

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**

According to the Exchange, the purpose of the proposed rule change is to amend the definition of "ITS/CAES Market Maker" to eliminate the current reference to "ITS/CAES securities." Since 1982, the National Association of Securities Dealers' participation in the ITS Plan had been limited to securities subject to SEC Rule 19c-3 ("ITS/CAES Securities").<sup>6</sup> On December 9, 1999, the Commission adopted amendments to the ITS Plan to expand the ITS/CAES linkage to all listed securities, thus rendering unnecessary the term "ITS/CAES securities."<sup>7</sup>

**2. Statutory Basis**

The Exchange believes that the proposed amendment to NYSE Rule 15A is consistent with section 6(b)(5) of the Act<sup>8</sup> as it is designed to promote just and equitable principles of trade. The Exchange also believes the amendment is consistent with section 11A(a)(1)(D) of the Act,<sup>9</sup> which calls for the linking of markets for qualified securities.

*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.

*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 foregoing 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 from the date on which it was filed, or

such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup> 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 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal office of the Exchange.

All submissions should refer to File No. SR-NYSE-00-33 and should be submitted by January 25, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Jonathan G. Katz,**

*Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43773; File No. SR-Phlx-00-31]

**Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendments No. 1 and No. 2 by the Philadelphia Stock Exchange, Inc., Relating to the Listing of Trust Issued Receipts**

December 27, 2000.

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 October 18, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On December 13, 2000, the Phlx filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On December 18, 2000, the Phlx filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change and Amendments No. 1 and No. 2 from interested persons and to approve the proposal and Amendments No. 1 and No. 2 on an accelerated basis.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Phlx proposes to amend its rules to create listing criteria and additional trading halt criteria to allow the Exchange to list and trade trust issued receipts, and to trade Holding Company

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

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

<sup>3</sup> See Letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Nancy J. Sanow Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 12, 2000 ("Amendment No. 1"). In Amendment No. 1, the Phlx corrected technical errors in the rule text and the language of the rule text. The Phlx also deleted proposed Phlx Rule 803(j)(4) because the 4:00 p.m. deadline until which trust issued receipts can trade is already addressed in current Phlx Rule 101, Supplementary Material .02. The Phlx determined to reserve Phlx Rule 803(j)(4) for future use.

<sup>4</sup> See Letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Nancy J. Sanow Assistant Director, Division of Market Regulation, dated December 15, 2000 ("Amendment No. 2"). In Amendment No. 2, the Phlx renumbered proposed Phlx Rule 133, Supplementary Material .05 as proposed Phlx Rule 136(b). Phlx Rule 136 was created in a separate Phlx filing and relates to trading halts in certain exchange traded funds. See Securities Exchange Act Release No. 43717 (December 13, 2000) (Phlx-00-54). The Phlx also clarified certain changes to the rule text made in Amendment No. 1.

<sup>6</sup> 17 CFR 240.19c-3.

<sup>7</sup> See Securities Exchange Act Release No. 42212 (December 9, 1999), 64 FR 70297 (December 16, 1999).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78k-1(a)(1)(D).

<sup>10</sup> U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

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

Depository Receipts ("HOLDERS"),<sup>5</sup> a type of trust issued receipt, pursuant to unlisted trading privileges ("UTP").

Below is the text of the proposed rule change. Proposed new language is in *italics*.

\* \* \* \* \*

#### Rule 136. Trading Halts in Certain Exchange Traded Funds

(a) Rule 1047A(c) shall apply to the trading of Trust Shares listed pursuant to the terms of Rule 803(i). The term "option" as used therein shall be deemed for the purposes of this rule only to include a Trust Share.

(b) Rule 1047A(c) shall apply to the trading of Trust Issued Receipts listed pursuant to the terms of Rule 803(j). The term "option" as used therein shall be deemed for the purposes of this rule only to include a Trust Issued Receipt. The term "index" as used therein shall be deemed for the purposes of this rule only to mean "basket".

\* \* \* \* \*

#### Criteria for Listing—Tier I

##### Rule 803

##### (j) Trust Issued Receipts

(1) Applicability. Rule 803(j) is applicable only to Trust Issued Receipts. Except to the extent inconsistent with Rule 803(j) or unless the context otherwise requires, the provisions of the By-laws and all other rules and policies of the Board of Governors shall be applicable to the trading on the Exchange of such securities. Trust Issued Receipts are included within the definition of "security" or "securities" as such terms are used in the By-laws and Rules of the Exchange.

