Proposed Rule Change by Philadelphia Stock Exchange

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial Amendment Withdrawal Section 19(b)(2) Section 19(b)(3)(A) Section 19(b)(3)(B)

Pilot Extension of Time Period for Commission Action Date Expires

Rule

19b-4(f)(1) 19b-4(f)(4)
19b-4(f)(2) 19b-4(f)(5)
19b-4(f)(3) 19b-4(f)(6)

Description

Provide a brief description of the proposed rule change (limit 250 characters).

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Carla Last Name Behnfeldt
Title Director
E-mail carla.behnfeldt@phlx.com
Telephone (215) 496-5208 Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 03/24/2006
By Carla Behnfeldt
(Name) Director

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Carla BEhnfeldt,
The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission’s permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.
1. **Text of the Proposed Rule Change**

The Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")\(^1\) and Rule 19b-4 thereunder,\(^2\) proposes to continue the listing and trading of options on various stock indices upon making certain changes to the procedures for dissemination of the values of the indices.\(^3\) Specifically, Phlx has determined to license the current and closing index values underlying options currently listed pursuant to Securities and Exchange Commission ("Commission") approval pursuant to Rule 19b-4 rule filings, namely, the Phlx Gold/Silver Sector\(^{SM}\) ("XAU\(^{SM}\)"), Phlx Oil Service Sector\(^{SM}\) ("OSX\(^{SM}\)"), Phlx Semiconductor Sector ("SOX\(^{SM}\)"), and the Phlx Utility Sector\(^{SM}\) ("UTY\(^{SM}\)") (together, the “Approved Index Options”), as well as values of most of Phlx’s other proprietary indexes, to its wholly owned subsidiary, the Philadelphia Board of Trade ("PBOT")\(^4\), for the purpose of selling, reproducing and distributing the index values over PBOT’s Market Data Distribution Network ("MDDN").\(^5\) The Exchange proposes that the index values

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3. SR-Phlx-2006-04 was originally filed with the Commission on January 12, 2006. This Amendment No. 2 supersedes the original filing in its entirety.

4. PBOT is a dormant designated contract market regulated by the Commodity Futures Trading Commission (the “CFTC”). Until November 30, 2005, when it became dormant, PBOT listed futures contracts on a number of foreign currencies. PBOT has applied to the CFTC for reinstatement for dormancy and expects to launch a new electronic trading platform, PBOT XL, in the near future.

5. Phlx also lists and trades options on a number of other stock indices whose values will not be disseminated by PBOT. Those indices will continue to be maintained, and options thereon will continue to be listed, as they are today. PBOT has, however,
underlying the Approved Index Options will no longer be disseminated as described in
their respective Rule 19b-4 filings and approval orders. The Exchange is also seeking
approval to cease disseminating the current and closing index values of all its proprietary
indexes over the facilities of the Consolidated Tape Association ("CTA"), and to
disseminate such values solely over the PBOT’s MDDN. Finally, the Exchange is
seeking approval for the subscriber fees to be charged to market data vendors by PBOT
for all the values of Phlx’s proprietary indexes disseminated by PBOT’s MDDN.

A notice of the proposed rule change for publication in the Federal Register is
attached hereto as Exhibit 1. A comment letter is attached as Exhibit 2. The amended
text of the proposed rule change indicating any additions to or deletions from the
immediately preceding filing is attached hereto as Exhibit 4.

2. Procedures of the Self-Regulatory Organization

The Executive Committee, pursuant to delegated authority, approved the proposal
for filing with the Securities and Exchange Commission ("SEC" or "Commission") on

55229 (December 9, 1983) (XAU); 38207 (January 27, 1997), 62 FR 5268 (February 4,
1997) (OSX); 34546 (August 18, 1994) 59 FR 43881 (August 25, 1994) (SOX); 24889
(September 9, 1987), 52 FR 35021 (September 16, 1987) (UTY).

7 Phlx’s proprietary indexes are, in addition to the indexes underlying the Approved
Index Options, the Phlx Defense SectorSM, Phlx Drug SectorSM, Phlx Europe SectorSM,
Phlx Housing SectorSM, and the Phlx World Energy IndexSM, all of which were listed
pursuant to Phlx Rule 1009A(b), the Exchange’s generic index option listing standard
rule. Phlx’s proprietary indexes are owned and maintained by Phlx. The Exchange has
determined not to remove the Phlx World Energy IndexSM and the Phlx Europe SectorSM
from CTA immediately, but is requesting approval to do so when and if the Exchange
determines that disseminating these indexes in the same manner as its other proprietary
indexes will be appropriate.
May 31, 2005 and on January 12, 2006. Questions and comments on the proposed rule change may be directed to Carla Behnfeldt, Director, Legal Department New Product Development Group, at (215) 496-5208, or Edith Hallahan, Senior Vice President and Deputy General Counsel, at (215) 496-5179.

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

   a. **Purpose**

   The purpose of the proposed rule change is to effectuate changes to index dissemination procedures whereby PBOT will be disseminating index value information, as described above. Currently, the Exchange realizes no revenues from the sale of current and closing index values disseminated over CTA that are not shared with other CTA Plan participants but wants to going forward.\(^8\)

   In anticipation of the launch of PBOT XL, the PBOT’s fully electronic matching engine, PBOT has contracted with SAVVIS Communications to provide extranet services for the distribution of certain futures market data. This new internet protocol (IP) multicast network is known as the PBOT MDDN.\(^9\) It is anticipated that PBOT’s MDDN will disseminate quote and trade information regarding futures contracts executed on the PBOT, but will not disseminate quote and trade information regarding securities products. Further, as proposed herein, PBOT’s MDDN will disseminate index value information.

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\(^8\) Currently, market data vendors pay a $200.00 monthly fee to CTA for the right to redistribute current and closing index values on a real time basis, together with delayed last sale data.

