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)

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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 adopt listing standards for Index Linked Securities

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 01/25/2007

By John Dayton Director and Counsel

(Name) (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
| Exhibit 1 - Notice of Proposed Rule Change | 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) |
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| Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications | 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. |
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| Exhibit 3 - Form, Report, or Questionnaire | Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change. |
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| Exhibit 4 - Marked Copies | 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. |
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| Exhibit 5 - Proposed Rule Text | 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. |
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| Partial Amendment | 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. |
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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, for the purpose of adopting generic listing standards pursuant to Rule 19b-4(e)\(^3\) under the Act in connection with index-linked securities ("Index Securities").

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit I 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)-(m) No Change.

(n) Index-Linked Securities

Index-linked securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes. Such securities may or may not provide for the repayment of the original principal investment amount. The Exchange may submit a rule filing pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 to permit the listing and trading of index-linked securities that do not otherwise meet the standards set forth below in paragraphs (1) through (11). The Exchange will consider for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934, index-linked securities provided:

(1) Both the issue and the issuer of such security meet the criteria set forth above in (f) except that the minimum public distribution shall be 1,000,000 units with a minimum of 400 public holders, except, if traded in thousand dollar denominations, then no minimum number of holders.

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\(^3\) 17 CFR 240.19b-4(e).
(2) The issue has a minimum term of one (1) year but not greater than thirty (30) years.

(3) The issue must be the non-convertible debt of the issuer.

(4) The payment at maturity may or may not provide for a multiple of the positive performance of an underlying index or indexes; however, in no event will payment at maturity be based on a multiple of the negative performance of an underlying index or indexes.

(5) The issuer will be expected to have a minimum tangible net worth in excess of $250,000,000, and to otherwise substantially exceed the earnings requirements set forth in (a). In the alternative, the issuer will be expected: (A) to have a minimum tangible net worth of $150,000,000 and to otherwise substantially exceed the earnings requirement set forth in (a), and (B) not to have issued securities where the original issue price of all the issuer's other index-linked note offerings (combined with index-linked note offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth.


(7) Initial Listing Criteria—Each underlying index is required to have at least ten (10) component securities. In addition, the index or indexes to which the security is linked shall either (1) have been reviewed and approved for the trading of options or other derivatives by the Commission under Section 19(b)(2) of the 1934 Act and rules thereunder and the conditions set forth in the Commission's approval order, including comprehensive surveillance sharing agreements for non-U.S. stocks, continue to be satisfied, or (2) the index or indexes meet the following criteria:

   (A) Each component security has a minimum market value of at least $75 million, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the market value can be at least $50 million;

   (B) Each component security shall have trading volume in each of the last six months of not less than 1,000,000 shares, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the trading volume shall be at least 500,000 shares in each of the last six months;

   (C) In the case of a capitalization weighted index or modified capitalization weighted index, the lesser of the five highest weighted
component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of component securities in the index, each have an average monthly trading volume of at least 2,000,000 shares over the previous six months;

(D) No underlying component security will represent more than 25% of the weight of the index, and the five highest weighted component securities in the index do not in the aggregate account for more than 50% of the weight of the index (60% for an index consisting of fewer than 25 component securities);

(E) 90% of the index's numerical value and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading set forth in Rule 1009;

(F) Each component security shall be a 1934 Act reporting company which is listed on a national securities exchange; and

(G) Foreign country securities or American Depository Receipts ("ADRs") that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20% of the weight of the index.

(8) Continued Listing Criteria—(A) The Exchange will commence delisting or removal proceedings (unless the Commission has approved the continued trading of the subject index-linked security), if any of the standards set forth above in paragraph (7) are not continuously maintained, except that:

(i) the criteria that no single component represent more than 25% of the weight of the index and the five highest weighted components in the index can not represent more than 50% (or 60% for indexes with less than 25 components) of the weight of the Index, need only be satisfied for capitalization weighted, modified capitalization weighted and price weighted indexes as of the first day of January and July in each year;

(ii) the total number of components in the index may not increase or decrease by more than 33-1/3% from the number of components in the index at the time of its initial listing, and in no event may be less than ten (10) components;

(iii) the trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted components in the index that in the aggregate account for no more than 10% of the
weight of the index, trading volume must be at least 400,000 shares for each of the last six months; and

(iv) in a capitalization-weighted index or modified capitalization weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index have had an average monthly trading volume of at least 1,000,000 shares over the previous six months.

(B) In connection with an index-linked security that is listed pursuant to paragraph (7)(A) above, the Exchange will commence delisting or removal proceedings (unless the Commission has approved the continued trading of the subject index-linked security) if an underlying index or indexes fails to satisfy the maintenance standards or conditions for such index or indexes as set forth by the Commission in its order under Section 19(b)(2) of the 1934 Act approving the index or indexes for the trading of options or other derivatives.

(C) The Exchange will also commence delisting or removal proceedings (unless the Commission has approved the continued trading of the subject index-linked security), under any of the following circumstances:

(i) if the aggregate market value or the principal amount of the securities publicly held is less than $400,000;

(ii) if the value of the index or composite value of the indexes is no longer calculated or widely disseminated on at least a 15-second basis; or

(iii) if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

(9) Index Methodology and Calculation—(A) Each index will be calculated based on either a capitalization, modified capitalization, price, equal-dollar or modified equal-dollar weighting methodology. (B) Indexes based upon the equal-dollar or modified equal-dollar weighting method will be rebalanced at least quarterly. (C) If the index is maintained by a broker-dealer, the broker-dealer shall erect a "firewall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer. (D) The current value of an index will be widely disseminated at least every 15 seconds. (E) If the value of an index-linked security is based on more than one (1) index, then the composite value of such indexes must be widely disseminated at least every 15 seconds.
(10) Surveillance Procedures. The Exchange will implement written surveillance procedures for index-linked securities, including adequate comprehensive surveillance sharing agreements for non-U.S. securities, as applicable.

