

*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-NASDAQ-2008-026 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-NASDAQ-2008-026. 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 Nasdaq. 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-NASDAQ-2008-026 and should be submitted on or before April 25, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E8-6960 Filed 4-3-08; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-57583; File No. SR-Phlx-2008-23]

**Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change as Modified by Amendment No. 1 Thereto To Amend the Quarterly Options Series Pilot Program To Permit the Listing of Additional Series**

March 31, 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 March 27, 2008, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On March 28, 2008, the Exchange submitted Amendment No. 1 to the proposed rule change. The Exchange has designated this proposal as non-controversial under section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. 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 Phlx Rule 1012, Series of Options Open for Trading, to expand the number of series of exchange traded fund ("ETF") options that may be listed pursuant to Phlx's Quarterly Option Series ("QOS") pilot program (the "Pilot Program")<sup>5</sup> and to establish a delisting program in connection with the Pilot Program.<sup>6</sup>

<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)(iii).

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

<sup>5</sup> Phlx's Pilot Program was established in 2007 and subsequently extended through July 10, 2008. See Securities Exchange Act Release Nos. 55301 (February 15, 2007), 72 FR 8238 (February 23, 2007) (SR-Phlx-2007-08) ("Pilot Program Release") and 56030 (July 9, 2007), 72 FR 38645 (July 13, 2007) (SR-Phlx-2007-42). The American Stock Exchange, the Chicago Board Options Exchange ("CBOE"), the International Stock Exchange, and NYSEArca (the "pilot program exchanges") have similar pilot programs that likewise continue through July 10, 2008.

<sup>6</sup> The Phlx proposal is substantially identical to a proposal by CBOE. See Securities Exchange Act Release No. 57410 (March 3, 2008), 73 FR 12483

The text of the proposed rule change is available on the Exchange's Web site (<http://www.phlx.com>), at the Exchange's principal office, and at the Commission's Public Reference Room.

**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 amend the Exchange's Rule 1012, Series of Options Open for Trading, to permit the Exchange to list strike prices for QOS in ETF options that fall within a percentage range (30%) above and below the price of the underlying ETF. The proposed rule change will allow the Exchange, upon demonstrated customer interest, to open additional strike prices of QOS in ETF options that are more than 30% above or below the current price of the underlying ETF. The proposal will permit the Exchange to list up to sixty (60) additional series per expiration month for each QOS in ETF options. Additionally, the proposal will establish a delisting program for delisting QOS within certain parameters.

The Pilot Program in Phlx Rule 1012 allows the Exchange to list and trade QOS on ETFs that satisfy the applicable listing criteria under Phlx rules.<sup>7</sup> Under the Pilot Program, the Exchange may list QOS in up to five currently listed option classes that are either options on ETFs or indexes. The Exchange is also permitted to list QOS in any options class that is selected by the other pilot program exchanges. QOS trade based on calendar quarters that end in March, June, September and December. The

(March 7, 2008) (SR-CBOE-2007-96). See also Securities Exchange Act Release No. 57425 (March 4, 2008), 73 FR 12783 (March 10, 2008) (SR-ISE-2008-19) (notice of filing and immediate effectiveness of a similar proposed rule change by the International Securities Exchange).

<sup>7</sup> Phlx Rule 1101A establishes the Pilot Program for index options.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

Exchange lists QOS that expire at the end of the next consecutive four calendar quarters, as well as the fourth quarter of the next calendar year. For example, if the Exchange were trading QOS in iShares Russell 2000 Index Fund (“IWM”) in the month of April 2008, it would list series that expire at the end of the second quarter 2008 (June), third quarter 2008 (September), fourth quarter 2008 (December), first

quarter 2009 (March), and fourth quarter 2009 (December).  
Phlx now lists QOS in five ETF options: (1) Nasdaq-100 Index Tracking Stock (“QQQQ”); (2) IWM; (3) DIAMONDS Trust, Series 1 (“DIA”); (4) Standard and Poor’s Depository Receipts/SPDRs (“SPY”); and (5) Energy Select SPDR (“XLE”).<sup>8</sup> The average trading volume and total volume for QOS in IWM options, QQQQ options,

and SPY options exceed the volume for QOS in the other ETF options (DIA and XLE) that are listed and traded on the Exchange. The chart below provides trading volume figures for the fourth quarter in 2007, demonstrating that, in all but the month of November, QOS in IWM, along with QOS in QQQQ and SPY, were some of the more popular and heavily traded QOS on the Exchange.

