

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57923; File No. SR-Phlx-2008-12]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to an Exemption From Examination Requirements for Off-Floor Traders

June 4, 2008.

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 April 14, 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, II and III below, which Items have been prepared substantially by the Exchange. On May 30, 2008, Phlx filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Phlx proposes to amend Phlx Rule 604(e)(iii) to modify the category of persons subject to an exemption from the requirement that Off-Floor Traders<sup>4</sup> complete the Series 7 General Securities Registered Representative Examination (“Series 7”).

The text of the proposed rule change is available on Phlx’s Web site at <http://www.phlx.com>, at Phlx’s principal

office, and at the Commission’s Public Reference Room.

#### 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 IV 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

Phlx Rule 604(e)(i) states that Off-Floor Traders must successfully complete the Series 7. Currently, Phlx Rule 604(e)(iii) provides exceptions to the Series 7 requirement for Off-Floor Traders. The purpose of the proposed rule change is to modify the category of persons allowed an exemption from the requirement that Off-Floor Traders complete the Series 7. Phlx believes this proposed change would better capture the floor-based activities of Former Floor Participants, as defined below, in the exception from the Series 7 requirement, make the administration of the Series 7 requirements for Off-Floor Traders more efficient, and improve Phlx’s examination and enforcement efforts.

**Background.** Phlx adopted Rule 604(e) in 1999. At that time, Phlx stated that it believed the Series 7 requirement would primarily apply to persons “associated with limited liability companies (“LLC”) for the purpose of trading securities off the floor of the Exchange for the firm’s account.”<sup>5</sup> These persons are also known as “Day Traders.” Phlx stated that these Day Traders “generally become members of an LLC to avail themselves of good faith margin provided through the LLC’s Joint Back Office agreement with its clearing agent.”<sup>6</sup> In 1999, equity trading on Phlx took place on a physical trading floor. Persons who traded on Phlx’s equity trading floor were associated with either a specialist organization, or a floor brokerage organization that executed orders on an agency basis and were not,

by definition, Off-Floor Traders.

Therefore, they were not subject to the requirement in Phlx Rule 604(e)(i) to successfully complete the Series 7.

Phlx eliminated the physical equity trading floor in 2006 and replaced it with XLE, an electronic equity trading system.<sup>7</sup> At the time of the transition to XLE, persons trading on Phlx’s equity trading floor were associated with either a specialist organization or a floor brokerage organization that executed orders on an agency basis. Those persons (“Former Floor Participants”) then became participants in XLE; however, because there was no longer any physical trading floor, these Former Floor Participants became Off-Floor Traders for purposes of Phlx Rule 604(e)(i) and were, therefore, subject to the Series 7 requirement.

Phlx did not intend for the transition to XLE to require Former Floor Participants to become subject to the Series 7 requirement, so Phlx adopted an exception to the Series 7 requirement (“XLE Participant Exemption”).<sup>8</sup> The XLE Participant Exemption is available to those persons who are “primarily engaged” in either submitting orders to XLE, or making trading decisions with respect to trading on XLE. Phlx intended that the XLE Participant Exemption would cover Former Floor Participants and maintain the status quo ante; Former Floor Participants would not be subject to the Series 7 requirement. Phlx proposes to modify this XLE Participant Exemption as discussed below.

**Current Situation.** Currently, there are approximately 27 persons in four member organizations that are Former Floor Participants. In order to determine if a Former Floor Participant qualifies for the XLE Participant Exemption, first, the Former Floor Participant and then, Phlx examination staff consider all of the activity performed by a Former Floor Participant and compare that to trading activity on XLE. If Phlx determines to bring an enforcement action for non-compliance with Phlx Rule 604(e), Phlx enforcement staff must successfully allege that the Former Floor Participant was not “primarily engaged” in the activity stated in the XLE Participant Exemption. Phlx wants to continue to exempt Former Floor

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> Amendment No. 1 supersedes and replaces the original rule filing in its entirety.

<sup>4</sup> Phlx Rule 604(e)(i) defines an off-floor trader as a “person who is compensated directly or indirectly by a member or participant organization for which the Exchange is the DEA [Designated Examining Authority], or any other associated person of such member or participant organization, and who executes, makes trading decisions with respect to, or otherwise engages in proprietary or agency trading of securities, including, but not limited to, equities, preferred securities, convertible debt securities or options off the floor of the Exchange.”

