Proposed Rule Change by Philadelphia Stock Exchange
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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Extension of Time Period for Commission Action
Date Expires

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

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

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<th>First Name</th>
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<th>Title</th>
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<tbody>
<tr>
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<td><a href="mailto:john.dayton@phlx.com">john.dayton@phlx.com</a></td>
<td>(215) 496-5162</td>
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**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 officer.

Date 06/18/2007
By John Dayton  
(Director and Counsel)

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

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

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

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

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

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

The Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")\(^1\) and Rule 19b-4 thereunder,\(^2\) proposes to amend Phlx Rules 136, Trading Halts in Certain Exchange Traded Funds, and 803, Criteria for Listing – Tier 1, for the purpose of adopting generic listing standards, pursuant to Rule 19b-4(e)\(^3\), for Trust Shares and Index Fund Shares (which are also referred to together herein as “exchange-traded funds” or “ETFs”) based on international or global indexes, or on indexes described in rules previously approved by the Commission under Section 19(b)(2) under the Act\(^4\).

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and the text of the amended Exchange Rules is attached hereto as Exhibit 5. The text of the amended Exchange Rules marked against the original filing of the proposed rule change is attached hereto as Exhibit 4.

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

Senior Management of the Exchange, pursuant to delegated authority, approved the proposal for filing with the Securities and Exchange Commission ("SEC" or "Commission") on March 8, 2007.

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.

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

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 provide for the more efficient and timely listing and trading of ETFs. This proposal would enable the Exchange to list and trade ETFs pursuant to Rule 19b-4(e) under the Exchange Act if each of the conditions set forth in Phlx Rules 803(i) and (l) are satisfied. Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to Section 19(b) of the Exchange Act, the SRO’s trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class. This Amendment No. 1 replaces the original proposed rule change in its entirety.

   **Exchange Traded Funds**

   Phlx Rules 803(i) and (l) provide standards for listing ETFs, which are securities issued by a unit investment trust, an open-end management investment company registered under the Investment Company Act of 1940 ("40 Act") (i.e., an open-end mutual fund), or similar entity based on a portfolio of stocks that seeks to provide investment results that correspond generally to the price and yield performance of a specified stock index. Pursuant to Phlx Rules 803(i) and (l), an ETF eligible for listing

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6 When relying on Rule 19b-4(e), the SRO must submit Form 19b-4(e) to the Commission within five business days after the exchange begins trading the new derivative securities products. See 17 CFR 240.19b-4(e)(2)(ii).
on the Exchange must be issued in a specified aggregate number in return for a deposit of specified securities and/or a cash amount, with a value equal to the next determined net asset value ("NAV"). When aggregated in the same specified minimum number, the ETF must be redeemable by the issuer for the securities and/or cash, with a value equal to the next determined NAV. The NAV is calculated once a day after the close of the regular trading day.

To meet the investment objective of providing investment returns that correspond to the price and the dividend and yield performance of the underlying index, an ETF may use a “replication” strategy or a “representative sampling” strategy with respect to the ETF portfolio. An ETF using a replication strategy will invest in each stock of the underlying index in about the same proportion as that stock is represented in the index itself. An ETF using a representative sampling strategy will generally invest in a significant number, but not all of the component securities of the underlying index, and will hold stocks that, in the aggregate, are intended to approximate the full index in terms of key characteristics, such as price/earnings ratio, earnings growth, and dividend yield.

In addition, an ETF portfolio may be adjusted in accordance with changes in the composition of the underlying index or to maintain compliance with requirements applicable to a regulated investment company under the Internal Revenue Code ("IRC").

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7 In either case, an ETF, by its terms, may be considered invested in the securities of the underlying index to the extent the ETF invests in sponsored American Depositary Receipts ("ADRs"), Global Depositary Receipts ("GDRs"), European Depositary Receipts ("EDRs") that trade on exchanges with last-sale reporting representing securities in the underlying index.

8 For an ETF to qualify for tax treatment as a regulated investment company, it must meet several requirements under the IRC. Among these is the requirement that, at the close of each quarter of the ETF’s taxable year, (1) at least 50% of the market value of the ETF’s total assets must be represented by cash items, U.S. government securities, securities of other regulated investment companies, and other securities, with such other securities limited for purposes of this calculation in respect of any one issuer to an amount not greater than 5% of the value of the ETF’s assets and not greater than 10% of the outstanding voting
Generic Listing Standards for Exchange-Traded Funds

The Commission has previously approved generic listing standards for ETFs based on indexes that consist of stocks listed on U.S. exchanges.\(^9\) In general, the proposed criteria for the underlying component securities in the international and global indexes are similar to those for the domestic indexes, but with modifications as appropriate for the issues and risks associated with non-U.S. securities.

In addition, the Commission has previously approved generic listing standards rules based on international indexes – those based on non-U.S. component stocks – as well as global indexes – those based on non-U.S. and U.S. component stocks.\(^{10}\)

The Commission has also approved rules that permit the listing pursuant to Rule 19b-4(e) under the Act of index-based derivatives securities products where the Commission had previously approved rules contemplating the trading of specified index-based derivatives on the same index, on the condition that all of the standards set forth in


those orders, in particular with respect to surveillance sharing agreements, continued to be satisfied.\(^{11}\)

In approving ETFs for trading on exchanges, the Commission thoroughly considered the structure of the ETFs, their usefulness to investors and to the markets, and Exchange rules that govern their trading. The Exchange believes that adopting additional generic listing standards for these securities and applying Rule 19b-4(e) should fulfill the intended objective of that rule by allowing those ETFs that satisfy the proposed generic listing standards to commence trading, without the need for the public comment period and Commission approval. The proposed rules have the potential to reduce the time frame for bringing ETFs to market, thereby reducing the burdens on issuers and other market participants. The failure of a particular ETF to comply with the proposed generic listing standards under Rule 19b-4(e) would not, however, preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2) requesting Commission approval to list and trade a particular ETF.

**Requirements for Listing and Trading ETFs Based on International and Global Indexes**

Exchange-traded funds listed pursuant to the proposed generic listing standards would be traded, in all other respects, under the Exchange’s existing trading rules and procedures that apply to ETFs and would be covered under the Exchange’s surveillance program for ETFs.\(^{12}\)

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\(^{12}\) See Phlx Rule 803(i) and (l).
To list an ETF pursuant to the proposed generic listing standards for international and global indexes, the index underlying an ETF must satisfy all the conditions contained in proposed Phlx Rules 803(i)(11)(b) or (l)(6)(B). As with the existing generic standards for ETFs based on domestic indexes, 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. While the standards in this proposal are based on the standards contained in the current generic listing standards for ETFs based on domestic indexes, they have been adapted as appropriate to apply to international and global indexes.

As proposed, Phlx Rules 803(i)(1)(iii)-(iv) and (l)(2)(C)-(D) would be amended to include definitions of U.S. Component Stock and Non-U.S. Component Stock. These new definitions would provide the basis for the standards for indexes with either domestic or international stocks, or a combination of both. A “Non-U.S. Component Stock” would mean an equity security that is not registered under Section 12(b) or 12(g) of the Exchange Act, and that is issued by an entity that (1) is not organized, domiciled, or incorporated in the United States, and (2) is an operating company (including a real estate investment trust (REIT) or income trust, but excluding an investment trust, unit trust, mutual fund, or derivative). This definition is designed to create a category of component stocks that are issued by companies that are not based in the United States, are not subject to oversight through Commission registration, and would include sponsored GDRs and EDRs. A “U.S. Component Stock” would mean an equity security that is registered under Section 12(b) or 12(g) of the Exchange Act or an ADR the

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13 15 U.S.C. 78l(b) or (g).
underlying equity security of which is registered under Section 12(b) or 12(g) of the Exchange Act. An ADR with an underlying equity security that is registered pursuant to the Exchange Act is considered a U.S. Component Stock because the issuer of that security is subject to Commission jurisdiction and must comply with Commission rules.

The Exchange proposes that, to list an ETF based on an international or global index or portfolio pursuant to the generic listing standards, such index or portfolio must meet the following criteria:

- Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each must have a minimum market value of at least $100 million (Phlx Rules 803(i)(11)(b)(i) and (l)(6)(B)(I));
- Component stocks representing at least 90% of the weight of the index or portfolio each must have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares (Phlx Rules 803(i)(11)(b)(ii) and (l)(6)(B)(II));
- The most heavily weighted component stock may not exceed 25% of the weight of the index or portfolio and the five most heavily weighted component stocks may not exceed 60% of the weight of the index or portfolio (Phlx Rules 803(i)(11)(b)(iii) and (l)(6)(B)(III));
- The index or portfolio shall include a minimum of 20 component stocks (Phlx Rules 803(i)(11)(b)(iv) and (l)(6)(B)(IV)); and
- Each U.S. Component Stock must be listed on a national securities exchange and an NMS stock as defined in Rule 600 of Regulation NMS under the Exchange
Act, and each Non-U.S. Component Stock must be listed on an exchange that has last-sale reporting (Phlx Rules 803(i)(11)(b)(v) and (l)(6)(B)(V)).

The Exchange believes that the proposed standards are reasonable for international and global indexes, and, when applied in conjunction with the other listing requirements, would result in the listing and trading on the Exchange of ETFs that are sufficiently broad-based in scope and not readily susceptible to manipulation. The Exchange also believes that the proposed standards would result in ETFs that are adequately diversified in weighting for any single security or small group of securities to significantly reduce concerns that trading in an ETF based on an international or global index could become a surrogate for trading in unregistered securities.

