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).

Phlx proposes to modify the generic listing standards for Trust Shares

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 John Last Name Dayton
Title Director and Counsel
E-mail john.dayton@phlx.com
Telephone (215) 496-5162 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 11/29/2006
By John Dayton
(Name) Director and Counsel
(Title)

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.

John Dayton, john.dayton@phlx.com
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 amend Phlx Rule 803 – Criteria for Listing – Tier 1, regarding generic listing standards for Trust Shares.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and the text of the proposed Exchange Rule is set forth below:

Underlining indicates additions; brackets indicate deletions.

**Rule 803 Criteria for Listing – Tier I**

(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) *Eligibility Criteria for Index Components.* Upon the initial listing of a series of Trust Shares on the Exchange, the component stocks of an index or portfolio underlying such series of Trust Shares shall meet the following criteria as of the date of the initial deposit of cash and securities into the trust:

(i)-(ii) No Change.

(iii) The most heavily weighted component stock cannot exceed \([25\text{]30\%}\) of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65\% of the weight of the index or portfolio;

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(iv)-(v) No Change.

(b)-(h) No Change.

(j)-(m) No Change.

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 August 30, 2006.

Questions and comments on the proposed rule change may be directed to John Dayton, Director and Counsel, at (215) 496-5162 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 conform Phlx’s generic listing standards for Trust Shares, specifically Rule 803(i)(11)(a)(iii), to that of other exchanges. Phlx Rule 803 provides generic listing standards for Trust Shares to permit listing and trading of these securities pursuant to Rule 19b-4(e) under the Act.\(^3\) Rule 19b-4(e)\(^4\) 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,\(^5\) if the Commission has approved, pursuant to Section

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\(^{3}\) 17 CFR 240.19b-4(e).

\(^{4}\) Id.

\(^{5}\) 17 CFR 240.19b-4(c)(1).
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.

These generic listing standards are intended to ensure that stocks with substantial market capitalization and trading volume account for a substantial portion of the weight of an index or portfolio. Phlx Rule 803 provides that, upon the initial listing of a series of Trust Shares under Rule 19b-4(e), component stocks that in the aggregate account for at least 90 percent of the weight of the index or portfolio must have a minimum market value of at least $75 million. In addition, the component stocks in the index must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90 percent of the weight of the index or portfolio.

Currently, Rule 803(i)(11)(a)(iii) provides that the most heavily weighted component stock in an underlying index cannot exceed 25 percent of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65 percent of the weight of the index or portfolio. The Exchange proposes to increase from 25 percent to 30 percent the permissible weight of the most heavily weighted component stock in an underlying index. The Exchange is not amending the existing requirement that the five most heavily weighted stocks cannot exceed 65 percent of the weight of the index or portfolio. This change will provide additional flexibility to unit investment trusts to be listed pursuant to Rule 19b-4(e) in structuring their products and

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9 Id.
will help reduce possible concerns associated with a single stock exceeding the 25 percent threshold immediately prior to initial listing and trading due to a spike in the price of the most heavily weighted index stock. The Exchange notes that, notwithstanding this change, unit investment trusts (including Trust Shares) are subject to Internal Revenue Code Subchapter M requirements applicable to regulated investment companies. In order to maintain regulated investment company status, these entities would be required to rebalance their portfolios quarterly to avoid any one stock exceeding a 25 percent weighting in the trust’s portfolio.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

The 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.

5. 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.


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 accelerated approval for this proposed rule change as the Phlx believes that the earlier operative date is consistent with the protection of investors and the public interest because the proposed rule change is based upon the approved rule filings of the American Stock Exchange, and the Chicago Board Options Exchange.\(^{12}\)

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

The proposed rule change is based on the rules of the American Stock Exchange, Rule 1000, Commentary .03 regarding generic listing standards for Portfolio Depository Receipts (“PDRs”) and Rule 31.5 of the Chicago Board Options Exchange regarding generic listing standards applicable to Index Portfolio Receipts ("IPRs").\(^{13}\)

9. **Exhibits**

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

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\(^{13}\) Id.
SECURITIES AND EXCHANGE COMMISSION
(Release No. ; File No. SR-Phlx-2006-79)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Generic Listing Standards For Trust Shares

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, pursuant to Section 19(b)(1) of the Act\(^3\) and Rule 19b-4 thereunder,\(^4\) proposes to amend Phlx Rule 803 – Criteria for Listing – Tier 1, regarding generic listing standards for Trust Shares.