QOS	October 2007		November 2007		December 2007	
	ADV	Total Vol	ADV	Total Vol	ADV	Total Vol
IWM .....	2,090	48,066	3,998	83,952	9,325	177,172
QQQQ .....	3,900	89,692	8,043	168,904	15,859	301,320
SPY .....	3,919	90,134	4,697	98,646	5,064	96,210
DIA .....	412	9,478	669	14,042	1,816	34,496
XLE .....	653	15,008	8,967	188,316	3,357	63,776

Over time, some of the pilot program exchanges have received requests from market participants to add additional strike prices for QOS in IWM options that would be outside of the price range for setting strikes as provided for under Rule 5.5(e)(3) (hereinafter “+/- \$5 range”).<sup>9</sup> Moreover, investors and other market participants have advised such exchanges that they are buying and selling QOS in IWM options to trade volatility. In order to adequately replicate the desired volatility exposure, these market participants need to trade several IWM option series, many having strike prices that fall outside of the +/- \$5 range currently allowed under the QOS rules.

Market participants have also advised pilot program exchanges that their investment strategies involve trading options tied to a particular option “delta,”<sup>10</sup> rather than a particular level of the underlying security or index. At issue is the fact that delta depends on both the relative difference between the level of the underlying security or index and the option strike price and time to expiration. For example, with IWM trading at \$85 per share, the strike price corresponding to a “25-delta” IWM call (i.e., a call option with a delta of 25) with one month to expiration would be 89. However, the strike price corresponding to a “25-delta” IWM call with 3 months to expiration would be 93, and the strike price of a “25-delta” call with 1 year to expiration would be 106. In short, the +/- \$5 range for QOS in IWM options is insufficient to satisfy customer demand.

In order to meet such customer demand, the Exchange proposes to amend Commentary .08 to Phlx Rule 1012, which governs the Quarterly Option Series Pilot Program. Specifically, the Exchange proposes to revise Commentary .08 to allow the Exchange to open additional strike prices of QOS in ETF options that are within thirty percent (30%) above or below the closing price of the underlying on the preceding business day. The Exchange also will be permitted to open additional strike prices of QOS in ETF options that are more than 30% above or below the current price of the underlying ETF, provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers. Market-Makers trading for their own account will not be considered when determining customer interest under this proposed provision. The Exchange will be permitted to list up to sixty (60) additional series per expiration month for each QOS in ETF options.

The Exchange also is proposing to add new paragraph (g) to Commentary .08 to Phlx Rule 1012, which will set forth a delisting policy. Specifically, with respect to QOS in ETF options, the Exchange will, on a monthly basis, review series that are outside a range of five strikes above and five strikes below the current price of the underlying ETF, and delist series with no open interest in both the put and the call series having a strike price that is: (i) Higher than the highest strike price with open interest in the put and/or call series for

a given expiration month; or (ii) lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.

To illustrate how the proposed delisting program will work, assume that IWM closed at \$70 on the day the Exchange conducts the monthly review of QOS in ETF options. Series having strike prices above \$75 and below \$65 would be reviewed by the Exchange for possible delisting. Assume that the Exchange lists the following QOS in IWM options that expire in June 2008:

Calls—June 08 Exp		Puts—June 08 Exp	
Strike	Open Interest?	Strike	Open Interest?
62	No	62	No
63	No	63	Yes
64	Yes	64	Yes
*	*	*	*
76	Yes	76	Yes
77	Yes	77	Yes
78	Yes	78	Yes
79	Yes	79	Yes
80	Yes	80	Yes
81	Yes	81	Yes
82	Yes	82	Yes
83	No	83	No
84	No	84	No
85	No	85	Yes
86	Yes	86	No
87	Yes	87	Yes
88	Yes	88	Yes
89	Yes	89	No
90	Yes	90	No
91	No	91	No
92	No	92	No
93	No	93	No

<sup>8</sup> These are the same options that are listed by the other pilot program exchanges.