(11) Index-linked securities will be treated as equity instruments.

2. **Procedures of the Self-Regulatory Organization**

   The Executive Committee, pursuant to delegated authority, approved parts of the proposal for filing with the Securities and Exchange Commission ("SEC" or "Commission") on August 30, 2006. In addition, senior management has approved parts of the proposal pursuant to delegated authority. No further action is required under the Exchange’s governing documents.

   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 facilitate new products by adding new language to Rule 803 to provide generic listing standards to permit the listing and trading of Index Securities pursuant to Rule 19b-4(e) under the Act.\(^4\) Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4\(^5\) if the Commission has approved, pursuant to Section

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\(^4\) Id.

19(b) of the Act,6 the self-regulatory organization’s trading rules, procedures and listing standards for the product class that would include the new derivatives product, and the self-regulatory organization has a surveillance program for the product class.7

The Exchange believes that adopting generic listing standards for these securities and applying Rule 19b-4(e) should fulfill the intended objective of that Rule by allowing those Index Securities that satisfy the proposed generic listing standards to commence trading, without the need for the public comment period and Commission approval.8 This has the potential to reduce the time frame for bringing Index Securities to market and thereby reducing the burdens on issuers and other market participants. Of course, the failure of a particular index to comply with the proposed generic listing standards under Rule 19b-4(e), however, would not preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2), requesting Commission approval to list and trade a particular index-linked product.

Under Rule 803(f), the Exchange may approve for listing and trading securities that cannot be readily categorized under the listing criteria for common and preferred securities, bonds, debentures, or warrants.9 The Phlx proposes in this rule filing to adopt generic listing standard for Index Securities under new section (n) of Rule 803. Index Securities are designed for investors who desire to participate in a specific market


8 The Exchange has previously received Commission approval to list and trade certain index options, exchange-traded funds and trust issued receipts pursuant to Rule 19b-4(e). See Securities Exchange Act Release Nos. 43683 (December 6, 2000), 65 FR 78235 (December 14, 2000) (SR-Phlx-00-67) (Index Options); 45178 (December 20, 2001), 66 FR 67610 (December 31, 2001) (SR-Phlx-00-68) (Trust Shares); and 44826 (September 20, 2001), 66 FR 49990 (October 1, 2001) (SR-Phlx-2001-75) (TIRs).

segment or combination of market segments through index products. Each Index Security is intended to provide investors with exposure to an identifiable underlying market index. Index Securities may or may not make interest payments to the holder during their term. Despite the fact that Index Securities are linked to an underlying index, each will trade as a single, exchange-listed security.

The Exchange proposes that generic listing standards appropriate for Index Securities provide that each index or combination of indexes (the “Underlying Index” or “Underlying Indexes”) meet the criteria set forth in proposed Rule 803(n) or an index previously approved for the trading of options or other derivative securities by the Commission under Section 19(b)(2) of the Act and rules thereunder. In all cases, an Underlying Index is required to have a minimum of (10) component securities. The specific criteria for each underlying component security in proposed Rule 803(n) is set forth below in the section entitled “Eligibility Standards for Underlying Component Securities.” In general, the criteria for the underlying component securities of an Underlying Index is substantially similar to the requirements for index options set forth in Phlx Rule 1009A(a).

**Description of Index-Linked Securities**

Index Securities are the non-convertible debt of an issuer that have a term of at least one (1) year but not greater than thirty (30) years. The issuer of an Index Security may or may not provide for periodic interest payments to holders based on dividends or other cash distributions paid on the securities comprising the Underlying Index or

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Indexes during a prescribed period. The holder of an Index Security may or may not be fully exposed to the appreciation and/or depreciation of the underlying component securities. For example, an Index Security may be subject to a “cap” on the maximum principal amount to be repaid to holders or a “floor” on the minimum principal amount to be repaid to holders at maturity. The proposed generic listing standards will not be applicable to Index Securities where the payment at maturity may be based on a multiple of negative performance of an underlying index or indexes. An Index Security may not provide for a minimum guaranteed amount to be repaid, i.e., no “principal protection.” Other Index Securities provide for participation in the positive return or performance of an index with the added protection of receiving a payment guarantee of the issuance price or “principal protection.” Further iterations may also provide “contingent” protection of the principal amount, whereby the principal protection may disappear if the Underlying Index at any point in time during the life of such security reaches a certain pre-determined level. The Exchange believes that the flexibility to list a variety of Index Securities will offer investors the opportunity to more precisely focus their specific investment strategies.

The original public offering price of Index Securities may vary with the most common offering price expected to be $10 or $1,000 per unit. As discussed above, Index Securities entitle the owner at maturity to receive a cash amount based upon the performance of a particular market index or combination of indexes. The structure of an Index Security may provide “principal protection” or provide that the principal amount is fully exposed to the performance of a market index. The Index Securities do not give the holder any right to receive a portfolio security, dividend payments, or any other

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11 Interest payments may be based on a fixed or floating rate.
ownership right or interest in the portfolio or index of securities comprising the Underlying Index. The current value of an Underlying Index or composite value of the Underlying Indexes will be widely disseminated at least every 15 seconds during the trading day.

Index Securities may or may not be structured with accelerated returns, upside or downside, based on the performance of the Underlying Index.¹² For example, an Index Security may provide for an accelerated return of 3-to-1 if the Underlying Index achieves a positive return at maturity. The Exchange submits that Index Securities are “hybrid” securities whose rates of return are largely the result of the performance of Underlying Index or Indexes comprised of component securities. In connection with the listing and trading of Index Securities, the Exchange will issue an Information Circular to members detailing the special risks and characteristics of the securities. Accordingly, the particular structure and corresponding risk of any Index Security traded on the Exchange will be highlighted and disclosed.¹³

Index Securities are expected to trade at a lower cost than the cost of trading each of the underlying component securities separately (because of reduced commission and custody costs) and are also expected to give investors the ability to maintain index

¹² See e.g. Securities Exchange Act Release No. 48280 (August 1, 2003), 68 FR 47121 (August 7, 2003) (SR-NASD-2003-119). As stated, the proposed generic listing standards will not be applicable to Index Securities that are structured with “downside” accelerated returns.