\(^9\) Additional information regarding the PBOT MDDN can be found on the Exchange’s website at http://www.phlx.com/pbot/Market_Data/mkdata.html.
Additionally, in order to facilitate creation of revenues from the sale of current and closing values for Phlx proprietary indexes, the Phlx will remove those values from CTA. At that time, those index values will not be available from CTA and will be available only through the PBOT ’s MDDN. They will, however, continue to be disseminated by major market data vendors, as explained below.

In contemplation of removing the index values from CTA, the Exchange has entered into a license agreement with PBOT in which the Exchange granted to PBOT, subject to the terms and conditions set forth therein, a non-exclusive, fully-paid, royalty-free, worldwide right and license to sell, offer for sale, perform, display, reproduce and distribute the current and closing index values derived from the Phlx proprietary indices to be disseminated over the MDDN. Phlx or its third party designee will objectively calculate and make available to PBOT every 15 seconds real time current and closing index values on each trading day so that PBOT may market, sell and distribute the values to third parties. The three industry leading market data vendors will be making the real time market data available to subscribers, as will several mid-tier vendors. Finally, the

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10 As noted above, for business reasons the Phlx World Energy IndexSM (“XWE”SM) and the Phlx Europe SectorSM (“XEX”SM) will not initially be disseminated over the MDDN but will continue to be disseminated over the facilities of CTA.

11 PBOT has and will also enter into license agreements with one or more third party index providers to sell, reproduce and distribute index values which underlie other Phlx traded options listed pursuant to Rule 19b-4(e). Those index values will also be removed from CTA.

12 The license does not include the right to sublicense, modify, improve or create derivative works of, the values or the indices.

13 The term “vendors” as used herein includes subvendors which receive the market data feed from vendors rather than directly from PBOT, but which execute the same agreement with PBOT that vendors execute and pay the same subscriber fees.
parties acknowledged and agreed that the goodwill created from PBOT’s exercise of its rights under the agreement would constitute the full consideration for the grant of licenses therein.

PBOT, in turn, will execute and has executed agreements with various vendors of market data for the right to receive, store, and retransmit the current and closing index values transmitted over the MDDN. The subscriber fees payable to PBOT by vendors for the use or resale of these values are set forth in those agreements. Phlx is proposing that all vendors will be charged, based upon usage by their subscribers, a monthly fee of (a) $1.00 per “Device,” as defined in the agreement, that is used by vendors and their

14 Approximately 25 vendors, including for example Bloomberg L.P., Telekurs Financial Information Ltd. and Thomson Financial, have already entered into such market data agreements with PBOT. At least three of the vendors have elected to offer only the continuous real-time market data and will not offer snapshot or delayed data. The fees described in this proposed rule change cover values of all the indexes disseminated over the MDDN.

15 These fees will be subject to the possibility of a 15% Administrative Fee deduction as described in footnote 18.

16 The definition of “Device” in the agreement is complex and incorporates a number of other defined terms. The agreement provides that

“Device” shall mean, in case of each Subscriber and in such Subscriber’s discretion, either any Terminal or any End User. For the avoidance of doubt, a Subscriber’s Device may be exclusively Terminals, exclusively End Users or a combination of Terminals or End Users and shall be reported in a manner that is consistent with the way the Vendor identifies such Subscriber’s access to Vendor’s data.

By way of further explanation, an “End User” is an individual authorized or allowed by a vendor or a Subscriber to access and display real time market data that distributed by PBOT over the MDDN; and a “Terminal” is any type of equipment (fixed or portable) that accesses and displays such market data. By way of example, a vendor whose Subscribers collectively may access the index values on a real-time basis through 10,000 Devices would be assessed a monthly fee of $10,000. A vendor which makes available
subscribers to receive and re-transmit Phlx proprietary sector index current and
settlement values on a real time basis and disseminated every 15 seconds, and (b)
$.00025 per request for snapshot data, which is essentially market data that is refreshed
no more frequently than once every 60 seconds, or $1,500 per month for unlimited
snapshot data requests.  The fees are summarized in table format below:

<table>
<thead>
<tr>
<th>Fee (per month)</th>
<th>Real-Time Continuous Market Data</th>
<th>Delayed Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Per Device/User ID/Terminal ID</td>
<td>$1.00 per Device*</td>
<td>None</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Fee (per month)</th>
<th>Snapshot Market Data</th>
<th>Delayed Only</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$0.0025 per snapshot request *</td>
<td>None</td>
</tr>
<tr>
<td>OR</td>
<td>$1,500 per month for unlimited snapshot requests*</td>
<td>None</td>
</tr>
</tbody>
</table>

* Vendors which provide market data to 200,000 or more Devices in any month qualify for a 15% Administrative Fee for that month.  

unlimited snapshot data to its customers would be assessed a monthly fee of $1500.00 regardless of the number of End Users or Devices involved.

17 The index values may also be made available by vendors on a delayed basis (i.e., no sooner than twenty minutes following receipt of the data by vendors) at no charge. The Exchange also notes that devices used in customer service areas or for purposes such as quality control, software programming, sales demonstrations, or promotions are not subject to any fees.

18 All market data vendors which provide market data to 200,000 or more Devices in any month qualify for a 15% Administrative Fee for that month, to be deducted from the monthly Subscriber Fees that they collect and are obligated to pay PBOT under the
Separate charges will apply for futures market data, which is not the subject of this proposed rule change. However, the agreements will provide that PBOT may change any of the fees enumerated in the agreement by giving the vendor or subvendor advance written notice of such changes. Under the agreements and consistent with industry practice, vendors will be free to assess whatever fees they agree to with subscribers.

In the various proposed rule changes filed by the Exchange seeking Commission approval for the listing and trading of the Approved Index Options, the Exchange made certain representations regarding the manner in which index values would be disseminated. The Commission’s approval orders also described the index value dissemination procedures in some cases. The Exchange now proposes to continue the listing and trading of options on various stock indices upon ceasing the dissemination of index values over CTA Tape B as described above. However, current index values will continue to be disseminated as required by Phlx Rule 1100A. Moreover, the current index values will be widely disseminated by one or more major market data vendors at least every 15 seconds during trading hours on the Exchange. Phlx will also continue to

Vendor/Subvendor Agreement. Phlx also believes that the fees to be charged by PBOT are consistent with the requirements of Commission Rule 603, Distribution, consolidation, and display of information with respect to quotations for and transactions in NMS stocks, in that the fees are fair and reasonable and not unreasonably discriminatory.