The Exchange further notes that, while these standards are similar to those for indexes that include only U.S. Component Stocks, they differ in certain important respects and are generally more restrictive, reflecting greater concerns over portfolio diversification with respect to ETFs investing in components that are not individually registered with the Commission. First, in the proposed standards, component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least $100 million, compared to a minimum market value of at least $75 million for indexes with only U.S. Component Stocks. (Market value is calculated by multiplying the total shares outstanding by the price per share of the component stock). Second, in the proposed standards, the most heavily weighted component stock cannot exceed 25% of the weight of the index or portfolio, in contrast to a 30% standard for an index or portfolio comprised of only U.S. Component Stocks. Third, in the proposed standards, the five most heavily weighted component stocks shall
not exceed 60% of the weight of the index or portfolio, compared to a 65% standard for
indexes comprised of only U.S. Component Stocks. Fourth, the minimum number of
stocks in the proposed standards is 20, in contrast to a minimum of 13 in the standards for
an index or portfolio with only U.S. Component Stocks. Finally, the proposed standards
require that each Non-U.S. Component Stock included in the index or portfolio be listed
and traded on an exchange that has last-sale reporting.

The Exchange also proposes to modify Phlx Rules 803(i)(11)(e) and (l)(6)(E) to
require that the index value for an ETF listed pursuant to the proposed standards for
international and global indexes be widely disseminated by one or more major market
data vendors at least every 60 seconds during the time when the ETF shares trade on the
Exchange. If the index value does not change during some or all of the period when
trading is occurring on the Exchange, the last official calculated index value must remain
available throughout Exchange trading hours. In contrast, the index value for an ETF
listed pursuant to the existing standards for domestic indexes must be disseminated at
least every 15 seconds during the trading day. This modification reflects limitations, in
some instances, on the frequency of intra-day trading information with respect to Non-
U.S. Component Stocks and that, in many cases, trading hours for overseas markets
overlap only in part, or not at all, with Exchange trading hours.

In addition, Phlx Rules 803(i)(11)(e) and (l)(6)(E) would be modified to define
the term “Intraday Indicative Value” (“IIV”) as the estimate of the value of a share of
each ETF that is updated at least every 15 seconds during the Core Session\textsuperscript{14} and during

\textsuperscript{14} The Core Session on XLE shall take place for each security from 9:30 A.M. until 4:00 P.M., except for
specified exchange-traded funds, for which it shall last until 4:15 P.M. See Phlx Rule 101 Supplementary
Material .02(2).
any Pre Market Session\textsuperscript{15} for the ETF. Phlx also proposes to clarify in these rules that the IIV would be updated at least every 15 seconds during the Core Session and during any Pre Market Session for the ETF to reflect changes in the exchange rate between the U.S. dollar and the currency in which any component stock is denominated. If the IIV does not change during some or all of the period when trading is occurring on XLE, then the last official calculated IIV must remain available throughout XLE’s trading hours.

Phlx is proposing that it may designate an ETF for trading during the Pre Market Session and/or the Post Market Session\textsuperscript{16} as long as the index value and IIV dissemination requirements of Phlx Rules 803(i)(11)(e) and (l)(6)(E) are met. If there is no overlap with the trading hours of the primary market trading the underlying components of an ETF, Phlx may designate the ETF for the Pre Market Session as long as the last official calculated IIV remains available. Although the IIV does not need to be calculated during XLE’s current Post Market Session, the last official calculated IIV must also remain available during such post-market trading session.\textsuperscript{17}

The Exchange is also proposing to add new sections, Phlx Rules 803(i)(11)(k) and (l)(6)(K) regarding the creation and redemption process for ETFs and compliance with federal securities laws for, in particular, ETFs listed pursuant to the new generic listing standards. These new subsections would apply to ETFs listed pursuant to Phlx Rules 803(i) and (l), respectively. They would require that the statutory prospectus or the

\textsuperscript{15} The Pre Market Session on XLE begins at 8:00 A.M. and concludes at the commencement of the Core Session. See Phlx Rule 101 Supplementary Material .02(1).

\textsuperscript{16} The Post Market Session on XLE shall begin following the conclusion of the Core Session and conclude at 6:00 P.M. See Phlx Rule 101 Supplementary Material .02(3).

\textsuperscript{17} See Phlx Rule 803(i)(11)(l) and (l)(6)(H).
application for exemption from provisions of the 40 Act\textsuperscript{18} for the ETF being listed pursuant to these new standards must state that the ETF must comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.\textsuperscript{19}

The Commission has approved generic listing standards providing for the listing pursuant to Rule 19b-4(e) of other derivative products based on indexes described in rules previously approved by the Commission under Section 19(b)(2) of the Exchange Act.\textsuperscript{20} The Exchange proposes to include in the generic listing standards for the listing of ETFs indexes that have been approved by the Commission in connection with the listing of options, ETFs, Index-Linked Exchangeable Notes, or Index-Linked Securities. The Exchange believes that the application of that standard to ETFs is appropriate because the underlying index would have been subject to detailed and specific Commission review in the context of the approval of listing of those other derivatives.\textsuperscript{21}

This new generic standard would be limited to stock indexes and would require that each component stock be either: (1) a U.S. Component Stock that is listed on a national securities exchange and is an NMS stock as defined in Rule 600 of Regulation

\textsuperscript{18} 15 U.S.C. 80a et seq.

\textsuperscript{19} 15 U.S.C. 77a et seq.

\textsuperscript{20} See supra note 10.

\textsuperscript{21} For example, rules of the American Stock Exchange (“Amex”) and NYSE Arca, Inc. provide that one element of the standards for listing Index-Linked Securities pursuant to Rule 19b-4(e) is the previous review and approval for trading of options or other derivatives by the Commission under Section 19(b)(2) of the Exchange Act and rules thereunder. See supra note 11.
NMS; or (2) a Non-U.S. Component Stock that is listed and traded on an exchange that has last-sale reporting.

The Exchange is also proposing to include additional continued listing standards relating to ETFs. The Exchange would commence delisting proceedings if the value of the index or portfolio of securities on which the ETF is based is no longer calculated or disseminated.

The Exchange proposes to adopt Phlx Rules 803(i)(5)(D) and (l)(5)(D) to formalize in the rules existing best practices for providing equal access to material information about the value of ETFs. In addition, prior to approving an ETF for listing, the Exchange would obtain a representation from the ETF issuer that the NAV per share would be calculated daily and made available to all market participants at the same time.

Phlx Rule 136 sets out trading halt parameters for ETFs and other derivative securities. The proposed amendments to Phlx Rule 136(e) would expand the definition of Derivative Securities Products to include ETFs and other derivative securities. It would also clarify and expand the definition of Required Value to include the Indicative Optimized Portfolio Value, which is used in connection with certain derivative securities, and other comparable values. The effect of these amendments would serve to expand the provisions in Phlx Rule 136(c) and (d) regarding trading halts in the absence of the dissemination of Required Values to cover ETFs and other derivative securities that may be listed or traded on Phlx pursuant to unlisted trading privileges.

The Exchange is proposing to amend the Phlx Rule 803 to stipulate that, as provided by SEC Rule 12f-5, the Exchange may extend unlisted trading privileges to any security, such as ETFs, for which the Exchange has in effect rules providing or

22 17 CFR 240.12f-5.
transactions in such class or type of security. Provisions of Phlx Rule 803 that govern trading hours and surveillance procedures, and that relate to information circulars and prospectus delivery, also would apply to securities traded on an unlisted trading privileges basis (as do applicable proposed trading halt provision of Phlx Rule 136). The Exchange will not, however, apply quantitative listing standards to securities traded on an unlisted trading privileges basis.

The Exchange is proposing other minor and clarifying changes to Phlx Rules 803(i) and (l). Phlx Rules 803(i)(11)(d)(ii)-(iii) and (l)(6)(D)(II)-(III) have been amended to make sure that an entity that advises index providers or calculators and related entities has in place procedures designed to prevent the use and dissemination of material non-public information regarding the index underlying the ETF. Phlx Rules 803(i)(11)(g) and (l)(6)(G) are being amended to clarify that the trading increments for ETFs are set in Phlx Rule 125. Phlx Rule 803(l)(6)(H) is being amended and Phlx Rule 803(i)(11)(l) is being added to clarify that the trading hours for Index Fund Shares are set in Phlx Rule 101. Phlx Rule 803(l)(6)(A)(III) is being amended to change the maximum weighting requirement for the most heavily weighted component stock from 25% to 30% of the weight of the index or portfolio for Index Fund Shares. Phlx Rule 803(l)(3) is being amended to harmonize its provisions with those in Phlx Rule 803(l)(7).

The Exchange will closely monitor activity in ETFs to identify and deter any potential improper trading activity in ETFs. The Exchange represents that its surveillance procedures will be adequate to properly monitor the trading of ETFs that would be listed or traded pursuant to unlisted trading privileges. Specifically, the Phlx

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will rely on its existing surveillance procedures governing equities, options and exchange-traded funds. Additionally, the Exchange will develop procedures to closely monitor activity in the ETFs and related securities to identify and deter potential improper trading activity. In addition, the Exchange has a general policy prohibiting the dissemination of material, non-public information by its employees.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act\textsuperscript{24} in general, and furthers the objectives of Section 6(b)(5) of the Act\textsuperscript{25} in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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.

