

### B. Surveillance

Nasdaq must have surveillance procedures to monitor trading in any products listed under the generic listing standards. An Index Security, just like an ETF, derives its value by reference to the underlying index. For this reason, the Commission has required that markets that list index based securities monitor the qualifications of not just the actual security (e.g., the ETF, index option, or Index Securities), but also of the underlying indexes (and of the index providers). In this regard, the Commission believes that a surveillance sharing agreement between a self-regulatory organization proposing to list a stock index derivative product and the self-regulatory organization trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. When a new derivative securities product based upon domestic securities is listed and traded on an exchange or national securities association pursuant to Rule 19b-4(e) under the Act, the self-regulatory organization should determine that the markets upon which all of the U.S. component securities trade are members of the Intermarket Surveillance Group ("ISG"), which provides information relevant to the surveillance of the trading of securities on other market centers.<sup>42</sup> For derivative securities products based on previously approved indexes that contain securities from one or more foreign markets, the self-regulatory organization should have a comprehensive Intermarket Surveillance Agreement, as prescribed in the prior Commission order, which covers the securities underlying the new securities product.<sup>43</sup> With respect to indexes not previously approved by the Commission, the Commission finds that Nasdaq's commitment to implement comprehensive surveillance sharing agreements,<sup>44</sup> as necessary, and the definitive requirements that: (i) Each component security shall be a registered reporting company under the Act; and (ii) no more than 20 percent of the weight of the Underlying Index or

Additionally, a daily indicative value for the product is also disseminated.

<sup>42</sup> See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (File No. S7-13-98). ISG was formed on July 14, 1983, to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. The Commission notes that all of the registered national securities exchanges, including the ISE, as well as the NASD, are members of the ISG.

<sup>43</sup> Id.

<sup>44</sup> Proposed NASD Rule 4420(m)(9).

Underlying Indexes may be comprised of foreign country securities or ADRs not subject to a comprehensive surveillance sharing agreement,<sup>45</sup> will make possible adequate surveillance of trading of Index Securities listed pursuant to the proposed generic listing standards.

With regard to actual oversight, Nasdaq represents that its surveillance procedures are sufficient to detect fraudulent trading among members in the trading of Index Securities pursuant to the proposed generic listing standards.

### C. Acceleration

The Commission finds good cause for approving proposed rule change, as amended, prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The proposal implements generic listing standards substantially identical to those already approved for the Amex. The Commission does not believe that Nasdaq's proposal raises any novel regulatory issues. The proposed generic listing criteria should enable more expeditious review and listing of Index Securities by Nasdaq, thereby reducing administrative burdens and benefiting the investing public. Thus, the Commission finds good cause to accelerate approval of the proposed rule change, as amended.

### V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>46</sup> that the proposed rule change, as amended (SR-NASD-2006-001), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>47</sup>

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6-864 Filed 1-24-06; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>45</sup> Proposed NASD Rules 4420(m)(7)(vi)-(vii).

<sup>46</sup> 15 U.S.C. 78s(b)(2).

<sup>47</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53147; File No. SR-Phlx-2006-02]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay Implementation of a Split of the PHLX Housing Sector<sup>SM</sup> Index Option

January 19, 2006.

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 January 4, 2006, 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 Phlx. The Phlx filed the proposal as a "non-controversial" proposed rule change pursuant to section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> 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<sup>6</sup> and Rule 19b-4 thereunder,<sup>7</sup> proposes to delay until February 1, 2006<sup>8</sup> the implementation of a split of the PHLX Housing Sector<sup>SM</sup> Index ("Index") option ("HGX")<sup>9</sup> to one-half

<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).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> As required by Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii), the Phlx submitted 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 of filing.

<sup>6</sup> 15 U.S.C. 78s(b)(1).

<sup>7</sup> 17 CFR 240.19b-4.

<sup>8</sup> In its proposal, the Phlx requested a delay until February 2006. During a telephone conversation on January 12, 2006, the Exchange specified that it is seeking to delay implementation until February 1, 2006. Telephone conversation between Jurij Trypupenko, Director and Counsel, Phlx, and Christopher Chow, Attorney, Division of Market Regulation, on January 12, 2006.