<sup>5</sup> See Securities Exchange Act Release No. 41776 (August 20, 1999), 64 FR 47214 (August 30, 1999) (SR-Phlx-99-07).

<sup>6</sup> *Id.*, at 47215.

<sup>7</sup> See Securities Exchange Act Release No. 54538 (September 28, 2006), 71 FR 59184 (October 6, 2006) (SR-Phlx-2006-43).

<sup>8</sup> The XLE Participant Exemption is in the second half of Phlx Rule 604(e)(iii) and refers to an Off-Floor Trader “who is primarily engaged in (A) submitting proprietary or agency orders for execution on XLE, or (B) making trading decisions with respect to trading on XLE.” Phlx proposes to modify this provision.

Participants from the Series 7 requirement but believes a modification of the XLE Participant Exemption would assist its examination and enforcement efforts regarding the Series 7 requirement.

**Proposal.** Phlx therefore proposes to modify the exemption to apply to Market Maker Authorized Traders<sup>9</sup> ("MMATs") and Off-Floor Traders who solely handle and/or make trading decisions regarding agency orders and any bona fide errors<sup>10</sup> related to those agency orders ("Agency Brokers"). Phlx believes that the proposal would maintain an exemption for Former Floor Participants who are Off-Floor Traders but would still require Day Traders to successfully complete the Series 7.<sup>11</sup>

MMATs are those persons associated with Market Makers<sup>12</sup> who perform the market maker functions for the Market Maker. MMATs correspond to specialists, the former market makers on the physical equity trading floor. MMATs are required to register with Phlx and therefore are easily identified. MMATs, by virtue of their responsibilities to constantly maintain orders on XLE, focus on trading on XLE and are not functioning as Day Traders that routinely trade at multiple venues. Also, because Day Traders trade for their own account, they would not, by definition, qualify for the exemption for Agency Brokers. Agency Brokers correspond to former floor brokerage organizations that handled agency orders while on the former physical equity trading floor.<sup>13</sup> Some Agency Brokers, including Former Floor Participants, may trade primarily on markets other than Phlx and would therefore not qualify for the XLE

Participant Exemption.<sup>14</sup> Further, Phlx has proposed Supplementary Material to Phlx Rule 604 which states that the Series 7 requirement and exemption for MMATs in Phlx Rule 604(e) is independent of the requirements applicable to MMATs in Phlx Rule 171(b)(5).

The proposed exemption would focus on either the status of or the type of activity performed by the Former Floor Participant, not on the relative amount of activity done on XLE. This should simplify the process for Phlx examination staff because XLE Participants need to register with the Exchange to be a MMAT, so the determination of MMAT status is straightforward. In addition, Phlx staff can examine what type of orders (agency or proprietary) Off-Floor Traders handle for net capital purposes and could identify whether Off-Floor Traders would qualify for the proposed exemption. Phlx believes that the proposed exemption would enable Phlx staff to more efficiently examine for compliance with Phlx Rule 604(e) and, if necessary, to conduct enforcement activities than the current XLE Participant Exemption.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>15</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>16</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. Phlx believes that modifying the category of persons allowed an exemption from the requirement that Off-Floor Traders complete the Series 7 will make the administration of the Series 7 requirements for Off-Floor Traders at Phlx more efficient, improve Phlx's examination and enforcement efforts, and better capture the former floor-based activities of Former Floor Participants that are excepted from the Series 7 requirement.

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

Phlx does not believe that the proposed rule change will impose any burden on competition 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## 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-2008-12 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-2008-12. 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

<sup>9</sup> See Phlx Rule 1(m).

<sup>10</sup> If an Agency Broker makes an error in executing an order for its customer, for example purchasing 100 shares of symbol IBC instead of symbol IBM as instructed by the customer, the Agency Broker has an error. The method used to correct this error involves the Agency Broker taking the security purchased in error, 100 shares of IBC, in its error account (See Phlx Rule 703(c)(vi)), which is a proprietary account solely for the handling of errors. Then the Agency Broker purchases the correct security for its customer. The Agency Broker then must make a proprietary transaction to close out the position in its error account, in this case a sale of the 100 shares of IBC.

<sup>11</sup> Phlx believes that, at the time of filing of Amendment No. 1, everyone that would have qualified for the XLE Participant Exemption would also qualify for the proposed exemption, and no person other than Former Floor Participants would qualify for the proposed exemption.