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\textsuperscript{24} 15 U.S.C. 78f(b).

\textsuperscript{25} 15 U.S.C. 78f(b)(5).
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 international and global index-based ETFs immediately, pursuant to Rule 19b-4(e).

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 New York Stock Exchange, NYSE Arca, Inc. and the Nasdaq Stock Market LLC. 26

9. **Exhibits**

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

4. Amended rule text indicating additions to or deletions from the immediately preceding filing.

5. Proposed Rule Text

26 See supra note 10.
Exhibit 1

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Generic Listing Standards for Trust Shares and Index Fund 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 _________________ 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\(^3\) and Rule 19b-4 thereunder,\(^4\) proposes to amend Phlx Rules 136, Trading Halts in Certain Exchange Traded Funds, and 803, Criteria for Listing – Tier 1, for the purpose of adopting generic listing standards, pursuant to Rule 19b-4(e)\(^5\), for Trust Shares and Index Fund Shares (which are also referred to together herein as “exchange-traded funds” or “ETFs”) based on international

or global indexes, or on indexes described in rules previously approved by the Commission under Section 19(b)(2) under the Act\textsuperscript{6}.


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 provide for the more efficient and timely listing and trading of ETFs. This proposal would enable the Exchange to list and trade ETFs pursuant to Rule 19b-4(e) under the Exchange Act\textsuperscript{7} if each of the conditions set forth in Phlx Rules 803(i) and (l) are satisfied. Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (“SRO”) shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to Section 19(b) of the Exchange Act, the SRO’s trading rules, procedures, and listing standards for the product class that

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\textsuperscript{7} 17 CFR 240.19b-4(e).
would include the new derivatives securities product, and the SRO has a surveillance program for the product class.\textsuperscript{8} This Amendment No. 1 replaces the original proposed rule change in its entirety.

**Exchange Traded Funds**

Phlx Rules 803(i) and (l) provide standards for listing ETFs, which are securities issued by a unit investment trust, an open-end management investment company registered under the Investment Company Act of 1940 ("40 Act") (i.e., an open-end mutual fund), or similar entity based on a portfolio of stocks that seeks to provide investment results that correspond generally to the price and yield performance of a specified stock index. Pursuant to Phlx Rules 803(i) and (l), an ETF eligible for listing on the Exchange must be issued in a specified aggregate number in return for a deposit of specified securities and/or a cash amount, with a value equal to the next determined net asset value ("NAV"). When aggregated in the same specified minimum number, the ETF must be redeemable by the issuer for the securities and/or cash, with a value equal to the next determined NAV. The NAV is calculated once a day after the close of the regular trading day.

To meet the investment objective of providing investment returns that correspond to the price and the dividend and yield performance of the underlying index, an ETF may use a “replication” strategy or a “representative sampling” strategy with respect to the ETF portfolio.\textsuperscript{9} An ETF using a replication strategy will invest in each stock of the

\textsuperscript{8} When relying on Rule 19b-4(e), the SRO must submit Form 19b-4(e) to the Commission within five business days after the exchange begins trading the new derivative securities products. See 17 CFR 240.19b-4(e)(2)(ii).

\textsuperscript{9} In either case, an ETF, by its terms, may be considered invested in the securities of the underlying index to the extent the ETF invests in sponsored American Depositary Receipts ("ADRs"), Global Depositary
underlying index in about the same proportion as that stock is represented in the index itself. An ETF using a representative sampling strategy will generally invest in a significant number, but not all of the component securities of the underlying index, and will hold stocks that, in the aggregate, are intended to approximate the full index in terms of key characteristics, such as price/earnings ratio, earnings growth, and dividend yield.

In addition, an ETF portfolio may be adjusted in accordance with changes in the composition of the underlying index or to maintain compliance with requirements applicable to a regulated investment company under the Internal Revenue Code (“IRC”).

Generic Listing Standards for Exchange-Traded Funds

The Commission has previously approved generic listing standards for ETFs based on indexes that consist of stocks listed on U.S. exchanges. In general, the proposed criteria for the underlying component securities in the international and global

Receipts (“GDRs”), European Depositary Receipts (“EDRs”) that trade on exchanges with last-sale reporting representing securities in the underlying index.

10 For an ETF to qualify for tax treatment as a regulated investment company, it must meet several requirements under the IRC. Among these is the requirement that, at the close of each quarter of the ETF’s taxable year, (1) at least 50% of the market value of the ETF’s total assets must be represented by cash items, U.S. government securities, securities of other regulated investment companies, and other securities, with such other securities limited for purposes of this calculation in respect of any one issuer to an amount not greater than 5% of the value of the ETF’s assets and not greater than 10% of the outstanding voting securities of such issuer; and (2) not more than 25% of the value of its total assets may be invested in the securities of any one issuer, or two or more issuers that are controlled by the ETF (within the meaning of Section 851(b)(4)(B) of the IRC) and that are engaged in the same or similar trades or businesses or related trades or businesses (other than U.S. government securities or the securities of other regulated investment companies).

indexes are similar to those for the domestic indexes, but with modifications as
appropriate for the issues and risks associated with non-U.S. securities.

In addition, the Commission has previously approved generic listing standards
rules based on international indexes – those based on non-U.S. component stocks – as
well as global indexes – those based on non-U.S. and U.S. component stocks.12

The Commission has also approved rules that permit the listing pursuant to Rule
19b-4(e) under the Act of index-based derivatives securities products where the
Commission had previously approved rules contemplating the trading of specified index-
based derivatives on the same index, on the condition that all of the standards set forth in
those orders, in particular with respect to surveillance sharing agreements, continued to
be satisfied.13

In approving ETFs for trading on exchanges, the Commission thoroughly
considered the structure of the ETFs, their usefulness to investors and to the markets, and
Exchange rules that govern their trading. The Exchange believes that adopting additional
generic listing standards for these securities and applying Rule 19b-4(e) should fulfill the
intended objective of that rule by allowing those ETFs that satisfy the proposed generic
listing standards to commence trading, without the need for the public comment period
and Commission approval. The proposed rules have the potential to reduce the time
frame for bringing ETFs to market, thereby reducing the burdens on issuers and other
market participants. The failure of a particular ETF to comply with the proposed generic

NYSEArca-2006-86); 55269 (February 9, 2007), 72 FR 7490 (February 15, 2007) (SR-NASDAQ-2006-
50); and 55113 (January 17, 2007), 72 FR 3179 (SR-NYSE-2006-101).

listing standards under Rule 19b-4(e) would not, however, preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2) requesting Commission approval to list and trade a particular ETF.

Requirements for Listing and Trading ETFs Based on International and Global Indexes

Exchange-traded funds listed pursuant to the proposed generic listing standards would be traded, in all other respects, under the Exchange’s existing trading rules and procedures that apply to ETFs and would be covered under the Exchange’s surveillance program for ETFs.14

To list an ETF pursuant to the proposed generic listing standards for international and global indexes, the index underlying an ETF must satisfy all the conditions contained in proposed Phlx Rules 803(i)(11)(b) or (l)(6)(B). As with the existing generic standards for ETFs based on domestic indexes, 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. While the standards in this proposal are based on the standards contained in the current generic listing standards for ETFs based on domestic indexes, they have been adapted as appropriate to apply to international and global indexes.

As proposed, Phlx Rules 803(i)(1)(iii)-(iv) and (l)(2)(C)-(D) would be amended to include definitions of U.S. Component Stock and Non-U.S. Component Stock. These new definitions would provide the basis for the standards for indexes with either domestic or international stocks, or a combination of both. A “Non-U.S. Component Stock” would mean an equity security that is not registered under Section 12(b) or 12(g)

14 See Phlx Rule 803(i) and (l).
of the Exchange Act,\textsuperscript{15} and that is issued by an entity that (1) is not organized, domiciled, or incorporated in the United States, and (2) is an operating company (including a real estate investment trust (REIT) or income trust, but excluding an investment trust, unit trust, mutual fund, or derivative). This definition is designed to create a category of component stocks that are issued by companies that are not based in the United States, are not subject to oversight through Commission registration, and would include sponsored GDRs and EDRs. A “U.S. Component Stock” would mean an equity security that is registered under Section 12(b) or 12(g) of the Exchange Act or an ADR the underlying equity security of which is registered under Section 12(b) or 12(g) of the Exchange Act. An ADR with an underlying equity security that is registered pursuant to the Exchange Act is considered a U.S. Component Stock because the issuer of that security is subject to Commission jurisdiction and must comply with Commission rules.

The Exchange proposes that, to list an ETF based on an international or global index or portfolio pursuant to the generic listing standards, such index or portfolio must meet the following criteria:

- Component stocks that in the aggregate account for at least 90\% of the weight of the index or portfolio each must have a minimum market value of at least $100 million (Phlx Rules 803(i)(11)(b)(i) and (l)(6)(B)(I));

- Component stocks representing at least 90\% of the weight of the index or portfolio each must have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares (Phlx Rules 803(i)(11)(b)(ii) and (l)(6)(B)(II));

\textsuperscript{15} 15 U.S.C. 78l(b) or (g).
The most heavily weighted component stock may not exceed 25% of the weight of the index or portfolio and the five most heavily weighted component stocks may not exceed 60% of the weight of the index or portfolio (Phlx Rules 803(i)(11)(b)(iii) and (l)(6)(B)(III));

- The index or portfolio shall include a minimum of 20 component stocks (Phlx Rules 803(i)(11)(b)(iv) and (l)(6)(B)(IV)); and

- Each U.S. Component Stock must be listed on a national securities exchange and an NMS stock as defined in Rule 600 of Regulation NMS under the Exchange Act, and each Non-U.S. Component Stock must be listed on an exchange that has last-sale reporting (Phlx Rules 803(i)(11)(b)(v) and (l)(6)(B)(V)).