<sup>9</sup> Commentary .08(d) to Phlx Rule 1012 provides that the Exchange shall list strike prices for a QOS

that are within \$5 from the closing price of the underlying on the preceding day.

<sup>10</sup> “Delta” is a measure of how an option price will change in response to a \$1 price change in the

underlying security or index. For example, an ABC option with a delta of “50” can be expected to change by \$0.50 in response to a \$1 change in the price of ABC.

The Exchange would delist the first series listed above, as well as the last three: \$62, \$91, \$92, and \$93. The Exchange would not delist the \$83 and \$84 series because there are series having open interest with strike prices higher than these two series. In addition, the Exchange would not delist the \$63 call series because there is open interest in the \$63 put series.

Notwithstanding the proposed delisting policy, customer requests to add strikes and/or maintain strikes in QOS in ETF options in series eligible for delisting shall be granted.

Further, in connection with the proposed delisting policy, if the Exchange identifies series for delisting, the Exchange shall notify other options exchanges with similar delisting policies regarding eligible series for listing, and shall work with such other exchanges to develop a uniform list of series to be delisted, so as to ensure uniform series delisting of multiply listed QOS in ETF options. The Exchange expects that the proposed delisting policy for QOS in ETF options would be adopted by other options exchanges that have adopted the QOS Pilot Program.

The Exchange represents that it has the necessary systems capacity to support new options series that will result from this proposal. Further, as proposed, the Exchange notes that this rule change would become part of the Pilot Program and, going forward, would be considered by the Commission when the Exchange seeks to renew or make permanent the Pilot Program in the future.<sup>11</sup>

## 2. Statutory Basis

The Exchange believes that because the additional new series can be added without presenting capacity problems and because the Exchange has proposed a delisting policy with respect to QOS in ETF options, the rule proposal is consistent with section 6(b) of the Act<sup>12</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>13</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

<sup>11</sup> To the extent the Commission views the proposed rule change as an expansion of the Pilot Program, thus triggering the requirement under the terms of the Pilot Program Approval Order that the Exchange submit a Pilot Program report, the Exchange notes that it submitted a report on or about June 26, 2007, in connection with its filing to extend the Pilot Program through July 10, 2008. See Securities Exchange Act Release No. 56030 (July 9, 2007), 72 FR 38645 (July 13, 2007) (SR-Phlx-2007-42).

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

and a national market system, and to protect investors and the public interest.

### 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 solicited or received with respect to the proposed rule change.

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

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>14</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>15</sup> The Exchange has asked the Commission to waive the 30-day operative delay to permit the Exchange to immediately compete with the other options exchanges that have similarly amended their quarterly options series pilot programs.

The Commission notes that this proposal is substantially similar to a proposed rule change submitted by CBOE, which was approved by the Commission following publication for notice and comment, and does not raise any new regulatory issues.<sup>16</sup> Waiving the 30-day operative delay will promote, without undue delay, further competition in the options market.<sup>17</sup> For

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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 of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

<sup>16</sup> See Securities Exchange Act Release No. 57410, supra note 6. See also Securities Exchange Act Release No. 57425, supra note 6.

<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. See 15 U.S.C. 78c(f).

these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

The Commission notes that this rule change will become part of the Pilot Program and, going forward, its effects will be considered by the Commission in the event that the Exchange seeks to renew or make permanent the Pilot Program.<sup>18</sup> Thus, in the Exchange's future reports on the Pilot Program, the Exchange should include analysis of (1) the impact of the additional series on the Exchange's market and quote capacity, and (2) the implementation and effects of the delisting policy, including the number of series eligible for delisting during the period covered by the report, the number of series actually delisted during that period (pursuant to the delisting policy or otherwise), and documentation of any customer requests to maintain QOS strikes that were otherwise eligible for delisting.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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>19</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

