

the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

NYSE Arca has requested that the Commission waive the 30-day operative delay and designate the proposed rule change to become operative on January 2, 2008. The proposal would synchronize the closing time for options on ETFs with the time at which the underlying ETF closes in the core trading session of the primary listing exchange. The Commission notes that the present proposal is similar to CBOE Rule 6.1. Therefore, the Commission designates the proposed rule change as operative on January 2, 2008.<sup>11</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2008-01 on the subject line.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). The Exchange has requested that the Commission waive the requirement that the Exchange provide the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date on which the Exchange filed the proposed rule change pursuant to Rule 19b-4(f)(6)(iii). The Commission hereby grants this request.

<sup>11</sup> For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

##### *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-NYSEArca-2008-01. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2008-01 and should be submitted on or before January 30, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57086; File No. SR-Phlx-2007-90]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the \$1 Strike Pilot Program

January 2, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 12, 2007, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On December 28, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend Commentary .05 to Phlx Rule 1012 (Series of Options Open for Trading) to expand the \$1 Strike Pilot Program ("\$1 Pilot") and to request permanent approval of the \$1 Pilot.<sup>4</sup> The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.phlx.com>.

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

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

<sup>3</sup> The Exchange states that Amendment No. 1 to the proposed rule change supersedes and replaces the original filing in its entirety.

<sup>4</sup> The Commission approved the \$1 Pilot on June 11, 2003. See Securities Exchange Act Release No. 48013 (June 11, 2003), 68 FR 35933 (June 17, 2003) (SR-Phlx-2002-55). The \$1 Pilot has subsequently been extended through June 5, 2008. See Securities Exchange Act Release Nos. 49801 (June 3, 2004), 69 FR 32652 (June 10, 2004) (SR-Phlx-2004-38) (extending the \$1 Pilot until June 5, 2005); 51768 (May 31, 2005), 70 FR 33250 (June 7, 2005) (SR-Phlx-2005-35) (extending the \$1 Pilot until June 5, 2006); 53938 (June 5, 2006), 71 FR 34178 (June 13, 2006) (SR-Phlx-2006-36) (extending the \$1 Pilot until June 5, 2007); and 55666 (April 25, 2007), 72 FR 23879 (May 1, 2007) (SR-Phlx-2007-29) (extending the \$1 Pilot until June 5, 2008). The other options exchanges have similar \$1 strike price listing programs that were likewise extended through June 5, 2008.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

#### 1. Purpose

The purpose of the proposed rule change is to expand the number of options classes eligible for the \$1 Pilot and to request permanent approval of the \$1 Pilot and thereby provide investors with greater flexibility in the trading of equity options that overlie lower priced stocks and allow equity options positions that are better tailored to meet investment objectives.

The \$1 Pilot, under the terms set forth in Commentary .05 to Phlx Rule 1012, currently allows the Exchange to establish \$1 strike price intervals on options classes overlying no more than five individual stocks designated by the Exchange where: (1) The underlying stock closes below \$20 on the primary market on the trading day before selection by the Exchange; (2) the \$1 strike price is from \$3 to \$20; (3) the \$1 strike price is no more than \$5 above or below the closing price of the underlying stock on the preceding day; and (4) the \$1 strike price is not within \$0.50 of an existing \$2.50 strike price in the same series. The Exchange may not list long-term option series ("LEAPS") at \$1 strike price intervals for any class selected for the \$1 Pilot. In addition, pursuant to the \$1 Pilot, the Exchange may list \$1 strike prices on any other option classes if those classes are specifically designated by other securities exchanges that employ a similar \$1 strike price program under their respective rules.

The Exchange proposes to expand the \$1 Pilot to allow it to select a total of 10, instead of the current 5, individual stocks on which option series may be listed at \$1 strike price intervals. Additionally, the Exchange proposes to expand the price range on which it may list \$1 strikes to \$3-\$50, instead of the current \$3-\$20. The proposed expanded

and permanent \$1 Pilot would be known as the "\$1 Strike Program." The Exchange notes that the existing restrictions on listing \$1 strikes would continue to apply; *i.e.*, no \$1 strike price may be listed that is greater than \$5 from the underlying stock's closing price in its primary market on the previous day or that would result in strike prices being \$0.50 apart.

As stated in the Commission order approving Phlx's \$1 Pilot and in the subsequent extensions of the \$1 Pilot,<sup>5</sup> the Exchange believes that \$1 strike price intervals provide greater trading flexibility to investors so that they may better achieve their investment objectives. The Exchange states that its member firms representing customers have requested that Phlx seek to expand the \$1 Pilot both in terms of the number of classes that can be selected by the Exchange and the range in which \$1 strikes may be listed.