¹³ The Exchange notes that members that carry customer accounts must be members of the NASD and would therefore be subject to the rules and regulations of the NASD, including NASD Rule 2310(a) and (b). Accordingly, NASD Notice to Members 03-71 regarding non-conventional investments or “NCIs” applies to Exchange members recommending/selling index-linked securities to public customers. This Notice specifically reminds members in connection with NCIs (such as index-linked securities) of their obligations to: (1) conduct adequate due diligence to understand the features of the product; (2) perform a reasonable-basis suitability analysis; (3) perform customer-specific suitability analysis in connection with any recommended transactions; (4) provide a balanced disclosure of both the risks and rewards associated with the particular product, especially when selling to retail investors; (5) implement appropriate internal controls; and (6) train registered persons regarding the features, risk and suitability of these products.
exposure without the corresponding management or administrative fees and ongoing expenses. The initial offering price for an Index Security will be established on the date the security is priced for sale to the public. The final value of an Index Security will be determined on the valuation date at or near maturity consistent with the mechanics detailed in the prospectus for such Index Security.

**Eligibility Standards for Issuers**

The following standards are proposed for each issuer of Index Securities:

1. Both the issue and the issuer of such security meet the criteria set forth above in (f) except that the minimum public distribution shall be 1,000,000 units with a minimum of 400 public holders, except, if traded in thousand dollar denominations, then no minimum number of holders.

2. The issue has a minimum term of one (1) year but not greater than thirty (30) years.

3. The issue must be the non-convertible debt of the issuer.

4. The payment at maturity may or may not provide for a multiple of the positive performance of an underlying index or indexes; however, in no event will payment at maturity be based on a multiple of the negative performance of an underlying index or indexes.

5. The issuer will be expected to have a minimum tangible net worth in excess of $250,000,000, and to otherwise substantially exceed the earnings requirements set forth in (a). In the alternative, the issuer will be expected: (A) to have a minimum tangible net worth of $150,000,000 and to otherwise substantially exceed the earnings requirement set forth in (a), and (B) not to have issued securities where the original issue price of all the issuer's other index-linked note offerings (combined with index-linked note offerings of
the issuer's affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth.

(6) The issuer is in compliance with Rule 10A-3 under the Act.

*Description of Underlying Indexes*

Each Underlying Index will either be (i) an index meeting the specific criteria set forth below in proposed Phlx Rule 803(n) that is similar to the current Phlx Rule 1009A(a); or (ii) an index approved for the trading of options or other derivatives securities by the Commission under Section 19(b)(2) of the Act and rules thereunder. However, in all cases, an Underlying Index must contain at least ten (10) component securities.

The Exchange will require that all changes to an Underlying Index, including the deletion and addition of underlying component securities, index rebalancings and changes to the calculation of the index, will be made in accordance with the proposed generic criteria or the Commission’s Section 19(b)(2) order approving the similar derivative product containing the Underlying Index.

In order to satisfy the proposed generic listing standards, the Underlying Index will be calculated based on either a market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting.

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14 A “market capitalization” index is the most common type of stock index. The components are weighted according to the total market value of the outstanding shares, i.e., share price times the number of shares outstanding. This type of index will fluctuate in line with the price moves of the component stocks.

15 A “modified market capitalization” index is similar to the market capitalization index, except that an adjustment to the weights of one or more of the components occurs. This is typically done to avoid having an index that has one or a few stocks representing a disproportionate amount of the index value.

16 A “price-weighted” index is an index in which the component stocks are weighted by their share price. The most common example is the Dow Jones Industrial Average (“DJIA”).
methodology. If a broker-dealer is responsible for maintaining (or has a role in maintaining) the Underlying Index, such broker-dealer is required to erect and maintain a “firewall,” in a form satisfactory to the Exchange, to prevent the flow of information regarding the Underlying Index from the index production personnel to the sales and trading personnel. In addition, an Underlying Index that is maintained by a broker-dealer is also required to be calculated by an independent third party who is not a broker-dealer.

Eligibility Standards for Underlying Securities

Index Securities will be subject to the criteria in proposed Rule 803(n)(7) and (8) for initial and continued listing. For an Underlying Index to be appropriate for the initial listing of and Index Security, such Index must either be approved for the trading of options or other derivative securities by the Commission under Section 19(b)(2) of the Act and rules thereunder or meet the following requirements:

17 An “equal dollar weighted” index is an index structured so that share quantities for each of the component stocks in the index are determined as if one were buying an equal dollar amount of each stock in the index. Equal dollar weighted indexes are usually rebalanced to equal weightings either quarterly, semi-annually, or annually.

18 A “modified equal –dollars weighted” index is designed to be a fair measurement of the particular industry or sector represented by the index, without assigning an excessive weight to one or more index components that have a large market capitalization relative to the other index components. In this type of index, each component is assigned a weight that takes into account the relative market capitalization of the securities comprising the index. The index is subsequently rebalanced to maintain these pre-established weighting levels. Like equal-dollar weighted indexes, the value of a modified equal-dollar weighted index will equal the current combined market value of the assigned number of shares of each of the underlying components divided by the appropriate index divisor. A modified equal-dollar weighted index will typically be re-balanced quarterly.