Rule 1100A(a) provides that “[t]he Exchange shall disseminate or shall assure that the closing index value is disseminated after the close of business and the current index value is disseminated from time-to-time on days on which transactions in index options are made on the Exchange.”

Current underlying index values for narrow-based index options trading pursuant to Phlx Rule 1009A(b) and Commission Rule 19b-4(e) are also reported at least once
maintain the indexes underlying the Approved Index Options as described in their respective Rule 19b-4 filings and approval orders. Phlx anticipates that it may list options on new Phlx proprietary indexes in the future, in which event the underlying current and closing values of those new indexes will also be disseminated over the PBOT MDDN and not over CTA Tape B. Further, the Exchange may determine at a later date to remove the Phlx World Energy IndexSM (“XWE”SM) and the Phlx Europe SectorSM (“XEX”SM) and disseminate their values over PBOT’s MDDN, like the other Phlx proprietary indexes.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act\(^{21}\) in general, and furthers the objectives of Section 6(b)(5) of the Act\(^{22}\) 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 permitting the Exchange to cause the dissemination of index values in a manner that will enhance the value to the Exchange of indexes which the Exchange owns, while continuing to maintain the listing and trading of options on these indices as an investment alternative available to investors. The Exchange also believes that its proposal furthers the objectives of Section 6(b)(4) of the Act\(^{23}\) in particular, in that it is an equitable allocation of reasonable fees among persons using its facilities. The Exchange believes that PBOT’s proposed fee every fifteen seconds during the time the index options are traded on the Exchange pursuant to Rule 1009A(b)(10).


structure is reasonable and equitable, as it is based on the type of data received (real-time, delayed and snapshot), which is, in turn, generally based on the timeliness of the data. As noted above, market data vendors which provide market data to 200,000 or more Devices in any given month qualify for a 15% Administrative Fee for that month, to be deducted from the monthly subscriber fees that they collect and are obligated to pay PBOT under the Vendor/Subvendor Agreement.24 The Exchange believes that the 15% Administrative Fee is equitable because any vendor which provides market data to 200,000 or more Devices in any given month will qualify for the Administrative Fee. PBOT is offering the Administrative Fee as an incentive for large market data vendors to carry the data disseminated by the PBOT network. Phlx also believes that the fees to be charged by PBOT are consistent with the requirements of Commission Rule 603, Distribution, consolidation, and display of information with respect to quotations for and transactions in NMS stocks, in that the fees are fair and reasonable and not unreasonably discriminatory.

4. **Self-Regulatory Organization's Statement on Burden on Competition**

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

5. **Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

Although the Exchange received no written comments on the proposed rule change to continue listing and trading the Approved Index Options following changes in the index dissemination procedures or the level of fees to be charged by PBOT, the Exchange did receive one comment on the Exchange’s underlying decision to remove

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24 See footnote 18 above.
index values from the consolidated tape and disseminate them over the PBOT MDDN.25 While the commenter did not specify the basis for his conclusion that the proposed changes would reduce the volume in index options to zero, the Exchange continues to believe that continued listing and trading of the Approved Index Options after underlying index values are removed from the consolidated tape is appropriate, as are the relocation of all Phlx proprietary index values from the consolidated tape to the PBOT MDDN and the fees to be assessed by PBOT, and, so long as the values continue to be widely disseminated by one or more market data vendors, is consistent with the Act.

6. **Extension of Time Period for Commission Action**

   The Exchange does not consent to an extension of the time period for Commission action.

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

   The Exchange requests that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the Federal Register. The Exchange requests that the Commission approve this proposed rule change on an accelerated basis no later than May 1, 2006, to enable PBOT to provide adequate notice to vendors of the July 1, 2006 scheduled implementation date of the fees proposed herein.

8. **Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

25 See e-mail from Brian Schaer to the Exchange dated Thursday, August 25, 2005.
The proposed rule change is based in part on proposed rule changes of the New York Stock Exchange Inc., the American Stock Exchange LLC and Nasdaq, which were recently approved by the Commission. Those proposed rule changes revised certain generic listing standards for exchange traded funds by eliminating requirements that the current value of the underlying index be disseminated by a particular means (for example, by the consolidated tape) and replaced them with requirements that the current value of the underlying index must be widely disseminated by one or more major market data vendors. As recently amended, these listing standards conform more closely to existing generic narrow based index option listing standards, which do not require underlying index values to be disseminated by any particular party or procedure, so long as they are disseminated every 15 seconds.


27 See, e.g., Chicago Board Options Exchange, Inc. Rule 24.2(b); International Securities Exchange Inc. Rule 2002(b); Pacific Exchange Inc. Rule 5.13; and Phlx 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). The Exchange notes that the International Securities Exchange has filed a proposed rule change to adopt similar generic listing standards for broad based index options which would require only that the current index value be “widely disseminated at least once every fifteen (15) seconds by one or more major market data vendors. . .” without specifying the precise means of such dissemination. See Securities Exchange Act Release No. 52084 (July 20, 2005), 70 FR 43481 (July 27, 2005) (SR-ISE-2005-27). The Exchange also notes that the Commission
9. **Exhibits**

1. Notice of proposed rule for publication in the Federal Register.

2. Comment Letter

4. Amended Text of Proposed Rule Change

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Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Dissemination of Index Values

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")\(^1\), and Rule 19b-4\(^2\) thereunder, notice is hereby given that on ______________________ 2006, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, 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.

