory organization, such vendor would be an “exclusive processor” under Section 3(a)(22)(B) of the Act and, absent an exemption, required to register as a securities information processor under Section 11A(b)(1) of the Act.

<sup>11</sup> See Securities Exchange Act Release Nos. 51748 (May 26, 2005), 70 FR 32684 (June 3, 2005) (SR-NASD-2005-024); 51868 (June 17, 2005), 70 FR 36672 (June 24, 2005) (SR-Amex-2005-044); and 52081 (July 20, 2005), 70 FR 43488 (July 27, 2005) (SR-NYSE-2005-44).

<sup>12</sup> 15 U.S.C. 78s(b)(2).



V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-Phlx-2005-57) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Jonathan G. Katz  
Secretary

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<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).