The Exchange believes that the proposed standards are reasonable for international and global indexes, and, when applied in conjunction with the other listing requirements, would result in the listing and trading on the Exchange of ETFs that are sufficiently broad-based in scope and not readily susceptible to manipulation. The Exchange also believes that the proposed standards would result in ETFs that are adequately diversified in weighting for any single security or small group of securities to significantly reduce concerns that trading in an ETF based on an international or global index could become a surrogate for trading in unregistered securities.

The Exchange further notes that, while these standards are similar to those for indexes that include only U.S. Component Stocks, they differ in certain important respects and are generally more restrictive, reflecting greater concerns over portfolio diversification with respect to ETFs investing in components that are not individually registered with the Commission. First, in the proposed standards, component stocks that
in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least $100 million, compared to a minimum market value of at least $75 million for indexes with only U.S. Component Stocks. (Market value is calculated by multiplying the total shares outstanding by the price per share of the component stock). Second, in the proposed standards, the most heavily weighted component stock cannot exceed 25% of the weight of the index or portfolio, in contrast to a 30% standard for an index or portfolio comprised of only U.S. Component Stocks. Third, in the proposed standards, the five most heavily weighted component stocks shall not exceed 60% of the weight of the index or portfolio, compared to a 65% standard for indexes comprised of only U.S. Component Stocks. Fourth, the minimum number of stocks in the proposed standards is 20, in contrast to a minimum of 13 in the standards for an index or portfolio with only U.S. Component Stocks. Finally, the proposed standards require that each Non-U.S. Component Stock included in the index or portfolio be listed and traded on an exchange that has last-sale reporting.

The Exchange also proposes to modify Phlx Rules 803(i)(11)(e) and (l)(6)(E) to require that the index value for an ETF listed pursuant to the proposed standards for international and global indexes be widely disseminated by one or more major market data vendors at least every 60 seconds during the time when the ETF shares trade on the Exchange. If the index value does not change during some or all of the period when trading is occurring on the Exchange, the last official calculated index value must remain available throughout Exchange trading hours. In contrast, the index value for an ETF listed pursuant to the existing standards for domestic indexes must be disseminated at least every 15 seconds during the trading day. This modification reflects limitations, in
some instances, on the frequency of intra-day trading information with respect to Non-U.S. Component Stocks and that, in many cases, trading hours for overseas markets overlap only in part, or not at all, with Exchange trading hours.

In addition, Phlx Rules 803(i)(11)(e) and (l)(6)(E) would be modified to define the term “Intraday Indicative Value” (“IIV”) as the estimate of the value of a share of each ETF that is updated at least every 15 seconds during the Core Session\(^{16}\) and during any Pre Market Session\(^{17}\) for the ETF. Phlx also proposes to clarify in these rules that the IIV would be updated at least every 15 seconds during the Core Session and during any Pre Market Session for the ETF to reflect changes in the exchange rate between the U.S. dollar and the currency in which any component stock is denominated. If the IIV does not change during some or all of the period when trading is occurring on XLE, then the last official calculated IIV must remain available throughout XLE’s trading hours.

Phlx is proposing that it may designate an ETF for trading during the Pre Market Session and/or the Post Market Session\(^{18}\) as long as the index value and IIV dissemination requirements of Phlx Rules 803(i)(11)(e) and (l)(6)(E) are met. If there is no overlap with the trading hours of the primary market trading the underlying components of an ETF, Phlx may designate the ETF for the Pre Market Session as long as the last official calculated IIV remains available. Although the IIV does not need to be

\(^{16}\) The Core Session on XLE shall take place for each security from 9:30 A.M. until 4:00 P.M., except for specified exchange-traded funds, for which it shall last until 4:15 P.M. See Phlx Rule 101 Supplementary Material .02(2).

\(^{17}\) The Pre Market Session on XLE begins at 8:00 A.M. and concludes at the commencement of the Core Session. See Phlx Rule 101 Supplementary Material .02(1).

\(^{18}\) The Post Market Session on XLE shall begin following the conclusion of the Core Session and conclude at 6:00 P.M. See Phlx Rule 101 Supplementary Material .02(3).
calculated during XLE’s current Post Market Session, the last official calculated IIV must also remain available during such post-market trading session.\(^\text{19}\)

The Exchange is also proposing to add new sections, Phlx Rules 803(i)(11)(k) and (l)(6)(K) regarding the creation and redemption process for ETFs and compliance with federal securities laws for, in particular, ETFs listed pursuant to the new generic listing standards. These new subsections would apply to ETFs listed pursuant to Phlx Rules 803(i) and (l), respectively. They would require that the statutory prospectus or the application for exemption from provisions of the 40 Act\(^\text{20}\) for the ETF being listed pursuant to these new standards must state that the ETF must comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.\(^\text{21}\)

The Commission has approved generic listing standards providing for the listing pursuant to Rule 19b-4(e) of other derivative products based on indexes described in rules previously approved by the Commission under Section 19(b)(2) of the Exchange Act.\(^\text{22}\) The Exchange proposes to include in the generic listing standards for the listing of ETFs indexes that have been approved by the Commission in connection with the listing of options, ETFs, Index-Linked Exchangeable Notes, or Index-Linked Securities. The Exchange believes that the application of that standard to ETFs is appropriate because the

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\(^\text{19}\) See Phlx Rule 803(i)(11)(l) and (l)(6)(H).

\(^\text{20}\) 15 U.S.C. 80a et seq.

\(^\text{21}\) 15 U.S.C. 77a et seq.

\(^\text{22}\) See supra note 12.
underlying index would have been subject to detailed and specific Commission review in the context of the approval of listing of those other derivatives.23

This new generic standard would be limited to stock indexes and would require that each component stock be either: (1) a U.S. Component Stock that is listed on a national securities exchange and is an NMS stock as defined in Rule 600 of Regulation NMS; or (2) a Non-U.S. Component Stock that is listed and traded on an exchange that has last-sale reporting.

The Exchange is also proposing to include additional continued listing standards relating to ETFs. The Exchange would commence delisting proceedings if the value of the index or portfolio of securities on which the ETF is based is no longer calculated or disseminated.

The Exchange proposes to adopt Phlx Rules 803(i)(5)(D) and (l)(5)(D) to formalize in the rules existing best practices for providing equal access to material information about the value of ETFs. In addition, prior to approving an ETF for listing, the Exchange would obtain a representation from the ETF issuer that the NAV per share would be calculated daily and made available to all market participants at the same time.

Phlx Rule 136 sets out trading halt parameters for ETFs and other derivative securities. The proposed amendments to Phlx Rule 136(e) would expand the definition of Derivative Securities Products to include ETFs and other derivative securities. It would also clarify and expand the definition of Required Value to include the Indicative Optimized Portfolio Value, which is used in connection with certain derivative securities,

23 For example, rules of the American Stock Exchange (“Amex”) and NYSE Arca, Inc. provide that one element of the standards for listing Index-Linked Securities pursuant to Rule 19b-4(e) is the previous review and approval for trading of options or other derivatives by the Commission under Section 19(b)(2) of the Exchange Act and rules thereunder. See supra note 13.
and other comparable values. The effect of these amendments would serve to expand the provisions in Phlx Rule 136(c) and (d) regarding trading halts in the absence of the dissemination of Required Values to cover ETFs and other derivative securities that may be listed or traded on Phlx pursuant to unlisted trading privileges.

The Exchange is proposing to amend the Phlx Rule 803 to stipulate that, as provided by SEC Rule 12f-5, the Exchange may extend unlisted trading privileges to any security, such as ETFs, for which the Exchange has in effect rules providing or transactions in such class or type of security. Provisions of Phlx Rule 803 that govern trading hours and surveillance procedures, and that relate to information circulars and prospectus delivery, also would apply to securities traded on an unlisted trading privileges basis (as do applicable proposed trading halt provision of Phlx Rule 136). The Exchange will not, however, apply quantitative listing standards to securities traded on an unlisted trading privileges basis.

The Exchange is proposing other minor and clarifying changes to Phlx Rules 803(i) and (l). Phlx Rules 803(i)(11)(d)(ii)-(iii) and (l)(6)(D)(II)-(III) have been amended to make sure that an entity that advises index providers or calculators and related entities has in place procedures designed to prevent the use and dissemination of material non-public information regarding the index underlying the ETF. Phlx Rules 803(i)(11)(g) and (l)(6)(G) are being amended to clarify that the trading increments for ETFs are set in Phlx Rule 125. Phlx Rule 803(l)(6)(H) is being amended and Phlx Rule 803(i)(11)(l) is being added to clarify that the trading hours for Index Fund Shares are set in Phlx Rule 101. Phlx Rule 803(l)(6)(A)(III) is being amended to change the maximum weighting requirement for the most heavily weighted component stock from 25% to 30% of the

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24 17 CFR 240.12f-5.
weight of the index or portfolio for Index Fund Shares. 25 Phlx Rule 803(l)(3) is being amended to harmonize its provisions with those in Phlx Rule 803(l)(7).

