

company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1-1 under the Act. For the purposes of rule 12d1-2, "securities" means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1-2 under the Act, but for the fact that the Funds of Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1-2(a) to allow the Funds of Funds to invest in Other Investments. Applicants assert that permitting the Funds of Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Prior to approving any investment advisory agreement under section 15 of the Act, the board of the appropriate Fund of Funds, including a majority of the directors or trustees who are not "interested persons" as defined in section 2(a)(19) of the Act, will find that the advisory fees, if any, charged under the agreement are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any Underlying Fund's advisory agreement. Such finding, and the basis upon which the finding is made, will be recorded fully in the minute books of the appropriate Fund of Funds.

2. Applicants will comply with all provisions of rule 12d1-2 under the Act, except for paragraph (a)(2), to the extent that it restricts any Fund from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57706; File No. SR-ISE-2007-77]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Relating to Complex Orders

April 24, 2008.

I. Introduction

On August 24, 2007, the International Securities Exchange, LLC ("ISE" 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 proposal to amend ISE Rule 722, "Complex Orders," to provide an opportunity for marketable complex orders to receive price improvement and to describe the execution of complex orders on the ISE in greater detail. The ISE filed Amendment Nos. 1 and 2 to the proposal on November 27, 2007, and March 11, 2008, respectively.³ The proposed rule change, as modified by Amendment Nos. 1 and 2, was published for comment in the **Federal Register** on March 21, 2008.⁴ The Commission received no comments regarding the proposed rule change, as amended.

II. Description of the Proposal

The ISE proposes to amend ISE Rule 722 to provide an opportunity for marketable complex orders to receive price improvement and to describe the execution of complex orders on the ISE

in greater detail.⁵ The ISE proposes to amend ISE Rule 722 to specify that, subject to 722(b)(2), a complex order will be executed automatically against orders on the complex order book in price priority and in time priority at the same price.⁶ A complex order that is not executed against another complex order will be executed automatically against bids and offers for the individual legs of the complex order, provided that the complex order may be executed in full or in a permissible ratio by such bids and offers.⁷ The Exchange's system, however, will not execute two complex orders against each other if the execution price of the options leg(s) would be below the best price available on the ISE for the options series, nor will it execute two complex orders at a price that matches the best price available on the ISE when there is a Public Customer order on the book.⁸

The ISE also proposes to amend ISE Rule 722 to allow members to choose to provide complex orders with an opportunity for price improvement by marking such orders for price improvement.⁹ Members will be able to mark all complex orders for price improvement, including stock-option orders. A marketable complex order that has been marked for price improvement will be exposed on the ISE's complex order book for a period of up to one second before being executed automatically against other complex orders, or against bids and offers for the individual legs of the order.¹⁰ Members may view the complex orders through an API. During the exposure period, market participants will have an opportunity to enter contra-side complex orders.¹¹ While the ISE will not conduct an auction for the incoming marketable complex order (*i.e.*, there will be no messages sent to members specifically soliciting interest to trade with the complex order), the exposure period will provide an opportunity for

⁵ The proposal also deletes ISE Rule 722(b)(5), which contains outdated cross-references.

⁶ See ISE Rule 722(b)(3)(i).

⁷ See ISE Rule 722(b)(3)(ii).

⁸ See ISE Rule 722(b)(2).

⁹ See ISE Rule 722(b)(3)(iii).

¹⁰ See ISE Rule 722(b)(3)(iii). The Exchange will determine the length of the exposure period, not to exceed one second, from time to time. The ISE will communicate the initial exposure period and any subsequent changes to the exposure period to members via an Exchange circular.

¹¹ The complex order book is available to all ISE market participants. However, the application of ISE Rules 717(d) and (e), which require a three-second exposure period before a member may execute an agency order against a proprietary order or a solicited order, will prohibit the member that entered the complex order from entering contra-side principal orders or solicited orders during the exposure period.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 2 replaces the original filing in its entirety.

⁴ See Securities Exchange Act Release No. 57507 (March 14, 2007), 73 FR 15241.

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

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

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).