19 For certain indexes, an index provider, such as Dow Jones, may select the components and calculate the index, but overseas broker-dealer affiliates of U.S. registered broker-dealers may sit on an “advisory” committee that recommends component selections to the index provider. In such case, the Exchange would ensure that appropriate information barriers and insider trading policies exist for this advisory committee. See Securities Exchange Act Release No. 50501 (October 7, 2004), 69 FR 61533 (October 19, 2004) (approving NASD 2004-138, pertaining to index linked notes on the Dow Jones Euro Stoxx 50 Index).
• A minimum market value of at least $75 million, except that for each of the
  lowest weighted Underlying Securities in the index in the aggregate account for
  no more than 10% of the weight of the index, the market value can be at least $50
  million;

• Trading volume in each of the last six months of not less than 1,000,000 shares,
  except that for each of the lowest weighted Underlying Securities in the index that
  in the aggregate account for no more than 10% of the weight of the index, the
  trading volume shall be at least 500,000 shares in each of the last six months;

• In the case of a capitalization-weighted index, the lesser of the five highest weight
  Underlying Securities in the index or the highest weighted Underlying Securities
  in the index that in the aggregate represent at least 30% of the total number of
  Underlying Securities in the index, each have an average monthly trading volume
  of at least 2,000,000 shares over the previous six months;

• No component security will represent more than 25% of the weight of the index,
  and the five highest weighted component securities in the index will not in the
  aggregate account for more than 50% of the weight of the index (60% for an
  index consisting of fewer than 25 Underlying Securities);

• 90% of the index’s numerical index value and at least 80% of the total number of
  component securities will meet the then current criteria for standardized options
  trading set forth in Exchange Rule 1009;

• Each component security shall be a 1934 Act reporting company which is listed
  on a national securities exchange; and
• Foreign country securities or American Depository Receipts (“ADRs”) that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20% of the weight of the index.

As described above in the Section entitled “Description of Underlying Indexes,” all Underlying Indexes are required to have at least ten (10) component securities.

The proposed continued listing criteria set forth in proposed Rule 803(n)(8)(A) regarding the underlying components of an Underlying Index provides that the Exchange will commence delisting or removal proceedings of an Index Security (unless the Commission has approved the continued trading of the Index Security) if any of the standards set forth in the initial eligibility criteria of proposed Rule 803(n)(7) are not continuously maintained, except that:

• The criteria that no single component represent more than 25% of the weight of the index and the five highest weighted components in the index can not represent more than 50% (or 60% for indexes with less than 25 components) of the weight of the Index, need only be satisfied for capitalization weighted and price weighted indexes as of the first day of January and July in each year;

• The total number of components in the index may not increase or decrease by more than 33-1/3% from the number of components in the index at the time of its initial listing, and in no event may be less than ten (10) components;

• The trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted components in the index that in the aggregate account for no more than
10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months; and

- In a capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index have had an average monthly trading volume of at least 1,000,000 shares over the previous six months.

In connection with an Index Security that is listed pursuant to proposed Rule 803(n)(7)(l), the Exchange will commence delisting or removal proceedings (unless the Commission has approved the continued listing of the Index Security) if an underlying index or indexes fails to satisfy the maintenance standards or conditions for such index or indexes as set forth by the Commission in its order under Section 19(b)(2) of the Act approving the index or indexes for the trading of options or other derivatives.

As set forth in proposed Rule 803(n)(8)(C), the Exchange will also commence delisting or removal proceedings of an Index Security (unless the Commission has approved the continued trading of the Index Security), under any of the following circumstances:

- If the aggregate market value or the principal amount of the securities publicly held is less than $400,000;

- If the value of the Underlying Index or composite value of the Underlying Indexes is no longer calculated and widely disseminated on at least a 15-second basis; or
• If such other event shall occur or condition exists which is the opinion of the Exchange makes further dealings on the Exchange inadvisable.

The Phlx represents that Index Securities listed and traded on the Exchange will be required to be in compliance with rule 10A-3 under the Act.\textsuperscript{20}

\textit{Exchange Rules Applicable to Index-Linked Securities}

Index Securities will be treated as equity instruments and will be subject to all Exchange rules governing the trading of equity securities, including, among others, rule governing XLE, the Exchange’s equity trading system, and related trading halt provisions pursuant to Phlx Rule 133. Exchange equity margin rules and the trading hours of 8:00 a.m. to 6:00 p.m. will apply to transactions in Index Securities.

In addition, the Exchange will evaluate the nature and complexity of each Index Security and, if appropriate, distribute a circular to the membership, prior to the commencement of trading, providing guidance with respect to, among other things, member firm compliance responsibilities when handling transactions in Index Securities and highlighting the special risks and characteristics. Specifically, the circular, among other things, will discuss and emphasize the structure and operation of the Index Security, the requirements that members and member firms deliver a prospectus to investors purchasing an Index Security prior to or concurrently with the confirmation of a transaction, applicable Phlx rules, dissemination information regarding the Underlying Index, trading information and applicable suitability rules.

Proposed Rule 803(n)(10) provides that the Exchange will implement written surveillance procedures for Index Securities. The Exchange also has a general policy

\textsuperscript{20} See Rule 10A-3(c)(7), 17 CFR 240.10A-3(c)(7).
prohibiting the distribution of material, non-public information by its employees. As
detailed above in the description of generic standards, if a broker-dealer is responsible for
maintaining (or has a role in maintaining) the Underlying Index, such broker-dealer is
required to erect and maintain a “firewall” in a form satisfactory to the Exchange, in
order to prevent the flow of information regarding the Underlying Index from the index
production personnel to sales and trading personnel. In addition, the Exchange will
require that calculation of Underlying Indexes be performed by an independent third
party who is not a broker-dealer.

b. 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, 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.