The Exchange will closely monitor activity in ETFs to identify and deter any potential improper trading activity in ETFs. The Exchange represents that its surveillance procedures will be adequate to properly monitor the trading of ETFs that would be listed or traded pursuant to unlisted trading privileges. Specifically, the Phlx will rely on its existing surveillance procedures governing equities, options and exchange-traded funds. Additionally, the Exchange will develop procedures to closely monitor activity in the ETFs and related securities to identify and deter potential improper trading activity. In addition, the Exchange has a general policy prohibiting the dissemination of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act 26 in general, and furthers the objectives of Section 6(b)(5) of the Act 27 in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system.


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**

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 international and global index-based ETFs immediately, pursuant to Rule 19b-4(e).

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-2007-20 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-2007-20. 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-2007-20 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.\(^28\)

\(^28\) 17 CFR 200.30-3(a)(12).
Nancy M. Morris
Secretary
Rule 136.

Trading Halts in Certain Exchange Traded Funds

(a)-(d) No Change

(c) In exercising its discretion to halt or suspend trading in a series of Trust Shares or Index Fund Shares (“Shares”) pursuant to Phlx Rule 164(a), the Exchange may consider factors such as the extent to which trading in the underlying securities is not occurring or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present, in addition to other factors that may be relevant. In particular, if the Intraday Indicative Value (as defined in Rule 803(i)(11)(e) or (l)(6)(E), as applicable) or the index value applicable to that series of Shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value or the index value occurs. If the interruption to the dissemination of the Intraday Indicative Value or the index value persists past the trading day in which it occurred the Exchange will halt trading no later than the beginning of the trading day following the interruption. If a series of Shares is trading on the Exchange pursuant to unlisted trading privileges, the Exchange will halt trading in that series if the primary listing market halts trading in that series of Shares because the Intraday Indicative Value or the index value applicable to that series of Shares is not being disseminated as required.

(c) For purposes of this Rule:

(1) “Derivative Securities Product” means a series of securities described in Phlx Rule 803(f) and (h)-(n), which is based on an underlying security or index.

(2) “Required Value” shall mean (i) the value of any security or index underlying a Derivative Securities Product, and (ii) the Intraday Indicative Value (as defined in Rule 803), or the Indicative Optimized Portfolio Value or other comparable estimate of the value of a share of a Derivative Securities Product updated regularly during the trading day.

Rule 803.

Criteria for Listing – Tier I

Issuers should consider whether to list their securities under the Tier I or Tier II listing standards. While all listed issues will be traded pursuant to the identical Exchange auction rules, issues listed pursuant to the Tier I and Tier II standards may be
distinguished with respect to blue sky exemptions, transactions reporting symbols, listing
fees and maintenance standards. The Exchange will identify and distinguish at all times
which securities are listed pursuant to the Exchange's Tier I and Tier II standards. An
issuer seeking to list its securities pursuant to the Tier I standards must satisfy one of the
two alternative Tier I quantitative criteria and an issuer seeking to list its securities
pursuant to the Tier II standards must satisfy the Tier II quantitative criteria. Issuers
listing under either criteria must adhere to the policies and procedures and the corporate
governance criteria provided in Rules 812 through 853.

The Exchange also places great emphasis upon the level of public interest in the
securities of an issuer. Causes for concern may include a low trading volume on another
Exchange, lack of dealer interest in the over-the-counter market, unusual geographical
concentration of shareholders or a low rate of transfers. Under such circumstances the
Exchange may implement a higher distribution standard provided it perceives a relatively
low level of investor interest.

Phlx may extend unlisted trading privileges to any security for which Phlx has in effect
rules providing for transactions in such class or type of security. Provisions of Rule 803
that govern trading hours, dissemination of information (i.e. Intraday Indicative Value
and index value) and surveillance procedures, and that relate to information circulars and
prospectus delivery, shall apply to securities traded on an unlisted trading privileges
basis.

The listing criteria for Tier I Issues are as follows:

(a)-(h) No Change

(i) Trust Shares

(1) Definitions.

(i)-(ii) No Change

(iii) The term “US Component Stock” shall mean an equity security that is
registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934
(“Exchange Act”) or an American Depository Receipt the underlying equity security
of which is registered under Sections 12(b) or 12(g) of the Exchange Act.

(iv) The term “Non-US Component Stock” shall mean an equity security that is not
registered under Sections 12(b) or 12(g) of the Exchange Act and that is issued by
an entity that (a) is not organized, domiciled or incorporated in the United States,
and (b) is an operating company (including real estate investment trusts (REITs) and
income trusts, but excluding investment trusts, unit trusts, mutual funds, and
derivatives).

(2)-(4) No Change
(5) Initial and Continued Listing and/or Trading. A Trust upon which a series of Trust Shares are based will be listed and traded on the Exchange, whether by listing or pursuant to unlisted trading privileges, subject to application of the following criteria:

(A) No Change

(B) Continued Trading - Following the initial twelve month period following formation of a Trust and commencement of trading on the Exchange, the Exchange will consider the suspension of trading in or removal from listing of a Trust upon which a series of Trust Shares is based under any of the following circumstances:

(i)-(iii) No Change

(C) No Change

(D) The Exchange will obtain a representation from the issuer of each series of Trust Shares that the net asset value per share for the series will be calculated daily and will be made available to all market participants at the same time.

(6)-(10) No Change

(11) The Exchange may approve a series of Trust Shares for listing and 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 criteria described in paragraphs (a), (b) or (c) below and (d) through (k) are satisfied:

(a) Eligibility Criteria for Index Components. Series of Trust Shares that are based on an Index or Portfolio comprised solely of US Component Stocks. Upon the initial listing of a series of Trust Shares or upon trading pursuant to unlisted trading privileges, 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) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall each have a minimum market value of at least $75 million;

(ii) The component stocks that in the aggregate account for at least 90 percent of the weight of the index or portfolio each must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares.
least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio;

(iii) No Change

(iv) The underlying index or portfolio must include a minimum of 13 component stocks; and

(v) All securities in an underlying index or portfolio must be US Component Stocks listed on a national securities exchange [or The Nasdaq Stock Market (including the Nasdaq SmallCap Market)] and shall be NMS Stocks.

(b) Eligibility Criteria for series of Index Fund Trust Shares that are based on an Index or Portfolio comprised solely of Non-US Component Stocks or Both US and Non-US Component Stocks. Upon the initial listing of a series of Trust Shares, [or upon trading pursuant to unlisted trading privileges, each] 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 securities to the fund in connection with the initial issuance of shares of such fund:

(i) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each must have a minimum market value of at least $100 million;

(ii) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each must have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares;

(iii) the most heavily weighted component stock may not exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks may not exceed 60% of the weight of the index or portfolio;

(iv) the index or portfolio must include a minimum of 20 component stocks; and

(v) each US Component Stock must be listed on a national securities exchange and must be an NMS Stock, and each Non-US Component Stock must be listed and traded on an exchange that has last-sale reporting.

(c) Index or portfolio approved in connection with options or other derivative securities. Upon the initial listing of a series of Trust Shares, [or upon trading pursuant to unlisted trading privileges,] pursuant to Rule 19b-4(c) under the Exchange Act, the index or portfolio underlying such series shall have been reviewed and approved for trading of options, Trust Shares, Index Fund Shares, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Exchange Act and rules thereunder and the conditions set forth in the Commission’s approval order, including comprehensive surveillance
sharing agreements with respect to Non-US Component Stocks and requirements regarding dissemination of information continue to be satisfied. Each component stock of the index or portfolio shall be either (I) a US Component Stock that is listed on a national securities exchange and is an NMS Stock or (II) a Non-US Component Stock that is listed and traded on an exchange that has last-sale reporting.

((b)d) Index Methodology and Calculation.

(i) No Change

(ii) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund advisor; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or a major market data vendor or that makes decisions on the index or portfolio composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index. [The current index value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Trust Shares trade on the Exchange.]

((c)e) Disseminated Information. [The Reporting Authority will disseminate for each series of Trust Shares an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of shares of the series or upon the index value.] If a series of Trust Shares is listed for trading, or trades pursuant to unlisted trading privileges, on the Exchange in reliance upon Rule 19b-4(e) under the Exchange Act, and invests solely in US Component Stocks, the current value of the underlying index must be widely disseminated by one or more major market data vendors or disseminated over the consolidated tape at least every 15 seconds during trading hours on the Exchange. If a series of Trust Shares is listed for trading on the Exchange in reliance upon Rule 19b-4(e) under the Exchange Act and invest in both US Component Stocks and Non-US Component Stocks or only in Non-US Component Stocks, the current value of the underlying index must be widely disseminated by one or more major market data vendors or disseminated over the consolidated tape at least every 60 seconds during trading hours on the Exchange. If the index value does not change during some or all of the period when trading is occurring on the Exchange (for example, for indexes of Non-US Component Stocks because of time zone differences or holidays in the countries where such indexes’ component stocks trade), then the last official calculated index value must remain available throughout Exchange trading hours.
There must be similarly disseminated for each series of Trust Shares, whether listed or traded pursuant to unlisted trading privileges, an estimate, updated at least every 15 seconds, of the value of a share of each series (the “Intraday Indicative Value”) during the Core Session on XLE, and, if applicable, during the Pre Market Session on XLE. This may be based, for example, upon current information regarding the required deposit of securities plus any cash amount to permit the creation of new shares of the series or upon the index value. The Intraday Indicative Value will be updated at least every 15 seconds during the Core Session on XLE, and, if applicable, during the Pre Market Session on XLE, to reflect changes in the exchange rate between the U.S. dollar and the currency in which any component stock is denominated. If the Intraday Indicative Value does not change during some or all of the period when trading is occurring on XLE, then the last official calculated Intraday Indicative Value must remain available throughout XLE’s trading hours.

