

the order to receive price improvement. Although the exposed order may receive price improvement, the order may not be executable at the conclusion of the exposure period. In addition, ISE Rules 717(d) and (e), which require members to expose agency orders to the market before executing them against proprietary or solicited orders, will continue to apply to the execution of complex orders.

III. Discussion

After careful review, 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.¹² In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹³ which requires, in part, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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.

The Commission notes that the proposal will provide ISE members with the option to seek potential price improvement for complex orders. Marketable complex orders would be exposed to attract contra-side trading interest only if they are marked for price improvement. If marked for price improvement, a complex order that would otherwise be executable upon entry will be exposed on the ISE's complex order book for a period of up to one second thereby providing an opportunity for market participants to enter contra-side orders that could provide price improvement. Such an order would not be executable by its terms until the end of the exposure period. The Commission believes that, because of the unique nature of complex orders, it is consistent with the Act for ISE's rules to allow members seeking to execute a particular complex order strategy to choose to attach an additional contingency to their orders that would render such orders unexecutable during an exposure period for the purpose of attracting price improvement.¹⁴

In addition, the Commission notes that the requirements of ISE Rule 722, including the priority requirements of ISE Rule 722(b)(2) applicable to public customer orders, will continue to apply. In addition, ISE Rules 717(d) and (e), which require members to expose agency orders for three seconds before executing them against proprietary or solicited orders, will continue to apply to complex orders. Thus, a member would not be able to enter a proprietary order, or a solicited order, to trade with an agency order during the complex order exposure period, which will last for one second or less.¹⁵

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change (SR-ISE-2007-77), as amended, is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57715; File No. SR-Phlx-2008-30]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Criteria for Securities That Underlie Options Traded on the Exchange

April 25, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 24, 2008, 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 substantially prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule

of the exposure period because of changes to ISE's quoted market.

¹⁵ See *supra* note 11.

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

19b-4(f)(6) thereunder,⁴ 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

The Exchange proposes to amend Phlx Rule 1009, Criteria for Underlying Securities, and Phlx Rule 1010, Withdrawal of Approval of Underlying Securities or Options, to permit the initial and continued listing and trading of options on Index Multiple Exchange Traded Fund Shares ("Index Multiple ETFs") and Index Inverse Exchange Traded Fund Shares ("Index Inverse ETFs"), and the listing and trading of options on shares of certain funds or trusts that hold specified non-U.S. currencies.

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

An Index Multiple ETF seeks to provide investment results, before fees and expenses, that correspond to a specified multiple of the percentage performance on a given day of a particular foreign or domestic stock index. An Index Inverse ETF seeks to provide investment results, before fees and expenses, that correspond to the inverse (opposite) of the percentage performance on a given day of a particular foreign or domestic stock index by a specified multiple. Index Multiple ETFs and Index Inverse ETFs differ from traditional exchange-traded fund shares or "Units" in that they do

⁴ 17 CFR 240.19b-4(f)(6).

¹² In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ Although a complex order is marketable upon entry, it may not be executable at the conclusion

not merely correspond to the performance of a given index, but rather attempt to match a multiple or inverse of such underlying index performance. The ProShares Ultra Funds, which currently trade on the American Stock Exchange ("Amex"), are examples of Index Multiple ETFs. The ProShares Short Funds and the UltraShort Funds, which are also currently listed for trading on Amex, are examples of Index Inverse ETFs.⁵

To achieve investment results that provide either a positive multiple or inverse of the benchmark index, Index Multiple ETFs or Index Inverse ETFs may hold a combination of financial instruments, including, among other things: Stock index futures contracts; options on futures; options on securities and indexes; equity caps, collars, and floors; swap agreements; forward contracts; repurchase agreements; and reverse repurchase agreements (collectively "Financial Instruments"). The underlying portfolio of an Index Multiple ETF generally will hold at least 85% of its assets in the component securities of the underlying relevant benchmark index. The remainder is devoted to Financial Instruments that are intended to create the additional exposure to the underlying index necessary to pursue its investment objective. Normally, 100% of the value of the portfolio underlying an Index Inverse ETF will be devoted to Financial Instruments and money market instruments, including U.S. government securities and repurchase agreements ("Money Market Instruments").