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

\textsuperscript{22} 15 U.S.C. 78f(b)(5).
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 it is consistent with the protection of investors and the public interest because accelerated approval would enable the Exchange to begin offering the benefits of this proposed rule change for Exchange members and member organizations by allowing them to trade Index Securities immediately and should increase competition for Index Securities by allowing, pursuant to Rule 19b-4(e), another trading venue for trading Index Securities.

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, Amex Company Guide Section 107D regarding generic listing standards for Index Securities.\(^{23}\)

9. **Exhibits**

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

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, notice is hereby given that on ______________________ 2007, 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 and Rule 19b-4 thereunder, proposes to amend Phlx Rule 803 – Criteria for Listing – Tier 1, for the purpose of adopting generic listing standards pursuant to Rule 19b-4(e) under the Act in connection with index-linked securities ("Index Securities").

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

Underlining indicates additions; brackets indicate deletions.

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(n) Index-Linked Securities

Index-linked securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes. Such securities may or may not provide for the repayment of the original principal investment amount. The Exchange may submit a rule filing pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 to permit the listing and trading of index-linked securities that do not otherwise meet the standards set forth below in paragraphs (1) through (11). The Exchange will consider for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934, index-linked securities provided:

(1) Both the issue and the issuer of such security meet the criteria set forth above in (f) except that the minimum public distribution shall be 1,000,000 units with a minimum of 400 public holders, except, if traded in thousand dollar denominations, then no minimum number of holders.

(2) The issue has a minimum term of one (1) year but not greater than thirty (30) years.

(3) The issue must be the non-convertible debt of the issuer.

(4) The payment at maturity may or may not provide for a multiple of the positive performance of an underlying index or indexes; however, in no event will payment at maturity be based on a multiple of the negative performance of an underlying index or indexes.

(5) The issuer will be expected to have a minimum tangible net worth in excess of $250,000,000, and to otherwise substantially exceed the earnings requirements set forth in (a). In the alternative, the issuer will be expected: (A) to have a minimum tangible net worth of $150,000,000 and to otherwise substantially exceed the earnings requirement set forth in (a), and (B) not to have issued securities where the original issue price of all the issuer's other index-linked note offerings (combined with index-linked note offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth.

(7) Initial Listing Criteria—Each underlying index is required to have at least ten component securities. In addition, the index or indexes to which the security is linked shall either (1) have been reviewed and approved for the trading of options or other derivatives by the Commission under Section 19(b)(2) of the 1934 Act and rules thereunder and the conditions set forth in the Commission's approval order, including comprehensive surveillance sharing agreements for non-U.S. stocks, continue to be satisfied, or (2) the index or indexes meet the following criteria:

(A) Each component security has a minimum market value of at least $75 million, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the market value can be at least $50 million;

(B) Each component security shall have trading volume in each of the last six months of not less than 1,000,000 shares, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the trading volume shall be at least 500,000 shares in each of the last six months;

(C) In the case of a capitalization weighted index or modified capitalization weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of component securities in the index, each have an average monthly trading volume of at least 2,000,000 shares over the previous six months;

(D) No underlying component security will represent more than 25% of the weight of the index, and the five highest weighted component securities in the index do not in the aggregate account for more than 50% of the weight of the index (60% for an index consisting of fewer than 25 component securities);

(E) 90% of the index's numerical value and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading set forth in Rule 1009;

(F) Each component security shall be a 1934 Act reporting company which is listed on a national securities exchange; and

(G) Foreign country securities or American Depository Receipts ("ADRs") that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20% of the weight of the index.
(8) Continued Listing Criteria—(A) The Exchange will commence delisting or removal proceedings (unless the Commission has approved the continued trading of the subject index-linked security), if any of the standards set forth above in paragraph (7) are not continuously maintained, except that:

(i) the criteria that no single component represent more than 25% of the weight of the index and the five highest weighted components in the index can not represent more than 50% (or 60% for indexes with less than 25 components) of the weight of the Index, need only be satisfied for capitalization weighted, modified capitalization weighted and price weighted indexes as of the first day of January and July in each year;

(ii) the total number of components in the index may not increase or decrease by more than 33-1/3% from the number of components in the index at the time of its initial listing, and in no event may be less than ten (10) components;

(iii) the trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted components in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months; and

(iv) in a capitalization-weighted index or modified capitalization weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index have had an average monthly trading volume of at least 1,000,000 shares over the previous six months.

(B) In connection with an index-linked security that is listed pursuant to paragraph (7)(A) above, the Exchange will commence delisting or removal proceedings (unless the Commission has approved the continued trading of the subject index-linked security) if an underlying index or indexes fails to satisfy the maintenance standards or conditions for such index or indexes as set forth by the Commission in its order under Section 19(b)(2) of the 1934 Act approving the index or indexes for the trading of options or other derivatives.

(C) The Exchange will also commence delisting or removal proceedings (unless the Commission has approved the continued trading of the subject index-linked security), under any of the following circumstances:
(i) if the aggregate market value or the principal amount of the securities publicly held is less than $400,000;

(ii) if the value of the index or composite value of the indexes is no longer calculated or widely disseminated on at least a 15-second basis; or

(iii) if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

(9) Index Methodology and Calculation—(A) Each index will be calculated based on either a capitalization, modified capitalization, price, equal-dollar or modified equal-dollar weighting methodology. (B) Indexes based upon the equal-dollar or modified equal-dollar weighting method will be rebalanced at least quarterly. (C) If the index is maintained by a broker-dealer, the broker-dealer shall erect a "firewall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer. (D) The current value of an index will be widely disseminated at least every 15 seconds. (E) If the value of an index-linked security is based on more than one (1) index, then the composite value of such indexes must be widely disseminated at least every 15 seconds.

(10) Surveillance Procedures. The Exchange will implement written surveillance procedures for index-linked securities, including adequate comprehensive surveillance sharing agreements for non-U.S. securities, as applicable.

(11) Index-linked securities will be treated as equity instruments.