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

The Phlx proposes to continue the listing and trading of options on various stock indices upon making certain changes to the procedures for dissemination of the values of the indices.\(^3\) Specifically, Phlx has determined to license the current and closing index values underlying options currently listed pursuant to Securities and Exchange Commission ("Commission") approval pursuant to Rule 19b-4 rule filings, namely, the Phlx Gold/Silver Sector\(^\text{SM}\) ("XAU\(^\text{SM}\)"), Phlx Oil Service Sector\(^\text{SM}\) ("OSX\(^\text{SM}\)"). Phlx

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\(^{3}\) SR-Phlx-2006-04 was originally filed with the Commission on January 12, 2006. This Amendment No. 2 supersedes the original filing in its entirety.
Semiconductor Sector ("SOX\textsuperscript{SM}"), and the Phlx Utility Sector\textsuperscript{SM} ("UTY\textsuperscript{SM}") (together, the “Approved Index Options”), as well as values of most of Phlx’s other proprietary indexes, to its wholly owned subsidiary, the Philadelphia Board of Trade ("PBOT")\textsuperscript{4}, for the purpose of selling, reproducing and distributing the index values over PBOT’s Market Data Distribution Network ("MDDN").\textsuperscript{5} The Exchange proposes that the index values underlying the Approved Index Options will no longer be disseminated as described in their respective Rule 19b-4 filings and approval orders\textsuperscript{6}. The Exchange is also seeking approval to cease disseminating the current and closing index values of all its proprietary indexes over the facilities of the Consolidated Tape Association ("CTA"), and to disseminate such values solely over the PBOT’s MDDN.\textsuperscript{7} Finally, the Exchange is

\textsuperscript{4} PBOT is a dormant designated contract market regulated by the Commodity Futures Trading Commission (the “CFTC”). Until November 30, 2005, when it became dormant, PBOT listed futures contracts on a number of foreign currencies. PBOT has applied to the CFTC for reinstatement for dormancy and expects to launch a new electronic trading platform, PBOT XL, in the near future.

\textsuperscript{5} Phlx also lists and trades options on a number of other stock indices whose values will not be disseminated by PBOT. Those indices will continue to be maintained, and options thereon will continue to be listed, as they are today. PBOT has, however, secured a similar license from one other index provider, and Phlx anticipates that PBOT will enter into similar license agreements with proprietors of other indexes underlying options traded on the Phlx.


\textsuperscript{7} Phlx’s proprietary indexes are, in addition to the indexes underlying the Approved Index Options, the Phlx Defense Sector\textsuperscript{SM}, Phlx Drug Sector\textsuperscript{SM}, Phlx Europe Sector\textsuperscript{SM}, Phlx Housing Sector\textsuperscript{SM}, and the Phlx World Energy Index\textsuperscript{SM}, all of which were listed pursuant to Phlx Rule 1009A(b), the Exchange’s generic index option listing standard rule. Phlx’s proprietary indexes are owned and maintained by Phlx. The Exchange has determined not to remove the Phlx World Energy Index\textsuperscript{SM} and the Phlx Europe Sector\textsuperscript{SM} from CTA immediately, but is requesting approval to do so when and if the Exchange
seeking approval for the subscriber fees to be charged to market data vendors by PBOT for all the values of Phlx’s proprietary indexes disseminated by PBOT’s MDDN.

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 effectuate changes to index dissemination procedures whereby PBOT will be disseminating index value information, as described above. Currently, the Exchange realizes no revenues from the sale of current and closing index values disseminated over CTA that are not shared with other CTA Plan participants but wants to going forward.8

In anticipation of the launch of PBOT XL, the PBOT’s fully electronic matching engine, PBOT has contracted with SAVVIS Communications to provide extranet services for the distribution of certain futures market data. This new internet protocol (IP) determines that disseminating these indexes in the same manner as its other proprietary indexes will be appropriate.

8 Currently, market data vendors pay a $200.00 monthly fee to CTA for the right to redistribute current and closing index values on a real time basis, together with delayed last sale data.
multicast network is known as the PBOT MDDN. It is anticipated that PBOT’s MDDN will disseminate quote and trade information regarding futures contracts executed on the PBOT, but will not disseminate quote and trade information regarding securities products. Further, as proposed herein, PBOT’s MDDN will disseminate index value information.

Additionally, in order to facilitate creation of revenues from the sale of current and closing values for Phlx proprietary indexes, the Phlx will remove those values from CTA. At that time, those index values will not be available from CTA and will be available only through the PBOT’s MDDN. They will, however, continue to be disseminated by major market data vendors, as explained below.

In contemplation of removing the index values from CTA, the Exchange has entered into a license agreement with PBOT in which the Exchange granted to PBOT, subject to the terms and conditions set forth therein, a non-exclusive, fully-paid, royalty-free, worldwide right and license to sell, offer for sale, perform, display, reproduce and distribute the current and closing index values derived from the Phlx proprietary indices to be disseminated over the MDDN. Phlx or its third party designee will objectively

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9 Additional information regarding the PBOT MDDN can be found on the Exchange’s website at http://www.phlx.com/pbot/Market_Data/mktdata.html.

10 As noted above, for business reasons the Phlx World Energy IndexSM (“XWE”SM) and the Phlx Europe SectorSM (“XEX”SM) will not initially be disseminated over the MDDN but will continue to be disseminated over the facilities of CTA.

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<tbody>
<tr>
<td>Per Device/User ID/Terminal ID</td>
<td>$1.00 per Device*</td>
<td>None</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Fee (per month)</th>
<th>Snapshot Market Data</th>
<th>Delayed Only</th>
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<tr>
<td></td>
<td>$0.0025 per snapshot request *</td>
<td>None</td>
</tr>
</tbody>
</table>

Subscriber’s Device may be exclusively Terminals, exclusively End Users or a combination of Terminals or End Users and shall be reported in a manner that is consistent with the way the Vendor identifies such Subscriber’s access to Vendor’s data.

By way of further explanation, an “End User” is an individual authorized or allowed by a vendor or a Subscriber to access and display real time market data that distributed by PBOT over the MDDN; and a “Terminal” is any type of equipment (fixed or portable) that accesses and displays such market data. By way of example, a vendor whose Subscribers collectively may access the index values on a real-time basis through 10,000 Devices would be assessed a monthly fee of $10,000. A vendor which makes available unlimited snapshot data to its customers would be assessed a monthly fee of $1500.00 regardless of the number of End Users or Devices involved.

