

Section 17A(b)(3)(F),¹⁴ which requires, among other things, that the rules of a clearing agency are designed to provide for the safekeeping of securities and funds under its possession or control or for which it is responsible.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act¹⁵ and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change (File No. SR-DTC-2009-17) be, and hereby is, approved.¹⁷

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61590; File No. SR-Phlx-2009-113]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Order Granting Approval of Proposed Rule Change Relating to Index Option Position Limits

February 25, 2010.

On December 29, 2009, NASDAQ OMX PHLX, 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")¹ and Rule 19b-4 thereunder,² a proposed rule change to increase the position limits for certain narrow-based (industry) index option contracts. The Commission published the proposed rule change for comment in the **Federal Register** on January 19, 2010.³ The Commission received no comments on the proposed

rule change. This order approves the proposed rule change.

The Exchange proposes to revise the three tiered levels of position limits that are set forth in Phlx Rule 1001A by increasing those limits for options on the PHLX Oil Service Sector, PHLX Semiconductor Sector, PHLX Utility Sector, PHLX Gold/Silver Sector, PHLX Housing Sector, SIG Energy MLP Index, SIG Oil Exploration & Production Index, and the NASDAQ China Index (collectively, the "Specified Index Options").⁴ Currently, the Specified Index Options are subject to position limits of 18,000, 24,000, or 31,500 contracts based generally on the degree of concentration of a single component stock or groups of component stocks comprising the index.⁵ The Exchange proposes to increase these limits to 54,000, 72,000, and 94,500 contracts, respectively, for the Specified Index Options. In addition, the Exchange proposes to delete certain obsolete references in Rule 1001A.⁶

The Exchange states that it recognizes that the purpose of position limits is to prevent manipulation and protect against disruption of the markets for both the option as well as the underlying security. The Exchange states that it has considered the effects of increased position limits for the Specified Index Options on the marketplace, and believes that manipulation and disruption concerns are addressed by a combination of existing surveillance functions and the implementation of tiered position limits.

The Commission finds that the proposed rule change is consistent with

⁴ The SIG Indexes noted herein are trademarks of SIG Indices, LLLP.

⁵ Specifically, Phlx Rule 1001A(b)(i) currently provides for the following position limits for narrow-based index options: (1) 18,000 contracts if the Exchange determines that any single underlying stock accounted, on average, for 30% or more of the index value during the 30-day period immediately preceding the semi-annual review of the pertinent index option required by Phlx Rule 1001A(b)(ii); (2) 24,000 contracts if the Exchange determines, at the time of the required semi-annual review, that any single underlying stock accounted, on average, for 20% or more of the index value or that any five underlying stocks together accounted, on average, for more than 50% of the index value, but that no single stock in the group accounted, on average, for 30% or more of the index value, during the 30-day period immediately preceding the review; or (3) 31,500 contracts if the Exchange determines that the conditions specified above which would require the establishment of a lower limit have not occurred. In addition, the rule provides that position limits with respect to options on the KBW Bank Index are 44,000 contracts.

⁶ Phlx exercise limits in Phlx Rule 1002A, Exercise Limits, are established by reference to position limits. The proposed increase in position limits for the Specified Index Options would therefore effectively increase exercise limits for these options. See Phlx Rule 1002A.

the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.⁷ In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁸ which requires, among other things, 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 believes that the Exchange's proposal to increase the three tiered levels of position limits for the Specified Index Options is reasonable. Specifically, the Commission believes that increasing the three tiered levels of position limits for the Specified Index Options may bring additional depth and liquidity to these index options classes without significantly increasing concerns regarding manipulation or disruption of the market for index options or the underlying component securities.⁹

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-Phlx-2009-113) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,
Deputy Secretary.

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⁷ In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

⁹ The Exchange states that it dedicates substantial resources to monitoring the markets for evidence of manipulation or disruption caused by investors with positions at or near current position or exercise limits, and that the proposed increased position limits would not diminish the surveillance function in this regard. See Notice, *supra* note 3.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹⁴ 15 U.S.C. 78q-1(b)(3)(F).

¹⁵ 15 U.S.C. 78q-1.

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 61326 (January 11, 2010), 75 FR 2902 ("Notice").