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 facilitate new products by adding new language to Rule 803 to provide generic listing standards to permit the listing and trading of Index Securities pursuant to Rule 19b-4(e) under the Act.\(^6\) Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4\(^7\) 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 derivatives product, and the self-regulatory organization has a surveillance program for the product class.\(^9\)

The Exchange believes that adopting generic listing standards for these securities and applying Rule 19b-4(e) should fulfill the intended objective of that Rule by allowing those Index Securities that satisfy the proposed generic listing standards to commence trading, without the need for the public comment period and Commission approval.\(^{10}\) This has the potential to reduce the time frame for bringing Index Securities to market.

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\(^{6}\) Id.

\(^{7}\) 17 CFR 240.19b-4(c)(1).


\(^{10}\) The Exchange has previously received Commission approval to list and trade certain index options, exchange-traded funds and trust issued receipts pursuant to Rule 19b-4(e). See Securities Exchange Act Release Nos. 43683 (December 6, 2000), 65 FR 78235 (December 14, 2000) (SR-Phlx-00-67) (Index Options); 45178 (December 20, 2001), 66 FR 67610 (December 31, 2001) (SR-Phlx-00-68) (Trust Shares); and 44826 (September 20, 2001), 66 FR 49990 (October 1, 2001) (SR-Phlx-2001-75) (TIRs).
and thereby reducing the burdens on issuers and other market participants. Of course, the failure of a particular index to comply with the proposed generic listing standards under Rule 19b-4(e), however, would not preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2), requesting Commission approval to list and trade a particular index-linked product.

Under Rule 803(f), the Exchange may approve for listing and trading securities that cannot be readily categorized under the listing criteria for common and preferred securities, bonds, debentures, or warrants. The Phlx proposes in this rule filing to adopt generic listing standard for Index Securities under new section (n) of Rule 803. Index Securities are designed for investors who desire to participate in a specific market segment or combination of market segments through index products. Each Index Security is intended to provide investors with exposure to an identifiable underlying market index. Index Securities may or may not make interest payments to the holder during their term. Despite the fact that Index Securities are linked to an underlying index, each will trade as a single, exchange-listed security.

The Exchange proposes that generic listing standards appropriate for Index Securities provide that each index or combination of indexes (the “Underlying Index” or “Underlying Indexes”) meet the criteria set forth in proposed Rule 803(n) or an index previously approved for the trading of options or other derivative securities by the Commission under Section 19(b)(2) of the Act and rules thereunder. In all cases, an Underlying Index is required to have a minimum of (10) component securities. The specific criteria for each underlying component security in proposed Rule 803(n) is set

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forth below in the section entitled “Eligibility Standards for Underlying Component Securities.” In general, the criteria for the underlying component securities of an Underlying Index is substantially similar to the requirements for index options set forth in Phlx Rule 1009A(a).

**Description of Index-Linked Securities**

Index Securities are the non-convertible debt of an issuer that have a term of at least one (1) year but not greater than thirty (30) years. The issuer of an Index Security may or may not provide for periodic interest payments to holders based on dividends or other cash distributions paid on the securities comprising the Underlying Index or Indexes during a prescribed period. The holder of an Index Security may or may not be fully exposed to the appreciation and/or depreciation of the underlying component securities. For example, an Index Security may be subject to a “cap” on the maximum principal amount to be repaid to holders or a “floor” on the minimum principal amount to be repaid to holders at maturity. The proposed generic listing standards will not be applicable to Index Securities where the payment at maturity may be based on a multiple of negative performance of an underlying index or indexes. An Index Security may not provide for a minimum guaranteed amount to be repaid, i.e., no “principal protection.” Other Index Securities provide for participation in the positive return or performance of an index with the added protection of receiving a payment guarantee of the issuance price or “principal protection.” Further iterations may also provide “contingent” protection of the principal amount, whereby the principal protection may disappear if the Underlying

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13 Interest payments may be based on a fixed or floating rate.
Index at any point in time during the life of such security reaches a certain pre-
determined level. The Exchange believes that the flexibility to list a variety of Index
Securities will offer investors the opportunity to more precisely focus their specific
investment strategies.

The original public offering price of Index Securities may vary with the most
common offering price expected to be $10 or $1,000 per unit. As discussed above, Index
Securities entitle the owner at maturity to receive a cash amount based upon the
performance of a particular market index or combination of indexes. The structure of an
Index Security may provide “principal protection” or provide that the principal amount is
fully exposed to the performance of a market index. The Index Securities do not give the
holder any right to receive a portfolio security, dividend payments, or any other
ownership right or interest in the portfolio or index of securities comprising the
Underlying Index. The current value of an Underlying Index or composite value of the
Underlying Indexes will be widely disseminated at least every 15 seconds during the
trading day.

Index Securities may or may not be structured with accelerated returns, upside or
downside, based on the performance of the Underlying Index.\(^4\) For example, an Index
Security may provide for an accelerated return of 3-to-1 if the Underlying Index achieves
a positive return at maturity. The Exchange submits that Index Securities are “hybrid”
securities whose rates of return are largely the result of the performance of Underlying
Index or Indexes comprised of component securities. In connection with the listing and

(SR-NASD-2003-119). As stated, the proposed generic listing standards will not be applicable to Index
Securities that are structured with “downside” accelerated returns.
trading of Index Securities, the Exchange will issue an Information Circular to members
detailing the special risks and characteristics of the securities. Accordingly, the particular
structure and corresponding risk of any Index Security traded on the Exchange will be
highlighted and disclosed.\textsuperscript{15}

Index Securities are expected to trade at a lower cost than the cost of trading each
of the underlying component securities separately (because of reduced commission and
custody costs) and are also expected to give investors the ability to maintain index
exposure without the corresponding management or administrative fees and ongoing
expenses. The initial offering price for an Index Security will be established on the date
the security is priced for sale to the public. The final value of an Index Security will be
determined on the valuation date at or near maturity consistent with the mechanics
detailed in the prospectus for such Index Security.