<sup>9</sup> HGX is a modified capitalization-weighted index composed of 21 companies whose primary lines of business are directly associated with the U.S. housing construction market. The Index encompasses residential builders, suppliers of aggregate, lumber and other construction materials, manufactured housing and mortgage insurers. The

Continued

its present value,<sup>10</sup> so that any open interest in HGX contracts at \$2.50 strike price intervals expire before the split.

## 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 proposal. 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

Previously, the Exchange filed a proposed rule change to reduce the value of the HGX to one-half its present value.<sup>11</sup> The purpose of the proposed rule change is to delay the implementation of a split of the value of the HGX so that upon splitting the index the Exchange can list new, post-split options series at strike prices of \$2.50 or higher.

The Exchange may now set index option strike price intervals at \$2.50 or higher pursuant to Phlx Rule 1101A. Rule 1101A indicates that the Exchange may determine fixed strike price intervals for index options that may generally be \$2.50 for the three consecutive near-term months, \$5 for the fourth month and \$10 for the fifth month. The rule further allows that the Exchange may determine to list strike prices at \$2.50 intervals in response to demonstrated customer interest or specialist request, and to list strike

Index is currently composed of the following stocks: American Standard Companies, Beazer Homes USA, Inc., Champion Enterprises, Inc., Centex Corp., DR Horton, Inc., Hovnanian Enterprises, Inc., KB Home, Lennar Corp., Masco Corp., MDC Holdings, Inc., OfficeMax, Inc., Pulte Homes, PMI Group, Inc., Radian Group, Inc., Ryland Group, Inc., Standard Pacific Corp., Temple Inland, Inc., Toll Brothers, Inc., USG Corp., Vulcan Materials Company, Weyerhaeuser Company.

<sup>10</sup>The Commission notes that it published notice of a proposed rule change allowing a split of the HGX, which was effective upon filing (September 15, 2005) and which, per the Exchange's request, became operative on September 27, 2005. See Securities Exchange Act Release No. 52512 (September 27, 2005), 70 FR 57919 (October 4, 2005) (SR-Phlx-2005-50).

<sup>11</sup> See above, at n.10; telephone conversation between Jurij Trypupenko, Director and Counsel, Phlx, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, on January 19, 2006.

prices at wider intervals.<sup>12</sup> No Phlx rule accommodates index option strike price intervals lower than \$2.50.

There are several HGX option series priced at \$2.50 strike price intervals that have options contracts with open interest. The open interest in these series would expire by the end of January 2006. Splitting the HGX index at a time when there is open interest in these series would result in strike price intervals smaller than \$2.50.<sup>13</sup> Because index option strike prices that are smaller than \$2.50 (for example \$1.00) are not supported in Phlx rules, the delay in the implementation of the split is necessary.

The Exchange believes that delayed implementation should attract more volume by making option premiums more appealing for retail investors and allowing investors to better utilize the HGX as a trading and hedging vehicle with a smaller capital outlay.<sup>14</sup>

The Exchange will announce the effective date of the implementation of the split on February 1, 2006 by way of an Exchange memorandum to the membership, which will also serve as notice of the strike price and position limit changes.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act<sup>15</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>16</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by delaying the implementation of a split establishing a lower Index value, which should, in turn, facilitate trading in HGX, creating a more liquid trading

<sup>12</sup> The Exchange has filed a rule change (SR-Phlx-2005-43) and amendments thereto proposing to simplify the Rule 1101A procedure for setting option index strike prices so that, among other things, there is no correlation between index strike price intervals and months.

<sup>13</sup> For example, an HGX option series with a \$457.50 pre-split strike price, after a two-for-one split, would change to a \$228.75 strike price, which would require a smaller than \$2.50 strike price interval.