The text of the proposed Exchange Rule is set forth below:

Underlining indicates additions; brackets indicate deletions.

Rule 803 Criteria for Listing – Tier I

(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) Eligibility Criteria for Index Components. Upon the initial listing of a series of Trust Shares on the Exchange, the component stocks of an index or portfolio underlying such series of Trust Shares shall meet the following criteria as of the date of the initial deposit of cash and securities into the trust:

(i)-(ii) No Change.

(iii) The most heavily weighted component stock cannot exceed 30% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio;

(iv)-(v) No Change.

(b)-(h) No Change.

(j)-(m) No Change.

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 conform Phlx’s generic listing standards for Trust Shares, specifically Rule 803(i)(11)(a)(iii), to that of other exchanges. Phlx Rule 803 provides generic listing standards for Trust Shares to permit listing and trading of these securities pursuant to Rule 19b-4(e) under the Act.5 Rule 19b-4(e)6 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-4,7 if the Commission has approved, pursuant to Section 19(b) of the Act,8 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.9

These generic listing standards are intended to ensure that stocks with substantial market capitalization and trading volume account for a substantial portion of the weight of an index or portfolio. Phlx Rule 803 provides that, upon the initial listing of a series of Trust Shares under Rule 19b-4(e),10 component stocks that in the aggregate account for at least 90 percent of the weight of the index or portfolio must have a minimum market

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6 Id.
value of at least $75 million. In addition, the component stocks in the index must have a
minimum monthly trading volume during each of the last six months of at least 250,000
shares for stocks representing at least 90 percent of the weight of the index or portfolio.

Currently, Rule 803(i)(11)(a)(iii) provides that the most heavily weighted
component stock in an underlying index cannot exceed 25 percent of the weight of the
index or portfolio, and the five most heavily weighted component stocks cannot exceed
65 percent of the weight of the index or portfolio. The Exchange proposes to increase
from 25 percent to 30 percent the permissible weight of the most heavily weighted
component stock in an underlying index. The Exchange is not amending the existing
requirement that the five most heavily weighted stocks cannot exceed 65 percent of the
weight of the index or portfolio. This change will provide additional flexibility to unit
investment trusts to be listed pursuant to Rule 19b-4(e)\textsuperscript{11} in structuring their products and
will help reduce possible concerns associated with a single stock exceeding the 25
percent threshold immediately prior to initial listing and trading due to a spike in the
price of the most heavily weighted index stock. The Exchange notes that,
notwithstanding this change, unit investment trusts (including Trust Shares) are subject to
Internal Revenue Code Subchapter M requirements applicable to regulated investment
companies. In order to maintain regulated investment company status, these entities
would be required to rebalance their portfolios quarterly to avoid any one stock
exceeding a 25 percent weighting in the trust’s portfolio.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the

\textsuperscript{11} Id.
Act\textsuperscript{12} in general, and furthers the objectives of Section 6(b)(5) of the Act\textsuperscript{13} 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition 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 Phlx consents, the Commission shall: (a) by order approve such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange requests accelerated approval for this proposed rule change as the Phlx believes that the earlier operative date is consistent with the protection of investors

\textsuperscript{12} 15 U.S.C. 78f(b).

\textsuperscript{13} 15 U.S.C. 78f(b)(5).
and the public interest because the proposed rule change is based upon the approved rule filings of the American Stock Exchange, and the Chicago Board Options Exchange.\(^{14}\)

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](http://www.sec.gov/rules/sro.shtml)); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2006-79 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-2006-79](http://www.sec.gov/rules/sro.shtml). 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](http://www.sec.gov/rules/sro.shtml)). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld

from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission’s Public Reference Room. Copies of 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-2006-79 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.\textsuperscript{15}

Nancy M. Morris
Secretary

\textsuperscript{15} 17 CFR 200.30-3(a)(12).