\textit{Eligibility Standards for Issuers}

The following standards are proposed for each issuer of Index Securities:
(1) Both the issue and the issuer of such security meet the criteria set forth above in (f)
except that the minimum public distribution shall be 1,000,000 units with a minimum of
400 public holders, except, if traded in thousand dollar denominations, then no minimum
number of holders.

\textsuperscript{15} The Exchange notes that members that carry customer accounts must be members of the NASD and
would therefore be subject to the rules and regulations of the NASD, including NASD Rule 2310(a) and
(b). Accordingly, NASD Notice to Members 03-71 regarding non-conventional investments or “NCIs”
applies to Exchange members recommending/selling index-linked securities to public customers. This
Notice specifically reminds members in connection with NCIs (such as index-linked securities) of their
obligations to: (1) conduct adequate due diligence to understand the features of the product; (2) perform a
reasonable-basis suitability analysis; (3) perform customer-specific suitability analysis in connection with
any recommended transactions; (4) provide a balanced disclosure of both the risks and rewards associated
with the particular product, especially when selling to retail investors; (5) implement appropriate internal
controls; and (6) train registered persons regarding the features, risk and suitability of these products.
(2) The issue has a minimum term of one (1) year but not greater than thirty (30) years.

(3) The issue must be the non-convertible debt of the issuer.

(4) The payment at maturity may or may not provide for a multiple of the positive performance of an underlying index or indexes; however, in no event will payment at maturity be based on a multiple of the negative performance of an underlying index or indexes.

(5) The issuer will be expected to have a minimum tangible net worth in excess of $250,000,000, and to otherwise substantially exceed the earnings requirements set forth in (a). In the alternative, the issuer will be expected: (A) to have a minimum tangible net worth of $150,000,000 and to otherwise substantially exceed the earnings requirement set forth in (a), and (B) not to have issued securities where the original issue price of all the issuer's other index-linked note offerings (combined with index-linked note offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth.

(6) The issuer is in compliance with Rule 10A-3 under the Act.

*Description of Underlying Indexes*

Each Underlying Index will either be (i) an index meeting the specific criteria set forth below in proposed Phlx Rule 803(n) that is similar to the current Phlx Rule 1009A(a); or (ii) an index approved for the trading of options or other derivatives securities by the Commission under Section 19(b)(2) of the Act and rules thereunder. However, in all cases, an Underlying Index must contain at least ten (10) component securities.
The Exchange will require that all changes to an Underlying Index, including the
deletion and addition of underlying component securities, index rebalancings and
changes to the calculation of the index, will be made in accordance with the proposed
generic criteria or the Commission’s Section 19(b)(2) order approving the similar
derivative product containing the Underlying Index.

In order to satisfy the proposed generic listing standards, the Underlying Index
will be calculated based on either a market capitalization,\textsuperscript{16} modified market
capitalization,\textsuperscript{17} price,\textsuperscript{18} equal-dollar\textsuperscript{19} or modified equal-dollar\textsuperscript{20} weighting
methodology. If a broker-dealer is responsible for maintaining (or has a role in
maintaining) the Underlying Index, such broker-dealer is required to erect and maintain a
“firewall,” in a form satisfactory to the Exchange, to prevent the flow of information
regarding the Underlying Index from the index production personnel to the sales and

\textsuperscript{16} A “market capitalization” index is the most common type of stock index. The components are weighted
according to the total market value of the outstanding shares, i.e., share price times the number of shares
outstanding. This type of index will fluctuate in line with the price moves of the component stocks.

\textsuperscript{17} A “modified market capitalization” index is similar to the market capitalization index, except that an
adjustment to the weights of one or more of the components occurs. This is typically done to avoid having
an index that has one or a few stocks representing a disproportionate amount of the index value.

\textsuperscript{18} A “price-weighted” index is an index in which the component stocks are weighted by their share price.
The most common example is the Dow Jones Industrial Average (“DJIA”).

\textsuperscript{19} An “equal dollar weighted” index is an index structured so that share quantities for each of the
component stocks in the index are determined as if one were buying an equal dollar amount of each stock
in the index. Equal dollar weighted indexes are usually rebalanced to equal weightings either quarterly,
semi-annually, or annually.

\textsuperscript{20} A “modified equal –dollar weighted” index is designed to be a fair measurement of the particular
industry or sector represented by the index, without assigning an excessive weight to one or more index
components that have a large market capitalization relative to the other index components. In this type of
index, each component is assigned a weight that takes into account the relative market capitalization of the
securities comprising the index. The index is subsequently rebalanced to maintain these pre-established
weighting levels. Like equal-dollar weighted indexes, the value of a modified equal-dollar weighted index
will equal the current combined market value of the assigned number of shares of each of the underlying
components divided by the appropriate index divisor. A modified equal-dollar weighted index will
typically be re-balanced quarterly.
trading personnel.\textsuperscript{21} In addition, an Underlying Index that is maintained by a broker-dealer is also required to be calculated by an independent third party who is not a broker-dealer.