Initial Shares Outstanding. A minimum of 100,000 shares of a series of Trust Shares is required to be outstanding at start-up of trading on the Exchange.

Trading Increment. The minimum trading increment [for a series of Trust Shares shall be $0.01] is set in Phlx Rule 125.

Listing Fees. The original listing fee is $7,500 for each series of Trust Shares. The annual maintenance listing fee will be $1,250 for each series of Trust Shares.

Surveillance Procedures. The Exchange will implement written surveillance procedures for Trust Shares.

Applicability of Other Rules. All other provisions of Rule 803(i) will apply to all series of Trust Shares.

Creation and Redemption. For Trust Shares listed pursuant to (i)(11)(b) or (c) above, the statutory prospectus or the application for exemption from provisions of the Investment Company Act of 1940 for the series of Trust Shares must state that the series of Trust Shares must comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

Hours of Trading. Trading will occur on XLE during the times set in Phlx Rule 101. In addition, the Exchange may designate each series of Trust Shares for trading during the Pre Market Session and/or the Post Market Session; provided, however that the Exchange will not designate a series of Trust Shares for Pre Market or Post Market trading unless the requirements of Phlx Rule 803(i)(11)(e) are satisfied. If there is no overlap with the trading hours of the primary market(s) trading the
underlying components of a series of Trust Shares, the Exchange may designate such series for Pre Market trading as long as the last official calculated Intraday Indicative Value remains available.

(j)-(k) No Change

(l) Index Fund Shares.

(1) No Change

(2) Definitions. The following terms shall have the meanings specified herein:

(A)-(B) No Change

(C) The term “US Component Stock” shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934 (“Exchange Act”) or an American Depository Receipt the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Exchange Act.

(D) The term “Non-US Component Stock” shall mean an equity security that is not registered under Sections 12(b) or 12(g) of the Exchange Act and that is issued by an entity that (a) is not organized, domiciled or incorporated in the United States, and (b) is an operating company (including real estate investment trusts (REITs) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives).

(3) {Reserved.} Disclosure. Unless Rule 803(l)(7) applies, the Exchange requires that members and member organizations provide to all purchasers of newly issued Index Fund Shares a prospectus for the series of Index Fund Shares.

(4) No Change

(5) Initial and Continued Listing and/or Trading. Each series of Index Fund Shares will be listed and traded on the Exchange, whether by listing or pursuant to unlisted trading privileges, subject to application of the following criteria:

(A) No Change

(B) Continued Trading. Following the initial twelve month period following commencement of trading on the Exchange of a series of Index Fund Shares, the Exchange will consider the suspension of trading, or the removal from listing, or termination of unlisted trading privileges for such series under any of the following circumstances: (I) If there are fewer than 50 beneficial holders of the series of Index Fund Shares for 30 or more consecutive trading
days; (II) If the value of the index or portfolio of securities on which the series of Index Fund Shares is based is no longer calculated or available; 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.

Upon termination of an open-end management investment company, the Exchange requires that Index Fund Shares issued in connection with such entity be removed from Exchange listing.

(C) No Change

(D) The Exchange will obtain a representation from the issuer of each series of Index Fund Shares that the net asset value per share for the series will be calculated daily and will be made available to all market participants at the same time.

(6) Listing Pursuant to SEC Rule 19b-4(e). The Exchange may approve a series of Index Fund Shares for listing and trading or for unlisted trading privileges pursuant to Rule 19b-4(e) under the {Securities} Exchange Act {of 1934} provided [each of] the [following] criteria described in paragraph (A), (B) or (C) below and (D)-(K) are [is] satisfied:

(A) Eligibility Criteria for Index Components series of Index Fund Shares that are based on an Index or Portfolio comprised solely of US Component Stocks. Upon the initial listing of a series of Index Fund Shares, or upon trading pursuant to unlisted trading privileges, each the component stocks of an index or portfolio underlying a series of Index Fund Shares shall meet the following criteria as of the date of the initial deposit of securities to the fund in connection with the initial issuance of shares of such fund: (I) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least $75 million; (II) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares [The component stocks shall 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% of the weight of the index or portfolio]; (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) The underlying index or portfolio must include a minimum of 13 component stocks; and (V) All securities in an underlying index or portfolio must be US Component Stocks listed on a national securities exchange [or The Nasdaq Stock Market (including the Nasdaq SmallCap Market)] and shall be NMS Stocks.
(B) Eligibility Criteria for series of Index Fund Shares that are based on an index or portfolio comprised solely of Non-US Component Stocks or Both US and Non-US Component Stocks. Upon the initial listing of a series of Index Fund Shares, the component stocks of an index or portfolio underlying such series of Index Fund Shares shall meet the following criteria as of the date of the initial deposit of securities to the fund in connection with the initial issuance of shares of such fund: (I) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each must have a minimum market value of at least $100 million; (II) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each must have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares; (III) the most heavily weighted component stock may not exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks may not exceed 60% of the weight of the index or portfolio; (IV) the index or portfolio must include a minimum of 20 component stocks; and (V) each US Component Stock must be listed on a national securities exchange and must be an NMS Stock, and each Non-US Component Stock must be listed and traded on an exchange that has last-sale reporting.

(C) Index or portfolio approved in connection with options or other derivative securities. Upon the initial listing of a series of Index Fund Shares, pursuant to Rule 19b-4(e) under the Exchange Act, the index or portfolio underlying such series shall have been reviewed and approved for trading of options, Trust Shares, Index Fund Shares, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Exchange Act and rules thereunder and the conditions set forth in the Commission’s approval order, including comprehensive surveillance sharing agreements with respect to Non-US Component Stocks and requirements regarding dissemination of information continue to be satisfied. Each component stock of the index or portfolio shall be either (I) a US Component Stock that is listed on a national securities exchange and is an NMS Stock or (II) a Non-US Component Stock that is listed and traded on an exchange that has last-sale reporting.

(D) Index Methodology and Calculation. (I) The index underlying a series of Index Fund Shares will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology; (II) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the
index shall be calculated by a third party who is not a broker-dealer or fund advisor; and (III) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or a major market data vendor or that makes decisions on the index or portfolio composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index. [The current index value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Index Fund Shares trade on the Exchange.]

([C]E) Disseminated Information. [The Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value.] If a series of Index Fund Shares is listed for trading, or trades pursuant to unlisted trading privileges, on the Exchange in reliance upon Rule 19b-4(e) under the Exchange Act, and invests solely in US Component Stocks, the current value of the underlying index must be widely disseminated by on or more major market data vendors or disseminated over the consolidated tape at least every 15 seconds during trading hours on the Exchange. If a series of Index Fund Shares is listed for trading on the Exchange in reliance upon Rule 19b-4(e) under the Exchange Act and invest in both US Component Stocks and Non-US Component Stocks or only in Non-US Component Stocks, the current value of the underlying index must be widely disseminated by one or more major market data vendors or disseminated over the consolidated tape at least every 60 seconds during [the] trading hours on the Exchange. If the index value does not change during some or all of the period when trading is occurring on the Exchange (for example, for indexes of Non-US Component Stocks because of time zone differences or holidays in the countries where such indexes’ component stocks trade), then the last official calculated index value must remain available throughout Exchange trading hours.

{In addition, t}There must be {similarly} disseminated for each series of Index Fund Shares, whether listed or traded pursuant to unlisted trading privileges, an estimate, updated at least every 15 seconds, of the value of a share of each series (the “Intraday Indicative Value”) during the Core Session on XLE, and, if applicable, during the Pre Market Session on XLE. This may be based, for example, upon current information regarding the required deposit of securities plus any cash amount to permit the creation of new shares of the series or upon the index value. The Intraday Indicative Value will be updated at least every 15 seconds during the Core Session on XLE, and, if applicable, during the Pre Market
Session on XLE, to reflect changes in the exchange rate between the U.S.
dollar and the currency in which any component stock is denominated. If
the Intraday Indicative Value does not change during some or all of the
period when trading is occurring on XLE, then the last official calculated
Intraday Indicative Value must remain available throughout XLE’s trading
hours.

([D][E]) Initial Shares Outstanding. A minimum of 100,000 shares of a series
of Index Fund Shares is required to be outstanding at commencement of
trading.

([E][G]) Minimum Variation. The minimum variation [may vary among
different series of Index Fund Shares, but will be set at $.01 (for Index
Fund Shares trading in decimals)] is set in Phlx Rule 125.