The index values may also be made available by vendors on a delayed basis (i.e., no sooner than twenty minutes following receipt of the data by vendors) at no charge. The Exchange also notes that devices used in customer service areas or for purposes such as quality control, software programming, sales demonstrations, or promotions are not subject to any fees.
$1,500 per month for unlimited snapshot requests*

* Vendors which provide market data to 200,000 or more Devices in any month qualify for a 15% Administrative Fee for that month.¹⁸

Separate charges will apply for futures market data, which is not the subject of this proposed rule change. However, the agreements will provide that PBOT may change any of the fees enumerated in the agreement by giving the vendor or subvendor advance written notice of such changes. Under the agreements and consistent with industry practice, vendors will be free to assess whatever fees they agree to with subscribers.

In the various proposed rule changes filed by the Exchange seeking Commission approval for the listing and trading of the Approved Index Options, the Exchange made certain representations regarding the manner in which index values would be disseminated. The Commission’s approval orders also described the index value dissemination procedures in some cases. The Exchange now proposes to continue the listing and trading of options on various stock indices upon ceasing the dissemination of index values over CTA Tape B as described above. However, current index values will

¹⁸ All market data vendors which provide market data to 200,000 or more Devices in any month qualify for a 15% Administrative Fee for that month, to be deducted from the monthly Subscriber Fees that they collect and are obligated to pay PBOT under the Vendor/Subvendor Agreement. Phlx also believes that the fees to be charged by PBOT are consistent with the requirements of Commission Rule 603, Distribution, consolidation, and display of information with respect to quotations for and transactions in NMS stocks, in that the fees are fair and reasonable and not unreasonably discriminatory.
continue to be disseminated as required by Phlx Rule 1100A.\textsuperscript{19} Moreover, the current index values will be widely disseminated by one or more major market data vendors at least every 15 seconds during trading hours on the Exchange.\textsuperscript{20} Phlx will also continue to maintain the indexes underlying the Approved Index Options as described in their respective Rule 19b-4 filings and approval orders. Phlx anticipates that it may list options on new Phlx proprietary indexes in the future, in which event the underlying current and closing values of those new indexes will also be disseminated over the PBOT MDDN and not over CTA Tape B. Further, the Exchange may determine at a later date to remove the Phlx World Energy Index\textsuperscript{SM} (“XWE”\textsuperscript{SM}) and the Phlx Europe Sector\textsuperscript{SM} (“XEX”\textsuperscript{SM}) and disseminate their values over PBOT’s MDDN, like the other Phlx proprietary indexes.

2. **Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act\textsuperscript{21} in general, and furthers the objectives of Section 6(b)(5) of the Act\textsuperscript{22} 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 permitting the

\textsuperscript{19} Rule 1100A(a) provides that “[t]he Exchange shall disseminate or shall assure that the closing index value is disseminated after the close of business and the current index value is disseminated from time-to-time on days on which transactions in index options are made on the Exchange.”

\textsuperscript{20} Current underlying index values for narrow-based index options trading pursuant to Phlx Rule 1009A(b) and Commission Rule 19b-4(e) are also reported at least once every fifteen seconds during the time the index options are traded on the Exchange pursuant to Rule 1009A(b)(10).

\textsuperscript{21} 15 U.S.C. 78f(b).

\textsuperscript{22} 15 U.S.C. 78f(b)(5).
Exchange to cause the dissemination of index values in a manner that will enhance the value to the Exchange of indexes which the Exchange owns, while continuing to maintain the listing and trading of options on these indices as an investment alternative available to investors. The Exchange also believes that its proposal furthers the objectives of Section 6(b)(4) of the Act in particular, in that it is an equitable allocation of reasonable fees among persons using its facilities. The Exchange believes that PBOT’s proposed fee structure is reasonable and equitable, as it is based on the type of data received (real-time, delayed and snapshot), which is, in turn, generally based on the timeliness of the data. As noted above, market data vendors which provide market data to 200,000 or more Devices in any given month qualify for a 15% Administrative Fee for that month, to be deducted from the monthly subscriber fees that they collect and are obligated to pay PBOT under the Vendor/Subvendor Agreement. The Exchange believes that the 15% Administrative Fee is equitable because any vendor which provides market data to 200,000 or more Devices in any given month will qualify for the Administrative Fee. PBOT is offering the Administrative Fee as an incentive for large market data vendors to carry the data disseminated by the PBOT network. Phlx also believes that the fees to be charged by PBOT are consistent with the requirements of Commission Rule 603, Distribution, consolidation, and display of information with respect to quotations for and transactions in NMS stocks, in that the fees are fair and reasonable and not unreasonably discriminatory.

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


24 See footnote 18 above.
The Exchange 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

Although the Exchange received no written comments on the proposed rule change to continue listing and trading the Approved Index Options following changes in the index dissemination procedures or the level of fees to be charged by PBOT, the Exchange did receive one comment on the Exchange’s underlying decision to remove index values from the consolidated tape and disseminate them over the PBOT MDDN.²⁵ While the commenter did not specify the basis for his conclusion that the proposed changes would reduce the volume in index options to zero, the Exchange continues to believe that continued listing and trading of the Approved Index Options after underlying index values are removed from the consolidated tape is appropriate, as are the relocation of all Phlx proprietary index values from the consolidated tape to the PBOT MDDN and the fees to be assessed by PBOT, and, so long as the values continue to be widely disseminated by one or more market data vendors, is consistent with the Act.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the Federal Register. The Exchange requests that the Commission approve this proposed rule change on an

²⁵ See e-mail from Brian Schaer to the Exchange dated Thursday, August 25, 2005.
accelerated basis no later than May 1, 2006, to enable PBOT to provide adequate notice
to vendors of the July 1, 2006 scheduled implementation date of the fees proposed herein.

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. Please include File Number SR-
  Phlx-2006-04 on the subject line.