Initial Listing Standards

Currently, Commentary .06 to Phlx Rule 1009 provides that securities deemed appropriate for options trading shall include shares or other securities ("Exchange-Traded Fund Shares" or "ETFs") that are traded on a national securities exchange or through the facilities of a national securities

association and reported as a national market security, and that: (1) Represent interests in a registered investment company organized as an open-end management investment company, a unit investment trust, or a similar entity that holds securities constituting or otherwise based on or representing investments in index or portfolio of securities; or (2) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts, and/or options on physical commodities and/or non-U.S. currency ("Commodity Pool ETFs").

The Exchange proposes to amend Commentary .06 to Phlx Rule 1009 to include the listing and trading of options based on Index Multiple ETFs and Index Inverse ETFs that may hold or invest in any combination of securities, Financial Instruments, and/or Money Market Instruments. Index Multiple ETFs and Index Inverse ETFs must continue to otherwise satisfy the listing standards in Phlx Rule 1010. In addition, the Exchange proposes to make non-substantive, technical changes to Commentary .06 such as, for example, removal of the reference to a "national securities association" to conform Phlx's rule to other options exchange rules.

The Exchange also proposes to modify Commentary .06 regarding interests in a fund or trust that holds a specified non-U.S. currency or currencies, and surveillance agreements in respect thereof, by conforming this part of the commentary to the rules of Amex, Chicago Board Options Exchange ("CBOE"), International Securities Exchange ("ISE"), and NYSE Arca.⁶ Thus, Phlx proposes to amend its Commentary .06 at (iii) to expand the options that may be listed on the Exchange to include options on a fund (trust) that represents an interest in a trust or other similar entity that holds specified non-U.S. currency or currencies deposited with the trust or similar entity ("Fund"). The Exchange is also proposing to require in Commentary .06 at (b)(v) that, for any Fund that holds specified non-U.S. currencies deposited with the trust, the Exchange will have entered into a comprehensive surveillance sharing agreement with the marketplace or

marketplaces with last-sale reporting that represent(s) the highest volume in derivatives (options or futures) on the non-U.S. currency or currencies, which are utilized by the national securities exchange where the underlying Fund is listed and traded.

As set forth in proposed amended Commentary .06 to Phlx Rule 1009, an underlying Index Multiple ETF, Index Inverse ETF, or Fund must be traded on a national securities exchange and must be an "NMS stock" as defined under Rule 600 of Regulation NMS. In addition, an Index Multiple ETF, Index Inverse ETF, or Fund must meet either: (1) The criteria and guidelines under Commentary .01 to Phlx Rule 1009; or (2) be available for creation or redemption each business day in cash or in kind from the investment company, commodity pool, or other entity at a price related to net asset value. In addition, the investment company, commodity pool, or other entity shall provide that shares may be created even though some or all of the securities and/or cash (in lieu of the Financial Instruments) needed to be deposited have not been received by the unit investment trust or the management investment company, provided the authorized creation participant has undertaken to deliver the shares and/or cash as soon as possible and such undertaking has been secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the fund which underlies the option, as described in the prospectus.

Continued Listing Standards

The Exchange states that its current continuing listing standards for options in its Rule 1010 will continue to apply.

The Exchange proposes to amend Commentary .08 to Phlx Rule 1010 to indicate that the index or portfolio underlying the ETF or fund on which an option is based may consist of various securities, Financial Instruments, and/or Money Market Instruments. The Exchange also seeks to delete the reference to "national securities association." Under the applicable continued listing criteria in Commentary .08 to Phlx Rule 1010, options on ETFs may be subject to the suspension of opening transactions as follows: (1) Following the initial 12-month period beginning upon the commencement of trading of the ETFs, there are fewer than 50 record and/or beneficial holders of the ETFs for 30 or more consecutive trading days; (2) the value of the index or portfolio of securities, non-U.S. currency, or portfolio of commodities including

⁵ The Ultra Funds are expected to gain, on a percentage basis, approximately twice (200%) as much as the underlying benchmark index and should lose approximately twice (200%) as much as the underlying benchmark index when such prices decline. The Short Funds are expected to achieve investment results, before fees and expenses, that correspond to the inverse or opposite of the daily performance (–100%) or an underlying benchmark index. Lastly, the UltraShort Funds are expected to achieve investment result, before fees and expenses, that correspond to twice the inverse or opposite of the daily performance (–200%) of the underlying benchmark index. See Securities Exchange Act Release Nos. 52553 (October 3, 2005), 70 FR 59100 (October 11, 2005) (SR-Amex-2004-62) (approving the listing and trading of Ultra Funds and Short Funds) and 54040 (June 23, 2006), 71 FR 37629 (June 30, 2006) (SR-Amex-2006-41) (approving the listing and trading of the UltraShort Funds).