([F][H]) Hours of Trading. Trading will occur [between 9:30 a.m. and either
4:00 p.m. or 4:15 p.m. for each series of Index Fund Shares, as specified
by the Exchange] on XLE during the times set in Phlx Rule 101. In
addition, the Exchange may designate each series of Index Fund Shares
for trading during the Pre Market Session and/or the Post Market Session;
provided, however that the Exchange will not designate a series of Index
Fund Shares for Pre Market or Post Market trading unless the
requirements of Phlx Rule 803(I)(6)(E) are satisfied. If there is no overlap
with the trading hours of the primary market(s) trading the underlying
components of a series of Index Fund Shares, the Exchange may designate
such series for Pre Market trading as long as the last official calculated
Intraday Indicative Value remains available.

([G][J]) Surveillance Procedures. The Exchange will utilize existing
surveillance procedures for Index Fund Shares.

([H][J]) Applicability of Other Rules. The provisions of Rule 803(I)(1)-(5) will
apply to all series of Index Fund Shares.

(K) Creation and Redemption. For Index Fund Shares listed pursuant to
(I)(6)(B) or (C) above, the statutory prospectus or the application for
exemption from provisions of the Investment Company Act of 1940 for
the series of Index Fund Shares must state that the series of Index Fund
Shares must comply with the federal securities laws in accepting
securities for deposits and satisfying redemptions with redemption
securities, including that the securities accepted for deposits and the
securities used to satisfy redemption requests are sold in transactions that
would be exempt from registration under the Securities Act of 1933.

(7)-(8) No Change
(m)-(n) No Change
Exhibit 5

Underlining indicates additions; brackets indicate deletions.

Rule 136.

Trading Halts in Certain Exchange Traded Funds

(a)-(d) No Change

(e) For purposes of this Rule:

(1) “Derivative Securities Product” means a series of securities described in Phlx Rule 803(f) and (h)-(n), which is based on an underlying security or index.

(2) “Required Value” shall mean (i) the value of any security underlying a Derivative Securities Product, and (ii) the Intraday Indicative Value (as defined in Rule 803), or the Indicative Optimized Portfolio Value or other comparable estimate of the value of a share of a Derivative Securities Product updated regularly during the trading day.

Rule 803.

Criteria for Listing --Tier I

Issuers should consider whether to list their securities under the Tier I or Tier II listing standards. While all listed issues will be traded pursuant to the identical Exchange auction rules, issues listed pursuant to the Tier I and Tier II standards may be distinguished with respect to blue sky exemptions, transactions reporting symbols, listing fees and maintenance standards. The Exchange will identify and distinguish at all times which securities are listed pursuant to the Exchange's Tier I and Tier II standards. An issuer seeking to list its securities pursuant to the Tier I standards must satisfy one of the two alternative Tier I quantitative criteria and an issuer seeking to list its securities pursuant to the Tier II standards must satisfy the Tier II quantitative criteria. Issuers listing under either criteria must adhere to the policies and procedures and the corporate governance criteria provided in Rules 812 through 853.

The Exchange also places great emphasis upon the level of public interest in the securities of an issuer. Causes for concern may include a low trading volume on another Exchange, lack of dealer interest in the over-the-counter market, unusual geographical concentration of shareholders or a low rate of transfers. Under such circumstances the Exchange may implement a higher distribution standard provided it perceives a relatively low level of investor interest.

Phlx may extend unlisted trading privileges to any security for which Phlx has in effect rules providing for transactions in such class or type of security. Provisions of Rule 803 that govern trading hours, dissemination of information (i.e. Intraday Indicative Value
and index value) and surveillance procedures, and that relate to information circulars and prospectus delivery, shall apply to securities traded on an unlisted trading privileges basis.

The listing criteria for Tier I Issues are as follows:

(a)-(h) No Change

(i) Trust Shares

(1) Definitions.

(iii) The term “US Component Stock” shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934 (“Exchange Act”) or an American Depository Receipt the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Exchange Act.

(iv) The term “Non-US Component Stock” shall mean an equity security that is not registered under Sections 12(b) or 12(g) of the Exchange Act and that is issued by an entity that (a) is not organized, domiciled or incorporated in the United States, and (b) is an operating company (including real estate investment trusts (REITs) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives).

(2)-(4) No Change

(5) Initial and Continued Listing and/or Trading. A Trust upon which a series of Trust Shares are based will be listed and traded on the Exchange[, whether by listing or pursuant to unlisted trading privileges,] subject to application of the following criteria:

(A) No Change

(B) Continued Trading - Following the initial twelve month period following formation of a Trust and commencement of trading on the Exchange, the Exchange will consider the suspension of trading in or removal from listing of [or termination of unlisted trading privileges for] a Trust upon which a series of Trust Shares is[are] based under any of the following circumstances:

(i)-(iii) No Change

(C) No Change
(D) The Exchange will obtain a representation from the issuer of each series of Trust Shares that the net asset value per share for the series will be calculated daily and will be made available to all market participants at the same time.

(6)-(10) No Change

(11) The Exchange may approve a series of Trust Shares for listing and 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 described in paragraphs (a), (b) or (c) below and (d) through (l) are [is] satisfied:

(a) [Eligibility Criteria for Index Components] Series of Trust Shares that are based on an Index or Portfolio comprised solely of US Component Stocks. 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) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall each have a minimum market value of at least $75 million;

(ii) The component stocks that in the aggregate account for at least 90 percent of the weight of the index or portfolio each must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares [shall 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% of the weight of the index or portfolio];

(iii) No Change

(iv) The underlying index or portfolio must include a minimum of 13 component stocks; and

(v) All securities in an underlying index or portfolio must be US Component Stocks listed on a national securities exchange [or The Nasdaq Stock Market (including the Nasdaq SmallCap Market)] and shall be NMS Stocks.

(b) Eligibility Criteria for series of Trust Shares that are based on an Index or Portfolio comprised solely of Non-US Component Stocks or Both US and Non-US Component Stocks. Upon the initial listing of a series of Trust Shares, 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 securities to the fund in connection with the initial issuance of shares of such fund:
(i) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each must have a minimum market value of at least $100 million;

(ii) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each must have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares;

(iii) the most heavily weighted component stock may not exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks may not exceed 60% of the weight of the index or portfolio;

(iv) the index or portfolio must include a minimum of 20 component stocks; and

(v) each US Component Stock must be listed on a national securities exchange and must be an NMS Stock, and each Non-US Component Stock must be listed and traded on an exchange that has last-sale reporting.

(c) **Index or portfolio approved in connection with options or other derivative securities.** Upon the initial listing of a series of Trust Shares, pursuant to Rule 19b-4(e) under the Exchange Act, the index or portfolio underlying such series shall have been reviewed and approved for trading of options, Trust Shares, Index Fund Shares, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Exchange Act and rules thereunder and the conditions set forth in the Commission’s approval order, including comprehensive surveillance sharing agreements with respect to Non-US Component Stocks and requirements regarding dissemination of information continue to be satisfied. Each component stock of the index or portfolio shall be either (I) a US Component Stock that is listed on a national securities exchange and is an NMS Stock or (II) a Non-US Component Stock that is listed and traded on an exchange that has last-sale reporting.

([b]d) **Index Methodology and Calculation.**

(i) No Change

(ii) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund advisor; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or a major market data vendor or that makes decisions on the index or portfolio composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the
applicable index. [The current index value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Trust Shares trade on the Exchange.]

(c) Disseminated Information. [The Reporting Authority will disseminate for each series of Trust Shares an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of shares of the series or upon the index value. If a series of Trust Shares is listed for trading, or trades pursuant to unlisted trading privileges, on the Exchange in reliance upon Rule 19b-4(e) under the Exchange Act, and invests solely in US Component Stocks, the current value of the underlying index must be widely disseminated by one or more major market data vendors or disseminated over the consolidated tape at least every 15 seconds during trading hours on the Exchange. If a series of Trust Shares is listed for trading on the Exchange in reliance upon Rule 19b-4(e) under the Exchange Act and invest in both US Component Stocks and Non-US Component Stocks or only in Non-US Component Stocks, the current value of the underlying index must be widely disseminated by one or more major market data vendors or disseminated over the consolidated tape at least every 60 seconds during trading hours on the Exchange. If the index value does not change during some or all of the period when trading is occurring on the Exchange (for example, for indexes of Non-US Component Stocks because of time zone differences or holidays in the countries where such indexes’ component stocks trade), then the last official calculated index value must remain available throughout Exchange trading hours.

There must be disseminated for each series of Trust Shares, whether listed or traded pursuant to unlisted trading privileges, an estimate, updated at least every 15 seconds, of the value of a share of each series (the “Intraday Indicative Value”) during the Core Session on XLE, and, if applicable, during the Pre Market Session on XLE. This may be based, for example, upon current information regarding the required deposit of securities plus any cash amount to permit the creation of new shares of the series or upon the index value. The Intraday Indicative Value will be updated at least every 15 seconds during the Core Session on XLE, and, if applicable, during the Pre Market Session on XLE, to reflect changes in the exchange rate between the U.S. dollar and the currency in which any component stock is denominated. If the Intraday Indicative Value does not change during some or all of the period when trading is occurring on XLE, then the last official calculated Intraday Indicative Value must remain available throughout XLE’s trading hours.

(d) Initial Shares Outstanding. A minimum of 100,000 shares of a series of Trust Shares is required to be outstanding at start-up of trading on the Exchange.