<sup>14</sup> The Exchange notes that to accommodate the two-fold increase in the number of contracts outstanding after the split, the position limits applicable to HGX (currently 31,500 contracts pursuant to Rule 1001A) will be temporarily increased to 63,000 until such time that all pre-split options expire, at which point the position limits will return to the 31,500 position limit specified in Rule 1001A. See Exchange Act Release No. 52512 (September 27, 2005), 70 FR 57919 (October 4, 2005) (SR-Phlx-2005-50).

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

environment. The Exchange believes that reducing the value of the Index should not raise manipulation concerns and should not cause adverse market impact because the Exchange will continue to employ its surveillance procedures and has proposed an orderly procedure to achieve the Index split, including adequate prior notice to market participants.

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

The Phlx believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Phlx has neither solicited nor received comments on the proposed rule change.

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Phlx has asked the Commission to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the additional time may allow the Exchange to list new, post-split options series at strike prices of \$2.50 or higher, as required under the Exchange's rules.<sup>17</sup> For this reason, the Commission designates that the proposal has become effective and

<sup>17</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

operative immediately upon filing with the Commission.

At any time within 60 days of the filing of the 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 furtherance of the purposes of the Act.<sup>18</sup>

#### 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-Phlx-2006-02 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 20549-9303.

All submissions should refer to File Number SR-Phlx-2006-02. 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 such 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

<sup>18</sup> See Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii).

should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2006-02 and should be submitted on or before February 15, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E6-923 Filed 1-24-06; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53139; File No. SR-Phlx-2005-67]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Maintenance, Retention, and Furnishing of Books, Records, and Other Information Regarding Payment for Order Flow

January 18, 2006.

On November 3, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend Phlx Rule 760 (Maintenance, Retention and Furnishing of Books, Records and Other Information) to incorporate recent changes to the Exchange's payment for order flow program. On November 22, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on December 14, 2005.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The Exchange recently amended its payment for order flow program for trades settling on or after October 1, 2005 ("October program").<sup>5</sup> The

<sup>19</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.

<sup>3</sup> Amendment No. 1 provided clarifying language to Phlx Rule 760 and the purpose section of the filing.

<sup>4</sup> Securities Exchange Act Release No. 52903 (December 7, 2005), 70 FR 74082 (December 14, 2005) (SR-Phlx-2005-67).

<sup>5</sup> The October program is in effect as a pilot program that is scheduled to expire on May 27, 2006. See Securities Exchange Act Release No.

Exchange represented that Registered Options Traders who receive electronically-delivered orders directed to them ("Directed ROTs") may, pursuant to the October program, direct the Exchange to make payments to order flow providers on their behalf.<sup>6</sup> Thus, the Exchange proposed to amend the Supplementary Material to Phlx Rule 760 to clarify that these Directed ROTs would now be required to retain records relating to payment for order flow arrangements.<sup>7</sup> The Exchange also proposed to amend the Supplementary Material to Phlx Rule 760 because the Exchange's current payment for order flow program no longer tracks payments to order flow providers on an option by option basis. In addition, the Exchange noted that specialists and specialist units no longer need to maintain records relating to the use, transfer, and distribution of payment for order flow funds because they would now direct the Exchange to make payments to order flow providers on their behalf. The Exchange further proposed to specifically request that books and records regarding the rate (whether on a per contract or flat fee basis) that is paid to order flow providers and the basis for the amount that Directed ROTs, specialists, and specialist units direct the Exchange to pay to order flow providers be maintained and made available as may be requested by the Exchange.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> The Commission believes that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act<sup>9</sup> in that this proposal 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 regulating, clearing, settling, processing information with respect to, and

52568 (October 6, 2005), 70 FR 60120 (October 14, 2005) (SR-Phlx-2005-58).

<sup>6</sup> The Exchange represented that under previous payment for order flow programs, specialist units requested reimbursement from the Exchange for monies they paid to order flow providers. Pursuant to the October program, the available payment for order flow funds would be disbursed by the Exchange according to the instructions of the specialist units and Directed ROTs.

<sup>7</sup> The Exchange represented that specialists/specialist units are already specifically required to maintain these books and records.

<sup>8</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b)(5).