

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43690; File No. SR-Phlx-00-90]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Listing and Trading of Basket Linked Notes

December 7, 2000.

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 October 16, 2000, 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 and II below, which Items have been prepared by the Exchange. On November 27, 2000, Phlx 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 and Amendment No. 1 from interested persons, and to grant accelerated approval to the proposed rule change, as amended.

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

The Phlx proposes to amend its rules to permit the listing and trading, or the trading pursuant to unlisted trading privileges, of Basket Linked Notes ("BLNs"), hybrid instruments whose values are linked to the performance of two or more highly capitalized, actively traded equity securities. New Section (k) of Rule 803 would provide listing standards for BLNs. Below is the text of the proposed rule change. Proposed new language is *italicized*.

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#### Philadelphia Stock Exchange, Inc. Criteria for Listing—Tier 1

Rule 803. Unchanged.

(a)–(j) Unchanged.

(k) *Basket Linked Notes ("BLNs").*

*Income instruments which are linked, in whole or in part, to the market performance of more than one common stock or non-convertible preferred stock will be considered for listing provided:*

(1) *Both the issue and the issuer of such security meet the criteria established in Rule 803(f) and the issue has a minimum term of one year.*

(2) *The issuer of such security will be expected to have a minimum tangible net worth in excess of \$250,000,000, and to otherwise substantially exceed the earnings requirement set forth in Rule 803(a). In the alternative, the issuer will be expected: (i) to have a minimum tangible net worth of \$150,000,000 and to otherwise substantially exceed the earnings requirements set forth in Rule 803(a), and (ii) not to have issued such securities where the original issue price of all the issuer's other equity and basket linked note offerings (combined with equity and basket linked note offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth.*

(3) *Each underlying linked stock either: (i) has a minimum market capitalization of \$3 billion and during the 12 months preceding listing is shown to have traded at least 2.5 million shares, (ii) has a minimum market capitalization of \$1.5 billion and during the 12 months preceding listing is shown to have traded at least 10 million shares; or (iii) has a minimum market capitalization of \$500 million and during the 12 months preceding listing is shown to have traded at least 15 million shares.*

(4) *Each issuer of an underlying stock to which the instrument is to be linked shall be a 1934 Act reporting company which is listed on a national securities exchange or is traded through the facilities of a national securities system and is subject to last sale reporting. In addition, if any underlying security to which the instrument is to be linked is the stock of a non-U.S. company which is traded in the U.S. market as sponsored American Depository Shares ("ADS"), ordinary shares or otherwise, then for each such security the Exchange shall either: (i) have in place a comprehensive surveillance sharing agreement with the primary exchange on which each non-U.S. security is traded, (in the case of an ADS, the primary exchange on which the security*

*underlying the ADS is traded); or (ii) the combined trading volume of each non-U.S. security and other related non-U.S. securities occurring in the U.S. market or in markets with which the Exchange has in place a comprehensive surveillance sharing agreement represents (on a share equivalent basis for any ADS) at least 50% of the combined worldwide trading volume in each non-U.S. security, other related non-U.S. securities, and other classes of common stock related to each non-U.S. security over the six month period preceding the date of listing; or (iii)(a) the combined trading volume of each non-U.S. security and other related non-U.S. securities occurring in the U.S. market represents (on a share equivalent basis) at least 20% of the combined world-wide trading volume in each non-U.S. security and in other related non-U.S. securities over the six month period preceding the date of selection of the non-U.S. security for a BLN listing, (b) the average daily trading volume for each non-U.S. security in the U.S. markets over the six months preceding the selection of each non-U.S. security for a BLN listing is 100,000 or more shares, and (c) the trading volume is at least 60,000 shares per day in the U.S. markets on a majority of the trading days for the six months preceding the date of selection of each non-U.S. security for a BLN listing.*