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-2006-04. 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
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 the 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 available publicly. All submissions should refer to File Number SR-Phlx-2006-04 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.26

Nancy M. Morris
Secretary

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Effective October 1, 2005, the proprietary sector index spot and settlement values (<http://www.phlx.com/pbot/Market_Data/Available%20Sector%20Index%20Spot%20and%20Settlement%20Values.pdf>) will only be available via PBOT Market Data Distribution, and no longer distributed via the consolidated tape. *List of vendors licensed to provide sector index spot and settlement values as well as PBOT market- Coming Soon.*

This is a fine example of how to make sure the volume in these index options goes completely to ZERO. Who is the brain surgeon that made this decision?

SO STUPID.
1. **Text of the Proposed Rule Change**

The Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")\(^1\) and Rule 19b-4 thereunder,\(^2\) proposes to continue the listing and trading of options on various stock indices upon making certain changes to the procedures for dissemination of the values of the indices.\(^3\) Specifically, Phlx has determined to license the current and closing index values underlying options currently listed pursuant to Securities and Exchange Commission ("Commission") approval pursuant to Rule 19b-4 rule filings, namely, the Phlx Gold/Silver Sector\(^{SM}\) ("XAU\(^{SM}\)"), Phlx Oil Service Sector\(^{SM}\) ("OSX\(^{SM}\)"), Phlx Semiconductor Sector ("SOX\(^{SM}\)"), Phlx Europe Sector\(^{SM}\) ("XEX\(^{SM}\)"), and the Phlx Utility Sector\(^{SM}\) ("UTY\(^{SM}\)") (together, the “Approved Index Options”), as well as values of most of Phlx’s other proprietary indexes, to its wholly owned subsidiary, the Philadelphia Board of Trade ("PBOT")\(^4\), for the purpose of selling, reproducing and distributing the index values over PBOT’s Market Data Distribution Network.

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\(^3\) SR-Phlx-2006-04 was originally filed with the Commission on January 12, 2006. This Amendment No. 2 supersedes the original filing in its entirety.

\(^4\) PBOT is a dormant designated contract market regulated by the Commodity Futures Trading Commission (the “CFTC”). Until November 30, 2005, when it became dormant, PBOT listed futures contracts on a number of foreign currencies. PBOT has applied to the CFTC for reinstatement for dormancy and is applying to the CFTC for reinstatement from dormancy and expects to launch a new electronic trading platform, PBOT XL, in the near future.
The Exchange proposes that the index values underlying the Approved Index Options will no longer be disseminated as described in their respective Rule 19b-4 filings and approval orders. The Exchange is also seeking approval to cease disseminating the current and closing index values of all its proprietary indexes over the facilities of the Consolidated Tape Association (“CTA”), and to disseminate such values solely over the PBOT’s MDDN. Finally, the Exchange is seeking approval for the subscriber fees to be charged to market data vendors by PBOT for all the values of Phlx’s proprietary indexes disseminated by PBOT’s MDDN.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1. A comment letter is attached as Exhibit 2. The amended text of the proposed rule change indicating any additions to or deletions from the immediately preceding filing is attached hereto as Exhibit 4.

Phlx also lists and trades options on a number of other stock indices whose values will not be disseminated by PBOT. Those indices will continue to be maintained, and options thereon will continue to be listed, as they are today. PBOT has, however, secured a similar license from one other index provider, and Phlx anticipates that PBOT will enter into similar license agreements with proprietors of other indexes underlying options traded on the Phlx.


Phlx’s proprietary indexes are, in addition to the indexes underlying the Approved Index Options, the Phlx Defense Sector SM, Phlx Drug Sector SM, Phlx Europe Sector SM, Phlx Housing Sector SM, and the Phlx World Energy Index SM, all of which were listed pursuant to Phlx Rule 1009A(b), the Exchange’s generic index option listing standard rule. Phlx’s proprietary indexes are owned and maintained by Phlx. The Exchange has determined not to remove the Phlx World Energy Index SM and the Phlx Europe Sector SM from CTA immediately, but is requesting approval to do so when and if the Exchange determines that disseminating these indexes in the same manner as its other proprietary indexes will be appropriate.
2. Procedures of the Self-Regulatory Organization

The Executive Committee, pursuant to delegated authority, approved the proposal for filing with the Securities and Exchange Commission ("SEC" or "Commission") on May 31, 2005 and on January 12, 2006. Questions and comments on the proposed rule change may be directed to Carla Behnfeldt, Director, Legal Department New Product Development Group, at (215) 496-5208, or Edith Hallahan, Senior Vice President and Deputy General Counsel, at (215) 496-5179.

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

a. Purpose

The purpose of the proposed rule change is to effectuate changes to index dissemination procedures whereby PBOT will be disseminating index value information, as described above. Currently, the Exchange realizes no revenues from the sale of current and closing index values disseminated over CTA that are not shared with other CTA Plan participants but wants to going forward.8

In anticipation of the launch of PBOT XL, the PBOT’s fully electronic matching engine, PBOT has contracted with SAVVIS Communications to provide extranet services for the distribution of certain futures market data. This new internet protocol (IP) multicast network is known as the PBOT MDDN.9 It is anticipated that PBOT’s MDDN will disseminate quote and trade information regarding futures contracts executed

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8 Currently, market data vendors pay a $200.00 monthly fee to CTA for the right to redistribute current and closing index values on a real time basis, together with delayed last sale data.

9 Additional information regarding the PBOT MDDN can be found on the Exchange’s website at http://www.phlx.com/pbot/Market Data/mktdata.html.
on the PBOT, but will not disseminate quote and trade information regarding securities products. Further, as proposed herein, PBOT’s MDDN will disseminate index value information.

Additionally, in order to facilitate creation of revenues from the sale of current and closing values for Phlx proprietary indexes, the Phlx will remove those values from CTA. At that time, those index values will not be available from CTA and will be available only through the PBOT ’s MDDN. They will, however, continue to be disseminated by major market data vendors, as explained below.