(e) Trading Increment. The minimum trading increment [for a series of Trust Shares shall be $0.01] is set in Phlx Rule 125.
([f]h) **Listing Fees.** The original listing fee is $7,500 for each series of Trust Shares. The annual maintenance listing fee will be $1,250 for each series of Trust Shares.

([g]i) **Surveillance Procedures.** The Exchange will implement written surveillance procedures for Trust Shares.

([h]j) **Applicability of Other Rules.** All other provisions of Rule 803(i) will apply to all series of Trust Shares.

(k) **Creation and Redemption.** For Trust Shares listed pursuant to (i)(11)(b) or (c) above, the statutory prospectus or the application for exemption from provisions of the Investment Company Act of 1940 for the series of Trust Shares must state that the series of Trust Shares must comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

(l) **Hours of Trading.** Trading will occur on XLE during the times set in Phlx Rule 101. In addition, the Exchange may designate each series of Trust Shares for trading during the Pre Market Session and/or the Post Market Session; provided, however that the Exchange will not designate a series of Trust Shares for Pre Market or Post Market trading unless the requirements of Phlx Rule 803(i)(11)(e) are satisfied. If there is no overlap with the trading hours of the primary market(s) trading the underlying components of a series of Trust Shares, the Exchange may designate such series for Pre Market trading as long as the last official calculated Intraday Indicative Value remains available.

(j)-(k) No Change

(l) **Index Fund Shares.**

(1) No Change

(2) **Definitions.** The following terms shall have the meanings specified herein:

(A)-(B) No Change

(C) The term “US Component Stock” shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934 (“Exchange Act”) or an American Depository Receipt the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Exchange Act.
The term “Non-US Component Stock” shall mean an equity security that is not registered under Sections 12(b) or 12(g) of the Exchange Act and that is issued by an entity that (a) is not organized, domiciled or incorporated in the United States, and (b) is an operating company (including real estate investment trusts (REITs) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives).

(3) Disclosure. Unless Rule 803(l)(7) applies, the Exchange requires that members and member organizations provide to all purchasers of newly issued Index Fund Shares a prospectus for the series of Index Fund Shares.

(4) No Change

(5) Initial and Continued Listing and/or Trading. Each series of Index Fund Shares will be listed and traded on the Exchange[, whether by listing or pursuant to unlisted trading privileges,] subject to application of the following criteria:

(A) No Change

(B) Continued Trading. Following the initial twelve month period following commencement of trading on the Exchange of a series of Index Fund Shares, the Exchange will consider the suspension of trading[,] or the removal from listing[, or termination of unlisted trading privileges] for such series under any of the following circumstances: (I) If there are fewer than 50 beneficial holders of the series of Index Fund Shares for 30 or more consecutive trading days; (II) If the value of the index or portfolio of securities on which the series of Index Fund Shares is based is no longer calculated or available; 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.

Upon termination of an open-end management investment company, the Exchange requires that Index Fund Shares issued in connection with such entity be removed from Exchange listing.

(C) No Change

(D) The Exchange will obtain a representation from the issuer of each series of Index Fund Shares that the net asset value per share for the series will be calculated daily and will be made available to all market participants at the same time.

(6) Listing Pursuant to SEC Rule 19b-4(e). The Exchange may approve a series of Index Fund Shares for listing and trading pursuant to Rule 19b-4(e) under the [Securities] Exchange Act [of 1934] provided [each of] the [following] criteria described in paragraph (A), (B) or (C) below and (D)-(K) are [is] satisfied:
(A) Eligibility Criteria for Index Fund Shares that are based on an Index or Portfolio comprised solely of US Component Stocks. Upon the initial listing of a series of Index Fund Shares, the component stocks of an index or portfolio underlying a series of Index Fund Shares shall meet the following criteria as of the date of the initial deposit of securities to the fund in connection with the initial issuance of shares of such fund: (I) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least $75 million; (II) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares; (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) The underlying index or portfolio must include a minimum of 13 component stocks; and (V) All securities in an underlying index or portfolio must be US Component Stocks listed on a national securities exchange (or The Nasdaq Stock Market (including the Nasdaq SmallCap Market)) and shall be NMS Stocks.

(B) Eligibility Criteria for series of Index Fund Shares that are based on an index or portfolio comprised solely of Non-US Component Stocks or Both US and Non-US Component Stocks. Upon the initial listing of a series of Index Fund Shares, the component stocks of an index or portfolio underlying such series of Index Fund Shares shall meet the following criteria as of the date of the initial deposit of securities to the fund in connection with the initial issuance of shares of such fund: (I) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each must have a minimum market value of at least $100 million; (II) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each must have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares; (III) The most heavily weighted component stock may not exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks may not exceed 60% of the weight of the index or portfolio; (IV) The index or portfolio must include a minimum of 20 component stocks; and (V) Each US Component Stock must be listed on a national securities exchange and must be an NMS Stock, and each Non-US Component Stock must be listed and traded on an exchange that has last-sale reporting.
(C) Index or portfolio approved in connection with options or other derivative securities. Upon the initial listing of a series of Index Fund Shares, pursuant to Rule 19b-4(e) under the Exchange Act, the index or portfolio underlying such series shall have been reviewed and approved for trading of options. Trust Shares, Index Fund Shares, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Exchange Act and rules thereunder and the conditions set forth in the Commission’s approval order, including comprehensive surveillance sharing agreements with respect to Non-US Component Stocks and requirements regarding dissemination of information continue to be satisfied. Each component stock of the index or portfolio shall be either (I) a US Component Stock that is listed on a national securities exchange and is an NMS Stock or (II) a Non-US Component Stock that is listed and traded on an exchange that has last-sale reporting.

([BD]) Index Methodology and Calculation. (I) The index underlying a series of Index Fund Shares will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology; (II) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a “fire wall” around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund advisor; and (III) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or a major market data vendor or that makes decisions on the index or portfolio composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.[The current index value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Index Fund Shares trade on the Exchange.]

([CE]) Disseminated Information. [The Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value.] If a series of Index Fund Shares is listed for trading, or trades pursuant to unlisted trading privileges, on the Exchange in reliance upon Rule 19b-4(e) under the Exchange Act, and invests solely in US Component Stocks, the current value of the underlying index must be widely disseminated by one or more major market data vendors or disseminated over the consolidated tape at least every 15 seconds during trading hours on the Exchange. If a series of Index Fund Shares is listed
for trading on the Exchange in reliance upon Rule 19b-4(e) under the
Exchange Act and invest in both US Component Stocks and Non-US
Component Stocks or only in Non-US Component Stocks, the current
value of the underlying index must be widely disseminated by one or more
major market data vendors or disseminated over the consolidated tape at
least every 60 seconds during trading hours on the Exchange. If the index
value does not change during some or all of the period when trading is
occurring on the Exchange (for example, for indexes of Non-US
Component Stocks because of time zone differences or holidays in the
countries where such indexes’ component stocks trade), then the last
official calculated index value must remain available throughout Exchange
trading hours.

There must be disseminated for each series of Index Fund Shares,
whether listed or traded pursuant to unlisted trading privileges, an
estimate, updated at least every 15 seconds, of the value of a share of each
series (the “Intraday Indicative Value”) during the Core Session on XLE,
and, if applicable, during the Pre Market Session on XLE. This may be
based, for example, upon current information regarding the required
deposit of securities plus any cash amount to permit the creation of new
shares of the series or upon the index value. The Intraday Indicative
Value will be updated at least every 15 seconds during the Core Session
on XLE, and, if applicable, during the Pre Market Session on XLE, to
reflect changes in the exchange rate between the U.S. dollar and the
currency in which any component stock is denominated. If the Intraday
Indicative Value does not change during some or all of the period when
trading is occurring on XLE, then the last official calculated Intraday
Indicative Value must remain available throughout XLE’s trading hours.

([D]E) Initial Shares Outstanding. A minimum of 100,000 shares of a series
of Index Fund Shares is required to be outstanding at commencement of
trading.

([E]G) Minimum Variation. The minimum variation [may vary among
different series of Index Fund Shares, but will be set at $.01 (for Index
Fund Shares trading in decimals)] is set in Phlx Rule 125.

([F]H) Hours of Trading. Trading will occur [between 9:30 a.m. and either
4:00 p.m. or 4:15 p.m. for each series of Index Fund Shares, as specified
by the Exchange] on XLE during the times set in Phlx Rule 101. In
addition, the Exchange may designate each series of Index Fund Shares
for trading during the Pre Market Session and/or the Post Market Session;
provided, however that the Exchange will not designate a series of Index
Fund Shares for Pre Market or Post Market trading unless the
requirements of Phlx Rule 803(1)(6)(E) are satisfied. If there is no overlap
with the trading hours of the primary market(s) trading the underlying
components of a series of Index Fund Shares, the Exchange may designate such series for Pre Market trading as long as the last official calculated Intraday Indicative Value remains available.

([G][I]) Surveillance Procedures. The Exchange will utilize existing surveillance procedures for Index Fund Shares.

([H][J]) Applicability of Other Rules. The provisions of Rule 803(l)(1)-(5) will apply to all series of Index Fund Shares.

(K) Creation and Redemption. For Index Fund Shares listed pursuant to (l)(6)(B) or (C) above, the statutory prospectus or the application for exemption from provisions of the Investment Company Act of 1940 for the series of Index Fund Shares must state that the series of Index Fund Shares must comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

(7)-(8) No Change

(m)-(n) No Change