Phlx's last \$1 Pilot report (the "Report") reviewed the Exchange's positive experience with the \$1 Pilot.<sup>6</sup> The Exchange states that the Report showed the strength and efficacy of the \$1 Pilot on the Exchange, as reflected by the increase in the percentage of \$1 strikes in comparison to total options volume traded on Phlx at \$1 strike price intervals and other options volume and the continuing robust open interest of options traded on Phlx at \$1 strike price intervals. With regard to the impact on systems capacities, Phlx's analysis of the \$1 Pilot showed that the impact on Phlx's, OPRA's, and market data vendors' respective automated systems has been negligible. The Exchange states that, as indicated in the Report, the \$1 Pilot has not created, and in the future should not create, capacity problems for the systems of OPRA. Phlx represents that it has sufficient capacity to handle an expansion of the \$1 Pilot, as proposed.

Finally, because the \$1 Pilot has been very successful in allowing investors to establish equity options positions that are better tailored to meeting their investment objectives, Phlx requests that the \$1 Pilot, as expanded, be approved on a permanent basis.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of section 6(b)(5),

<sup>5</sup> See *id.*

<sup>6</sup> See Securities Exchange Act Release No. 55666 (April 25, 2007), 72 FR 23879 (May 1, 2007) (SR-Phlx-2007-29) (enclosing the Report as Exhibit 3 to the filing).

<sup>7</sup> 15 U.S.C. 78f(b).

specifically,<sup>8</sup> in that it is designed to promote just and equitable principles of trade, to perfect the mechanism of a free and open market and the national market system, and, in general, to protect investors and the public interest. The proposal should achieve this by allowing continued listing of options at \$1 strike price intervals within certain parameters, thereby stimulating customer interest in options overlying the lowest tier of stocks and creating greater trading opportunities and flexibility and providing customers with the ability to more closely tailor investment strategies to the precise movement of the underlying stocks.

### 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 that is 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

The Exchange states that no written comments on the proposed rule change were either solicited or received.

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

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

- A. By order approve such proposed rule change, or
- B. Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File

<sup>8</sup> 15 U.S.C. 78f(b)(5).

Number SR-Phlx-2007-90 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-2007-90. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2007-90 and should be submitted on or before January 30, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57090; File No. SR-Phlx-2007-94]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending the Examinations Fee

January 3, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 28, 2007, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by Phlx under section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Phlx proposes to expand its current Examinations Fee in order to assess this fee on: (1) Member organizations and participant organizations,<sup>5</sup> for whom the Exchange is the Designated Examining Authority ("DEA"), that do not employ any off-floor traders; and (2) "inactive organizations." While changes to the Exchange's fee schedule pursuant to this proposal are effective upon filing, the Exchange has designated that the proposed changes become operative beginning January 1, 2008. The text of the proposed rule change is available at the Exchange, on its Web site at [http://phlx.com/exchange/phlx\\_rule\\_fil.html](http://phlx.com/exchange/phlx_rule_fil.html), and at Commission's Public Reference Room.

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>5</sup> For purposes of this proposed rule change, the term "participant organization" means Foreign Currency Options Participant Organization, as that term is defined in Section 1-1(f) of Phlx's By-Laws. See telephone conversation between Cynthia Hoekstra, Vice President, Phlx, and Christopher Chow, Special Counsel, Division of Trading and Markets, Commission, on December 31, 2007.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

Currently, the Exchange implements a tiered Examinations Fee based on the number of off-floor traders in the same member/participant organization for whom the Exchange is the DEA.<sup>6</sup> Specifically, a member/participant organization is assessed \$2,100 per month for one to ten off-floor traders; \$2,600 per month for 11 to 50 off-floor traders; \$5,000 per month for 51 to 200 off-floor traders; and \$12,500 per month for over 200 off-floor traders. However, the following member organizations are currently exempt from the assessment of the Examinations Fee: (1) Inactive organizations;<sup>7</sup> and (2) organizations operating through one or more Phlx markets that demonstrated that 25% or more of its revenue as reflected on the most recently submitted FOCUS report or transactions as reflected on its purchase and sales blotter are derived from securities transactions on the Phlx.

The Exchange proposes to assess the Examinations Fee on those member/participant organizations who do not have any off-floor traders because the Exchange must examine those member/participant organizations for whom the Exchange is the DEA.<sup>8</sup> Member/

<sup>6</sup> In connection with charges assessed in connection with the trading of equity securities on XLE (the Exchange's equity trading system), Sponsored Participants are not included in the calculation of the number of off-floor traders in a Sponsoring Member Organization. See Securities Exchange Act Release No. 54941 (December 14, 2006), 71 FR 77079 (December 22, 2006) (SR-Phlx-2006-70).

<sup>7</sup> An inactive organization is defined as one that has no securities transaction revenue, as determined by Financial and Operational Combined Uniform Single Report ("FOCUS reports") or other financial filings, as long as the member/participant organization continues to have no such revenue each month.

<sup>8</sup> Member/participant organizations that have operated without an off-floor trader generally rely

Continued

<sup>9</sup> 17 CFR 200.30-3(a)(12).