⁶ See Commentary .06(ii) and (b)(iv) to Amex Rule 915; Interpretation and Policy .06(ii) and (D) to CBOE Rule 5.3; ISE Rule 502(h)(ii) and (h)(B)(4); NYSE Arca Rule 5.3(g). The Exchange notes that these rules are substantially similar to the rules being proposed by the Exchange in this filing.

commodity futures contracts, options on commodity futures contracts, swaps, forward contracts, and/or options on physical commodities, and/or Financial Instruments and Money Market Instruments on which ETFs are based is no longer calculated or available; or (3) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable.⁷ Additionally, the Exchange proposes to clarify that the relevant instruments have to be an "NMS stock" under Rule 600 of Regulation NMS.

The expansion of the types of investments that may be held by Index Multiple ETFs, Index Inverse ETFs, or Funds under Commentary .06 to Rule 1009 will not have any effect on the rules pertaining to position and exercise limits or margin.⁸

The Exchange believes that this proposal is necessary to enable the Exchange to list and trade options on the shares of the Ultra Fund, Short Fund, and UltraShort Fund of the ProShares Trust. The proposed amendment is also necessary to enable the Exchange to list and trade interests in Funds that hold specified non-U.S. currencies. The Exchange believes that the ability to trade options on these products would provide investors with greater risk management tools.

The Exchange represents that its existing surveillance procedures applicable to trading in options are adequate to properly monitor the trading in Index Multiple ETF options and Index Inverse ETF options and the trading of options on Funds that hold a specified non-U.S. currency or currencies.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ 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 to protect investors and the public interest.

⁷ The Exchange will not open for trading any additional series of equity options already approved for trading that do not meet the requirements for continued approval and may determine to delist the entire class of options for inadequate volume. See Commentary .11 to Phlx Rule 1010.

⁸ See Phlx Rule 1001, Position Limits; Phlx Rule 1002, Exercise Limits; Phlx Rule 722, Margin Limits.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

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

The Exchange does not believe that the proposed rule change would 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 has neither solicited nor received written comments on the proposed rule change.

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

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of 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 Act¹¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹²

The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change as operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposed rule change is substantially similar to those of other options exchanges that have been previously approved by the Commission¹³ and does not appear to present any novel regulatory issues. Therefore, the Commission designates the proposal operative upon filing.¹⁴

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

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). The Exchange has satisfied the five-day pre-filing requirement of Rule 19b-4(f)(6)(iii).

¹³ See Securities Exchange Act Release Nos. 54983 (December 20, 2006), 71 FR 78476 (December 29, 2006) (Amex-2006-87); 56715 (October 29, 2007), 72 FR 62287 (November 2, 2007) (SR-CBOE-2007-119); 56871 (November 30, 2007), 72 FR 68924 (December 6, 2007) (SR-ISE-2007-87); and 57226 (January 29, 2008), 73 FR 6762 (February 5, 2008) (SR-NYSEArca-2008-03).

¹⁴ For purposes only of waiving the operative delay 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).

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. Please include File Number SR-Phlx-2008-30 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-2008-30. 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-2008-30 and should be submitted on or before May 21, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8-9469 Filed 4-29-08; 8:45 am]

BILLING CODE 8010-01-P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of final action regarding amendments to a policy statement and commentary effective May 1, 2008.

SUMMARY: The Sentencing Commission hereby gives notice of amendments to the commentary to § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) and to policy statement § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) made pursuant to its authority under 28 U.S.C. 994(a), (o), and (u).

DATES: The Commission has specified an effective date of May 1, 2008 for the amendments set forth in this notice.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502-4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o), and specifies in what circumstances and by what amount sentences of imprisonment may be reduced if the Commission reduces the term of imprisonment recommended in the guidelines applicable to a particular offense or category of offenses pursuant to 28 U.S.C. 994(u).