\textit{Eligibility Standards for Underlying Securities}

Index Securities will be subject to the criteria in proposed Rule 803(n)(7) and (8) for initial and continued listing. For an Underlying Index to be appropriate for the initial listing of and Index Security, such Index must either be approved for the trading of options or other derivative securities by the Commission under Section 19(b)(2) of the Act and rules thereunder or meet the following requirements:

- A minimum market value of at least $75 million, except that for each of the lowest weighted Underlying Securities in the index in the aggregate account for no more than 10\% of the weight of the index, the market value can be at least $50 million;

- Trading volume in each of the last six months of not less than 1,000,000 shares, except that for each of the lowest weighted Underlying Securities in the index that in the aggregate account for no more than 10\% of the weight of the index, the trading volume shall be at least 500,000 shares in each of the last six months;

- In the case of a capitalization-weighted index, the lesser of the five highest weight Underlying Securities in the index or the highest weighted Underlying Securities in the index that in the aggregate represent at least 30\% of the total number of

\textsuperscript{21} For certain indexes, an index provider, such as Dow Jones, may select the components and calculate the index, but overseas broker-dealer affiliates of U.S. registered broker-dealers may sit on an “advisory” committee that recommends component selections to the index provider. In such case, the Exchange would ensure that appropriate information barriers and insider trading policies exist for this advisory committee. See Securities Exchange Act Release No. 50501 (October 7, 2004), 69 FR 61533 (October 19, 2004) (approving NASD 2004-138, pertaining to index linked notes on the Dow Jones Euro Stoxx 50 Index).
Underlying Securities in the index, each have an average monthly trading volume of at least 2,000,000 shares over the previous six months;

- No component security will represent more than 25% of the weight of the index, and the five highest weighted component securities in the index will not in the aggregate account for more than 50% of the weight of the index (60% for an index consisting of fewer than 25 Underlying Securities);

- 90% of the index’s numerical index value and at least 80% of the total number of component securities will meet the then current criteria for standardized options trading set forth in Exchange Rule 1009;

- Each component security shall be a 1934 Act reporting company which is listed on a national securities exchange; and

- Foreign country securities or American Depository Receipts (“ADRs”) that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20% of the weight of the index.

As described above in the Section entitled “Description of Underlying Indexes,” all Underlying Indexes are required to have at least ten (10) component securities.

The proposed continued listing criteria set forth in proposed Rule 803(n)(8)(A) regarding the underlying components of an Underlying Index provides that the Exchange will commence delisting or removal proceedings of an Index Security (unless the Commission has approved the continued trading of the Index Security) if any of the standards set forth in the initial eligibility criteria of proposed Rule 803(n)(7) are not continuously maintained, except that:
• The criteria that no single component represent more than 25% of the weight of the index and the five highest weighted components in the index can not represent more than 50% (or 60% for indexes with less than 25 components) of the weight of the Index, need only be satisfied for capitalization weighted and price weighted indexes as of the first day of January and July in each year;

• The total number of components in the index may not increase or decrease by more than 33-1/3% from the number of components in the index at the time of its initial listing, and in no event may be less than ten (10) components;

• The trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted components in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months; and

• In a capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index have had an average monthly trading volume of at least 1,000,000 shares over the previous six months.

In connection with an Index Security that is listed pursuant to proposed Rule 803(n)(7)(l), the Exchange will commence delisting or removal proceedings (unless the Commission has approved the continued listing of the Index Security) if an underlying index or indexes fails to satisfy the maintenance standards or conditions for such index or
indexes as set forth by the Commission in its order under Section 19(b)(2) of the Act approving the index or indexes for the trading of options or other derivatives.

As set forth in proposed Rule 803(n)(8)(C), the Exchange will also commence delisting or removal proceedings of an Index Security (unless the Commission has approved the continued trading of the Index Security), under any of the following circumstances:

- If the aggregate market value or the principal amount of the securities publicly held is less than $400,000;
- If the value of the Underlying Index or composite value of the Underlying Indexes is no longer calculated and widely disseminated on at least a 15-second basis; or
- If such other event shall occur or condition exists which is the opinion of the Exchange makes further dealings on the Exchange inadvisable.

The Phlx represents that Index Securities listed and traded on the Exchange will be required to be in compliance with rule 10A-3 under the Act.22

*Exchange Rules Applicable to Index-Linked Securities*

Index Securities will be treated as equity instruments and will be subject to all Exchange rules governing the trading of equity securities, including, among others, rule governing XLE, the Exchange’s equity trading system, and related trading halt provisions pursuant to Phlx Rule 133. Exchange equity margin rules and the trading hours of 8:00 a.m. to 6:00 p.m. will apply to transactions in Index Securities.

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22 See Rule 10A-3(c)(7), 17 CFR 240.10A-3(c)(7).
In addition, the Exchange will evaluate the nature and complexity of each Index Security and, if appropriate, distribute a circular to the membership, prior to the commencement of trading, providing guidance with respect to, among other things, member firm compliance responsibilities when handling transactions in Index Securities and highlighting the special risks and characteristics. Specifically, the circular, among other things, will discuss and emphasize the structure and operation of the Index Security, the requirements that members and member firms deliver a prospectus to investors purchasing an Index Security prior to or concurrently with the confirmation of a transaction, applicable Phlx rules, dissemination information regarding the Underlying Index, trading information and applicable suitability rules.

Proposed Rule 803(n)(10) provides that the Exchange will implement written surveillance procedures for Index Securities. The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees. As detailed above in the description of generic standards, if a broker-dealer is responsible for maintaining (or has a role in maintaining) the Underlying Index, such broker-dealer is required to erect and maintain a “firewall” in a form satisfactory to the Exchange, in order to prevent the flow of information regarding the Underlying Index from the index production personnel to sales and trading personnel. In addition, the Exchange will require that calculation of Underlying Indexes be performed by an independent third party who is not a broker-dealer.
2. **Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act\(^{23}\) in general, and furthers the objectives of Section 6(b)(5) of the Act\(^{24}\) 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 it is consistent with the protection of investors and the public interest because accelerated approval would enable the Exchange to begin offering the benefits of this proposed rule change for Exchange members and member organizations by allowing them to trade Index Securities immediately and should increase competition for Index Securities by allowing, pursuant to Rule 19b-4(e), another trading venue for trading Index Securities.

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-2007-07 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-2007-07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent
amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission’s Public Reference 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-2007-07 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.25

Nancy M. Morris
Secretary