In contemplation of removing the index values from CTA, the Exchange has entered into a license agreement with PBOT in which the Exchange granted to PBOT, subject to the terms and conditions set forth therein, a non-exclusive, fully-paid, royalty-free, worldwide right and license to sell, offer for sale, perform, display, reproduce and distribute the current and closing index values derived from the Phlx proprietary indices to be disseminated over the MDDN. In the license agreement Phlx agreed that it or its third party designee would use commercially reasonable efforts to objectively calculate and make available to PBOT every 15 seconds real time current and closing index values on each trading day so that PBOT may market, sell and distribute

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10 As noted above, for business reasons the Phlx World Energy IndexSM (“XWE”SM) and the Phlx Europe SectorSM (“XEX”SM) will not initially be disseminated over the MDDN but will continue to be disseminated over the facilities of CTA.

11 PBOT has and will also enter into license agreements with one or more third party index providers to sell, reproduce and distribute index values which underlie other Phlx traded options listed pursuant to Rule 19b-4(e). Those index values will also be removed from CTA.

12 The license does not include the right to sublicense, modify, improve or create derivative works of, the values or the indices.
the values to third parties. In turn, PBOT agreed that it would commercialize the values in a diligent manner. The three industry leading market data vendors will be making the real time market data available to subscribers, as will several mid-tier vendors. Finally, the parties acknowledged and agreed that the goodwill created from PBOT’s exercise of its rights under the agreement would constitute the full consideration for the grant of licenses therein.

PBOT, in turn, will execute and has executed agreements with various vendors/subvendors of market data for the right to receive, store, and retransmit the current and closing index values transmitted over the MDDN. The subscriber fees payable to PBOT by vendors for the use or resale of these values are set forth in those agreements. Initially, Phlx is proposing that all vendors will be charged, based upon usage by their subscribers, a monthly fee of (a) $1.00 per “Device,” as defined in the agreement, that is used by Vendors/Subvendors and their subscribers to receive

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13 The term “vendors” as used herein includes subvendors which receive the market data feed from vendors rather than directly from PBOT, but which execute the same agreement with PBOT that vendors execute and pay the same subscriber fees.

14 Approximately 25 vendors, including for example Bloomberg L.P., Telekurs Financial Information Ltd., and Thomson Financial, have already entered into such market data agreements with PBOT. At least three of the vendors have elected to offer only the continuous real-time market data and will not offer snapshot or delayed data. The fees described in this proposed rule change cover values of all the indexes disseminated over the MDDN.

15 These fees will be subject to the possibility of a 15% Administrative Fee deduction as described in footnote 18.

16 The definition of “Device” in the agreement is complex and incorporates a number of other defined terms. The agreement provides that “Device” shall mean, in case of each Subscriber and in such Subscriber’s discretion, either any Terminal or any End User. For the avoidance of doubt, a
and re-transmit Phlx proprietary sector index spot current and settlement values on a real time basis and disseminated every 15 seconds, and (b) $.00025 per request for real-time snapshot data, which is essentially market data that is refreshed no more frequently than once every 60 seconds, and or $1,500 per month for unlimited snapshot data requests.  

The fees are summarized in table format below:

<table>
<thead>
<tr>
<th>Fee (per month)</th>
<th>Real-Time Continuous Market Data</th>
<th>Delayed Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Per Device/User ID/Terminal ID</td>
<td>$1.00 per Device*</td>
<td>None</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Fee (per month)</th>
<th>Snapshot Market Data</th>
<th>Delayed Only</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$0.0025 per snapshot request *</td>
<td>None</td>
</tr>
</tbody>
</table>

Subscriber’s Device may be exclusively Terminals, exclusively End Users or a combination of Terminals or End Users and shall be reported in a manner that is consistent with the way the Vendor identifies such Subscriber’s access to Vendor’s data.

By way of further explanation, an “End User” is an individual authorized or allowed by a Vendor or a Subscriber to access and display real time market data that distributed by PBOT over the MDDN; and a “Terminal” is any type of equipment (fixed or portable) that accesses and displays such market data. By way of example, a vendor whose Subscribers collectively may access the index values on a real-time basis through 10,000 Devices would be assessed a monthly fee of $10,000. A vendor which makes available unlimited snapshot data to its customers would be assessed a monthly fee of $1500.00 regardless of the number of End Users or Devices involved.

The index values may also be made available by vendors on a delayed basis (i.e., no sooner than twenty minutes following receipt of the data by vendors) at no charge. However, The Exchange also notes that devices used in customer service areas or for purposes such as quality control, software programming, sales demonstrations, or promotions are not subject to any fees.
$1,500 per month for unlimited snapshot requests*

* Vendors which provide market data to 200,000 or more Devices in any month qualify for a 15% Administrative Fee for that month.\textsuperscript{18}

Separate charges will apply for futures market data, which is not the subject of this proposed rule change. However, the agreements will provide that PBOT may change any of the fees enumerated in the agreement by giving the vendor or subvendor advance written notice of such changes. Under the agreements and consistent with industry practice, vendors will be free to assess whatever fees they agree to with subscribers.\textsuperscript{19}

In the various proposed rule changes filed by the Exchange seeking Commission approval for the listing and trading of the Approved Index Options, the Exchange made certain representations regarding the manner in which index values would be disseminated. The Commission’s approval orders also described the index value dissemination procedures in some cases. The Exchange now proposes to continue the listing and trading of options on various stock indices upon ceasing the dissemination of index values over CTA Tape B as described above. However, current index values will

\textsuperscript{18} One or more major market data vendors which provide market data to 200,000 or more Devices in any month may charge PBOT a 15% Administrative Fee for that month, to be deducted from the monthly Subscriber Fees that they collect and are obligated to pay PBOT under the Vendor/Subvendor Agreement. Phlx also believes that the fees to be charged by PBOT are consistent with the requirements of Commission Rule 603, Distribution, consolidation, and display of information with respect to quotations for and transactions in NMS stocks, in that the fees are fair and reasonable and not unreasonably discriminatory.