<sup>12</sup> See Phlx Rule 1(l).

<sup>13</sup> Phlx Rule 604(a) requires anyone who conducts a public business or has duties customarily performed by a Registered Representative to maintain an effective Series 7 or equivalent predecessor examination/registration. This provision is independent of Phlx Rule 604(e)(iii) and not affected by this proposal.

<sup>14</sup> The proposed exemption at Phlx would not preclude the effect of the rules regarding the Series 7 at other markets.

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the 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-2008-12 and should be submitted on or before July 3, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57936; File No. SR-Phlx-2008-36]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to List and Trade Options on Full and Reduced Values of the Nasdaq-100 Index

June 6, 2008.

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 June 4, 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 substantially prepared by the Exchange. The Exchange has designated the proposed rule change as a "non-controversial" 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 proposed rule change 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 Exchange, pursuant to Section 19(b)(1) of the Act<sup>5</sup> and Rule 19b-4 thereunder,<sup>6</sup> proposes to amend Phlx Rule 1079 (FLEX Index, Equity and Currency Options), Rule 1001A (Position Limits), and Rule 1101A (Terms of Options Contracts), to enable the Exchange to list and trade options on full and reduced values of the Nasdaq-100 Index. Phlx also proposes to list and trade FLEX options<sup>7</sup> and long-term options<sup>8</sup> on full and reduced values of the Index. The text of the proposed rule change is available at Phlx, the Commission's Public Reference Room, and <http://www.phlx.com/exchange/phlx-rule-fil.htm>.

### 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. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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

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 IV below. Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

<sup>5</sup> 15 U.S.C. 78s(b)(1).

<sup>6</sup> 17 CFR 240.19b-4.

<sup>7</sup> FLEX Options are flexible exchange-traded options contracts that overlie equity on index securities. FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX Options may have expiration dates within five years. See Phlx Rule 1079.

<sup>8</sup> Long term options are series of options having up to sixty months to expiration. They are structurally similar to shorter-term options and are sometimes known as Long-Term Entity Anticipation Securities (LEAPS). See Phlx Rule 1101A(b).

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

Phlx proposes to list and trade cash-settled, European-style, index options, including FLEX options and long-term options, on the full and reduced values of the Nasdaq 100 Index (the "Index"), a stock index calculated and maintained by Nasdaq.<sup>9</sup> Specifically, the Exchange proposes to list options based upon the full value of the Index ("Full-size Nasdaq 100 Index" or "NDX") as well as one-tenth of the value of the Nasdaq 100 Index ("Mini Nasdaq 100 Index" or "MNX"). The options on NDX and MNX listed on Phlx will be identical to those already listed on multiple exchanges.

Phlx is filing the proposed rule change because options on the Nasdaq 100 Index will not otherwise qualify for listing on the Exchange due to the component weightings of the Index. Specifically, Phlx Rule 1009A(d), which allows the listing of options on a broad-based index currently requires that no component of a broad-based index account for more than ten percent of the weight of the index.<sup>10</sup> Therefore, like the six other options exchanges that currently trade options on the Index, Phlx is seeking approval to list and trade options on the Index under the conditions and according to the standards set forth below.

This filing is based on a recently authorized Nasdaq proposal to list full and reduced value options on the Index.<sup>11</sup>

##### Index Design and Composition

The Index was launched in January 1985 and represents the largest non-financial domestic and international issues listed on Nasdaq based on market capitalization. The Index reflects companies across major industry groups, including computer hardware and software, telecommunications, retail/wholesale trade, and biotechnology.

The Index is calculated using a modified capitalization-weighted methodology. The value of the Index equals the aggregate value of the Index share weights of each of the component securities multiplied by each security's

<sup>9</sup> A description of the Index is available on Nasdaq's Web site at [http://dynamic.nasdaq.com/dynamic/nasdaq100\\_activity.stm](http://dynamic.nasdaq.com/dynamic/nasdaq100_activity.stm).

<sup>10</sup> See Securities Exchange Act Release No 54158 (July 17, 2006), 71 FR 41853, (July 24, 2006)(SR-Phlx-2006-17).

<sup>11</sup> See Security Exchange Act Release No 57654 (April 11, 2008), 73 FR 21003 (April 17, 2008)(SR-NASDAQ-2008-028).

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

<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).