(5) *Each underlying linked stock to which the instrument relates may not exceed 5% of the total outstanding common shares of such entity, provided however, if any underlying linked stock is a non-U.S. security represented by ADSs, common shares, or otherwise, then for each such linked security the instrument may not exceed: (i) 2% of the total shares outstanding worldwide provided at least 20% of the worldwide trading volume in each non-U.S. security and related security during the six month period preceding the date of listing occurs in the U.S. market; (ii) 3% of the total worldwide shares outstanding provided at least 50% of the worldwide trading volume in each non-U.S. security and related non-U.S. security during the six month period preceding the date of listing occurs in the U.S. market; and (iii) 5% of the total shares outstanding worldwide provided at least 70% of the worldwide trading volume in each non-U.S. security and related non-U.S. security during the six month period preceding the date of listing occurs in the U.S. market. If any non-U.S. security and related securities has less than 20% of the worldwide trading volume occurring in the U.S. market during the six month period*

<sup>8</sup> 17 CFR 200.30-2(a)(12).

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

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

<sup>3</sup> In Amendment No. 1, Phlx amended the text and description of the proposed rule change to require a one-year minimum term for the securities described herein. See letter from Carla Behnfeldt, Director, New Product Development Group, Legal Department, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 21, 2000.

preceding the date of listing, then the instrument may not be linked to that non-U.S. security. If an issuer proposes to list a BLN that relates to more than the allowable percentages set forth above, the Exchange, with the concurrence of the staff of the Division of Market Regulation of the Securities and Exchange Commission, will evaluate the maximum percentage of BLNs that may be issued on a case-by-case basis.

(6) BLNs will be treated as equity instruments.

(7) If any underlying security to which the instrument is to be linked is the stock of a non-U.S. company which is traded in the U.S. market as a sponsored ADS, ordinary shares or otherwise, then the minimum number of holders of such underlying linked security shall be 2,000.

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## 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 III 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

Exchange Rule 803(h) currently provides listing standards for equity linked notes ("ELNs"), hybrid instruments whose values are linked to the performance of a single highly capitalized, actively traded equity security. ELNs are non-convertible debt securities whose value is derived from the value of another issuer's common stock on non-convertible preferred stock.

The Exchange is now proposing to adopt Rule 803(k), separate listing standards for BLNs. BLNs are nonconvertible debt securities that are linked to more than one underlying equity security, each of which would be required to meet the listing standards set forth in the proposed rule. Proposed Rule 803(k) is substantially similar to American Stock Exchange ("Amex")

Rule 107B as it applies to ELNs which are linked to two or more securities.<sup>4</sup>

Proposed Rule 803(k) would permit the Exchange to consider for listing income instruments which are linked, in whole or in part, to the market performance of more than one common stock or non-convertible preferred stock. Proposed Rule 803(k) would require the issuer and the issuer of BLNs to meet the minimum assets/equity, earnings, distribution and aggregate market value/principal amount criteria established in existing Exchange Rule 803(f).<sup>5</sup>

Rule 803(k)(2) would establish a minimum tangible net worth requirement of at least \$250,000,000 for issuers of securities to which BLNs will be linked, or an alternative minimum tangible net worth requirement of at least \$150,000,000 if the issuer meets further financial requirements. In addition, issuers of BLNs and the underlying securities to which they are linked would be required to meet certain criteria which generally track those established in Amex Rule 107B for ELNs linked to more than one security. Rule 803(k)(3) would require each underlying linked stock to meet certain minimum market capitalization and trading volume tests. Rule 803(k)(4) would require each issuer of an underlying stock to which the BLN is linked to be a 1934 Act reporting company listed on a national securities exchange or traded through the facilities of a national securities system and subject to last sale reporting. Rule 803(k)(4) would impose additional requirements with respect to any underlying linked security which is stock of a non-U.S. company traded in the U.S. market as sponsored American Depositary Shares ("ADS"), ordinary shares or otherwise ("Foreign Securities"). Specifically, the proposed rule would require either that the Exchange have in place a comprehensive surveillance sharing agreement with the primary exchange on which each such Foreign Security is traded, or that the Foreign Security

<sup>4</sup> See Securities Exchange Act Release No. 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (granting accelerated approval of the Amex proposal to list and trade notes linked to a basket of equity securities). Amex Rule 107B applies both to ELNs linked to a single security and to ELNs linked to a basket of securities. Phlx is retaining its separate ELNs rule, Rule 803(h), applicable to hybrid securities linked to a single security. Proposed Rule 803(k) applies only in the case of multiple linked securities. Proposed Rule 803(k) does not include certain changes recently approved with respect to Amex Rule 107B that provide for ELNs linked to convertible bonds. See Securities Exchange Act Release No. 43162 (August 16, 2000), 65 FR 51374 (August 23, 2000).