\textsuperscript{19} One or more major market data vendors may charge PBOT a 15% Administrative Fee, to be deducted from the monthly Subscriber Fees that they are obligated to pay PBOT under the Vendor/Subvendor Agreement.
continue to be disseminated as required by Phlx Rule 1100A.\(^{20}\) Moreover, the current index values will be widely disseminated by one or more major market data vendors at least every 15 seconds during trading hours on the Exchange.\(^{21}\) Phlx will also continue to maintain the indexes underlying the Approved Index Options as described in their respective Rule 19b-4 filings and approval orders. Phlx anticipates that it may list options on new Phlx proprietary indexes in the future, in which event the underlying current and closing values of those new indexes will also be disseminated over the PBOT MDDN and not over CTA Tape B. Further, the Exchange may determine at a later date to remove the Phlx World Energy Index\(^{\text{SM}}\) (“XWE”\(^{\text{SM}}\)) and the Phlx Europe Sector\(^{\text{SM}}\) (“XEX”\(^{\text{SM}}\)) and disseminate their values over PBOT’s MDDN, like the other Phlx proprietary indexes.

b. **Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act\(^{22}\) in general, and furthers the objectives of Section 6(b)(5) of the Act\(^{23}\) 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 permitting the

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\(^{20}\) Rule 1100A(a) provides that “[t]he Exchange shall disseminate or shall assure that the closing index value is disseminated after the close of business and the current index value is disseminated from time-to-time on days on which transactions in index options are made on the Exchange.”

\(^{21}\) Current underlying index values for narrow-based index options trading pursuant to Phlx Rule 1009A(b) and Commission Rule 19b-4(e) are also reported at least once every fifteen seconds during the time the index options are traded on the Exchange pursuant to Rule 1009A(b)(10).


Exchange to cause the dissemination of index values in a manner that will enhance the value to the Exchange of indexes which the Exchange owns, while continuing to maintain the listing and trading of options on these indices as an investment alternative available to investors. The Exchange also believes that its proposal furthers the objectives of Section 6(b)(4) of the Act in particular, in that it is an equitable allocation of reasonable fees among persons using its facilities. The Exchange believes that PBOT’s proposed fee structure is reasonable and equitable, as it is based on the type of data received (real-time, delayed and snapshot), which is, in turn, generally based on the timeliness of the data. As noted above, market data vendors which provide market data to 200,000 or more Devices in any given month qualify for a 15% Administrative Fee for that month, to be deducted from the monthly subscriber fees that they collect and are obligated to pay PBOT under the Vendor/Subvendor Agreement. The Exchange believes that the 15% Administrative Fee is equitable because any vendor which provides market data to 200,000 or more Devices in any given month will qualify for the Administrative Fee. PBOT is offering the Administrative Fee as an incentive for large market data vendors to carry the data disseminated by the PBOT network. Phlx also believes that the fees to be charged by PBOT are consistent with the requirements of Commission Rule 603, Distribution, consolidation, and display of information with respect to quotations for and transactions in NMS stocks, in that the fees are fair and reasonable and not unreasonably discriminatory.

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

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25 See footnote 18 above.
The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

5. **Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

Although the Exchange received no written comments on the proposed rule change to continue listing and trading the Approved Index Options following changes in the index dissemination procedures or the level of fees to be charged by PBOT, the Exchange did receive one comment on the Exchange’s underlying decision to remove index values from the consolidated tape and disseminate them over the PBOT MDDN.26 While the commenter did not specify the basis for his conclusion that the proposed changes would reduce the volume in index options to zero, the Exchange continues to believe that continued listing and trading of the Approved Index Options after underlying index values are removed from the consolidated tape is appropriate, as are the relocation of all Phlx proprietary index values from the consolidated tape to the PBOT MDDN and the fees to be assessed by PBOT, and, so long as the values continue to be widely disseminated by one or more market data vendors, is consistent with the Act.

6. **Extension of Time Period for Commission Action**

The Exchange does not consent to an extension of the time period for Commission action.

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

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26 See e-mail from Brian Schaer to the Exchange dated Thursday, August 25, 2005.
The Exchange requests that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the Federal Register. The Exchange believes that granting accelerated approval would permit the Exchange to remove the index values in question from CTA and generate fee revenue for the Exchange in order to finance its operations in an expedited manner. The Exchange requests that the Commission approve this proposed rule change on an accelerated basis no later than May 1, 2006, to enable PBOT to provide adequate notice to vendors of the July 1, 2006 scheduled implementation date of the fees proposed herein.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is based in part on proposed rule changes of the New York Stock Exchange Inc., the American Stock Exchange LLC and Nasdaq, which were recently approved by the Commission.27 Those proposed rule changes revised certain

generic listing standards for exchange traded funds by eliminating requirements that the current value of the underlying index be disseminated by a particular means (for example, by the consolidated tape) and replaced them with requirements that the current value of the underlying index must be widely disseminated by one or more major market data vendors. As recently amended, these listing standards conform more closely to existing generic narrow based index option listing standards, which do not require underlying index values to be disseminated by any particular party or procedure, so long as they are disseminated every 15 seconds.28

9. Exhibits

1. Notice of proposed rule for publication in the Federal Register.

2. Comment Letter

Dissemination of the Underlying Index Value for Portfolio Depositary Receipts and Index Fund Shares).

28 See, e.g., Chicago Board Options Exchange, Inc. Rule 24.2(b); International Securities Exchange Inc. Rule 2002(b); Pacific Exchange Inc. Rule 5.13; and Phlx 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). The Exchange notes that the International Securities Exchange has filed a proposed rule change to adopt similar generic listing standards for broad based index options which would require only that the current index value be “widely disseminated at least once every fifteen (15) seconds by one or more major market data vendors. . .” without specifying the precise means of such dissemination. See Securities Exchange Act Release No. 52084 (July 20, 2005), 70 FR 43481 (July 27, 2005) (SR-ISE-2005-27). The Exchange also notes that the Commission has recently approved generic listing standards for index linked securities which merely require that the current value of the underlying index be widely disseminated at least every 15 seconds. See Securities Exchange Act Release No. 52204 (August 3, 2005), 70 FR 46559 (August 10, 2005) (SR-PCX-2005-63), and 51563 (April 15, 2005), 70 FR 21257 (April 25, 2005) (SR-Amex-2005-01).