Unlike amendments made to sentencing guidelines, the Commission is not required to apply the procedures of section 553 of title 5, United States Code, to amendments to policy statements and commentary. See 28 U.S.C. 994(x). To the extent practicable,

the Commission endeavors to apply such procedures to amendments to policy statements and commentary. Because the Commission has identified a certain sentencing anomaly in which some offenders have not received the reduction intended by Amendment 706 and some offenders have received a greater reduction than intended by Amendment 706, see USSC, *Guidelines Manual*, Supplement to Appendix C, Amendment 706 (November 1, 2007), the Commission did not apply the provisions of section 553 of title 5, United States Code, to the promulgation of the amendments set forth in this notice.

Additional information may be accessed through the Commission's Web site at www.ussc.gov.

Authority: 28 U.S.C. 994(a), (o), and (u); USSC Rules of Practice and Procedure 4.1.

Ricardo H. Hinojosa,
Chair.

1. *Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 by striking subdivision (D) in its entirety and inserting the following:

"(D) Determining Base Offense Level in Offenses Involving Cocaine Base and Other Controlled Substances.—

(i) In General.—Except as provided in subdivision (ii), if the offense involves cocaine base ('crack') and one or more other controlled substance, determine the combined offense level as provided by subdivision (B) of this note, and reduce the combined offense level by 2 levels.

(ii) Exceptions to 2-level Reduction.—The 2-level reduction provided in subdivision (i) shall not apply in a case in which:

(I) the offense involved 4.5 kg or more, or less than 250 mg, of cocaine base; or

(II) the 2-level reduction results in a combined offense level that is less than the combined offense level that would apply under subdivision (B) of this note if the offense involved only the other controlled substance(s) (*i.e.*, the controlled substance(s) other than cocaine base).

(iii) Examples.—

(I) The case involves 20 gm of cocaine base, 1.5 kg of cocaine, and 10 kg of marihuana. Under the Drug Equivalency Tables in subdivision (E) of this note, 20 gm of cocaine base converts to 400 kg of marihuana (20 gm × 20 kg = 400 kg), and 1.5 kg of cocaine converts to 300 kg of marihuana (1.5 kg × 200 gm = 300 kg), which, when added to the 10 kg of marihuana results in a combined equivalent quantity of 710 kg of marihuana. Under the Drug Quantity

Table, 710 kg of marihuana corresponds to a combined offense level of 30, which is reduced by two levels to level 28. For the cocaine and marihuana, their combined equivalent quantity of 310 kg of marihuana corresponds to a combined offense level of 26 under the Drug Quantity Table. Because the combined offense level for all three drug types after the 2-level reduction is not less than the combined base offense level for the cocaine and marihuana, the combined offense level for all three drug types remains level 28.

(II) The case involves 5 gm of cocaine base and 6 kg of heroin. Under the Drug Equivalency Tables in subdivision (E) of this note, 5 gm of cocaine base converts to 100 kg of marihuana (5 gm × 20 kg = 100 kg), and 6 kg of heroin converts to 6,000 kg of marihuana (6,000 gm × 1 kg = 6,000 kg), which, when added together results in a combined equivalent quantity of 6,100 kg of marihuana. Under the Drug Quantity Table, 6,100 kg of marihuana corresponds to a combined offense level of 34, which is reduced by two levels to 32. For the heroin, the 6,000 kg of marihuana corresponds to an offense level 34 under the Drug Quantity Table. Because the combined offense level for the two drug types after the 2-level reduction is less than the offense level for the heroin, the reduction does not apply and the combined offense level for the two drugs remains level 34."

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10, in subdivision (E), by inserting under the heading "Cocaine and Other Schedule I and II Stimulants (and their immediate precursors)*" the following as the fifteenth entry:

"1 gm Cocaine Base ('Crack') = 20 kg of marihuana".

Reason for Amendment: This amendment modifies the commentary to § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) to revise the manner in which combined offense levels are determined in cases involving cocaine base ("crack cocaine") and one or more other controlled substance. Specifically, Application Note 10(D) has resulted in a certain sentencing anomaly in which some offenders have not received the benefit of the two-level reduction provided by Amendment 706 because of the conversion of cocaine base to its marihuana equivalent, and some offenders have received a reduction greater than intended. (See USSC, *Guidelines Manual*, Supplement to the

¹⁵ 17 CFR 200.30-3(a)(12).