<sup>5</sup> Exchange Rule 803(f) is the Exchange's listing standard for "Other Securities."

meets additional trading volume requirements. Proposed Rule 803(k)(5) would limit each underlying linked stock to which the BLN relates to 5% of the total common shares of such entity, with stricter requirements applicable to underlying linked stocks which are Foreign Securities. Proposed Rule 803(k)(6) provides that BLNs will be treated as equity instruments. Finally, Rule 803(k)(7) would require underlying linked securities which are Foreign Securities to have a minimum of 2,000 holders.

The Exchange will apply to BLNs a one-year minimum term requirement. The Exchange will put in place appropriate surveillance procedures for BLNs, and will cap the number of underlying securities that may be linked to a BLN at twenty. The trading rules and procedures established by the Exchange for ELNs will apply equally to BLNs.

#### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>7</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

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

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

### 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. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-00-90 and should be submitted by January 5, 2001.

#### IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposal, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Commission notes that it has previously approved similar listing standards for equity linked products.<sup>9</sup> The proposed rule change will permit the Exchange to list and trade BLNs, thereby providing investors with an additional marketplace in which to trade these products. Thus, the proposal should bring increased efficiency, price competition, and greater liquidity to the markets for these products. The Commission believes that this proposal is also consistent with Section 6(b)(5) of the Act<sup>10</sup> because requiring each of the underlying securities linked to the BLNs to meet the established listing standards should strengthen the integrity of the

security and reduce the susceptibility of BLNs to manipulation.<sup>11</sup>

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. As noted above, the listing requirements for these instruments will be substantially similar to those of the Amex, which the Commission approved in the past.<sup>12</sup> The proposal thus concerns issues that already have been the subject of a full comment period pursuant to Section 19(b) of the Act.<sup>13</sup> The Commission does not believe that the proposed rule change raises novel regulatory issues that have not been addressed already. Therefore, the Commission finds good cause for approving the proposed rule change on an accelerated basis.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-Phlx-00-90), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43696; File No. SR-PHLX-00-99]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Establishing Two Systems Changes and Corresponding Fees to Members and Member Organizations for Receiving Certain Equity Information on a Real-Time Basis

December 8, 2000.

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 November 30, 2000, the Philadelphia Stock Exchange, Inc ("Phlx" or "Exchange") filed with the Securities and Exchange

<sup>11</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>12</sup> See *supra* note 4.

<sup>13</sup> 15 U.S.C. 78s(b).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

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

Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Phlx proposes to effect a systems change and amend its schedule of dues, fees and charges to impose a \$.10 per trade off-Exchange information fee for Phlx equity specialist units utilizing an enhancement to the Phlx electronic equity system, the Phlx Automated Communication and Execution ("PACE") System,<sup>3</sup> that provides equity specialists on the floor with real-time trade information respecting Super Designated Order Turnaround ("Super Dot") transactions in New York Stock Exchange, Inc. ("NYSE") securities.<sup>4</sup>

In addition, Phlx proposes to effect a systems change and amend its schedule of dues, fees and charges to impose a \$300 per month remote information access fee on members and member organizations utilizing another enhancement to the PACE System that provides real-time trade information respecting trading positions to a remote access terminal.

#### 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 effect a systems change and amend the Phlx's fee schedule to impose a \$.10 per trade off-Exchange trade information fee and a \$300 per month remote information access fee for Phlx specialist units, who choose to

<sup>3</sup> See Phlx Rule 229.

<sup>4</sup> SuperDot is an order routing system of the NYSE.

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

<sup>9</sup> See *supra* note 4.

<sup>10</sup> 15 U.S.C. 78f(b)(5).