<sup>18</sup> As set forth in the Pilot Program Release, if the Exchange were to propose an extension, expansion, or permanent approval of the Pilot Program, the Exchange must submit, along with any filing proposing such amendments to the program, a report that provides an analysis of the Pilot Program covering the entire period during which the Pilot Program was in effect. See Pilot Program Release, supra note 5. The Pilot Program Release requires the Exchange to include in its report, at a minimum: (1) Data and written analysis on the open interest and trading volume in the classes for which QOS were opened; (2) an assessment of the appropriateness of the option classes selected for the Pilot Program; (3) an assessment of the impact of the Pilot Program on the capacity of the Exchange, OPRA, and market data vendors (to the extent data from market data vendors is available); (4) any capacity problems or other problems that arose during the operation of the Pilot Program and how the Exchange addressed such problems; (5) any complaints that the Exchange received during the operation of the Pilot Program and how the Exchange addressed them; and (6) any additional information that would assist in assessing the operation of the Pilot Program.

<sup>19</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, the Commission considers the period to commence on March 28, 2007, the date on which the Exchange filed Amendment No. 1.

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 No. SR-Phlx-2008-23 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-2008-23. 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-Phlx-2008-23 and should be submitted on or before April 25, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. E8-6961 Filed 4-3-08; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57578; File No. SR-Amex-2008-34]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Give Retroactive Effect to Its Revenue Sharing Program for ETF Quoting Participants

March 28, 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 March 27, 2008, the American Stock Exchange LLC ("Amex" 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 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 Exchange proposes to retroactively apply a previously-adopted revenue sharing program ("RSP") for Designated Amex Remote Traders ("DARTs"), ETF specialists, and registered traders (collectively, "ETF quoting participants") on the Exchange. The text of the proposed rule change is available at Amex's principal office, the Commission's Public Reference Room, and <http://www.amex.com>.

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

In its filing with the Commission, Amex 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 Exchange proposes to retroactively apply its previously-adopted RSP for ETF quoting participants on the Exchange, as described below. The RSP was first put in place by the Exchange for ETF specialists and registered traders, effective July 1, 2007, and was to last through December 31, 2007 unless otherwise extended.<sup>3</sup> The Exchange then inadvertently failed to file to extend the RSP at the expiration of that time period, but, upon realizing the error (when recently expanding the RSP to DARTs), promptly filed to reinstate the RSP for all ETF quoting participants, effective March 18, 2008.<sup>4</sup> The RSP is now in effect through the end of September 2008.

The purpose of the instant filing is to seek approval to retroactively apply the now-reinstated RSP for the time period January 1, 2008 through March 17, 2008 in order to effectively assure continuity of the RSP from its inception for all ETF quoting participants on the Exchange, who have continued to quote aggressively in the expectation of receiving RSP payments flowing therefrom. To date, the Exchange believes that the current RSP has been beneficial in creating incentives for ETF quoting participants and does not believe it fair to withhold RSP payments for the retroactive period from ETF quoting participants solely because of the Exchange's inadvertent error. Retroactive application of the RSP will satisfy all ETF quoting participants' expectations.

For the retroactive period, the RSP will operate under the same terms established in the RSP Release.<sup>5</sup> Specifically:

- RSP payments will be made from the Exchange's general revenues and not be limited to a particular revenue source.
- ETF specialists may receive an aggregate RSP payment (calculated monthly) of as much as \$0.0024 per share (or 24 cents per 100 shares) whenever the specialist either buys or

<sup>3</sup> See Securities Exchange Act Release No. 55893 (June 29, 2007), 72 FR 37059 (July 6, 2007) (SR-Amex-2007-68) ("RSP Release").

<sup>4</sup> See Securities Exchange Act Release No. 57541 (March 20, 2008) (SR-Amex-2008-25), 73 FR 16400 (March 27, 2008) (reinstating RSP for all ETF quoting participants); see also Securities Exchange Act Release No. 57540 (March 20, 2008), 73 FR 16399 (March 27, 2008) (SR-Amex-2008-23) (expanding RSP to DARTs).

<sup>5</sup> See *supra* note 3.

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

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

<sup>20</sup> 17 CFR 200.30-3(a)(12).