(2) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

(A) Trust Issued Receipts. The term "Trust Issued Receipt" means a security (i) that is issued by a trust ("Trust") which holds specified securities deposited with the Trust;

(ii) that, when aggregated in some specified minimum number, may be surrendered to the Trust by the beneficial owner to receive the securities; and

(iii) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities.

(B) Reporting Authority. The term "Reporting Authority" in respect of a particular series of Trust Issued

Receipts means the Exchange, a wholly-owned subsidiary of the Exchange, an institution (including the Trustee for that series of Trust Issued Receipts), or a reporting service designated by the Exchange or its subsidiary or by the exchange that lists a particular series of Trust Issued Receipts (if the Exchange is trading the particular series of Trust Issued Receipts pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series of Trust Issued Receipts, including, but not limited to, any current basket or portfolio value; the current value of the basket or portfolio of securities required to be deposited to the Trust in connection with issuance of that series of Trust Issued Receipts; the amount of any dividend equivalent payment or cash distribution to holders of that series of Trust Issued Receipts, net asset value, or other information relating to the creation, redemption or trading of that series of Trust Issued Receipts.

(3) Prospectus. Members and member organizations shall provide to all purchasers of newly issued Trust Issued Receipts a prospectus for the series of Trust Issued Receipts.

(4) Reserved.

(5) Designation. The Exchange may list and trade Trust Issued Receipts based on one or more securities. The Trust Issued Receipts based on particular securities shall be designated as a separate series and shall be identified by a unique symbol. The securities that are included in a series of Trust Issued Receipts shall be selected by the Exchange or its agent, a wholly-owned subsidiary of the Exchange, or by such other person as shall have a proprietary interest in such Trust Issued Receipts.

(6) Initial and Continued Listing. Trust Issued Receipts will be listed and traded on the Exchange subject to application of the following criteria:

(A) Initial Listing. For each Trust, the Exchange will establish a minimum number of Trust Issued Receipts required to be outstanding at the time of commencement of trading on the Exchange.

(B) Continued Listing. Following the initial twelve month period after formation of a Trust and commencement of trading on the Exchange, the Exchange will consider the suspension of trading in or removal from listing of a Trust upon which a series of Trust Issued Receipts is based under any of the following circumstances:

(i) if the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or

beneficial holders of Trust Issued Receipts for 30 or more consecutive trading days;

(ii) if the Trust has fewer than 50,000 receipts issued and outstanding;

(iii) if the market value of all receipts issued and outstanding is less than \$1,000,000; or

(iv) if such other event shall occur or condition exists which in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

(C) Upon termination of a Trust, the Exchange requires that Trust Issued Receipts issued in connection with such Trust be removed from Exchange listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of securities in the Trust falls below a specified amount.

(7) Term. The stated term of the Trust shall be as stated in the Trust prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

(8) Trustee. The Trustee must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.

(9) Voting. Voting rights shall be as set forth in the Trust prospectus.

(10) Limitation of Liability. Neither the Exchange, the Reporting Authority nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current basket or portfolio value, the current value of the portfolio of securities required to be deposited to the Trust; the amount of any dividend equivalent payment or cash distribution to holders of Trust Issued Receipts; net asset value; or other information relating to the creation, redemption or trading of Trust Issued Receipts, resulting from any negligent act or omission by the Exchange, or the Reporting Authority, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange or its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in

<sup>5</sup> "HOLDERS" and "Holding Company Depository Receipts" are service marks of Merrill Lynch & Co.

one or more underlying securities. The Exchange makes no warranty, express or implied, as to results to be obtained by any person or entity from the use of Trust Issued Receipts or any underlying basket or portfolio of securities or data included therein and the Exchange makes no express or implied warranties, and disclaims all warranties of merchantability or fitness for a particular purpose with respect to Trust Issued Receipts or any underlying basket or portfolio of securities or data included therein. This limitation of liability shall be in addition to any other limitation contained in the Exchange's Articles of Incorporation or By-laws or elsewhere in the Rules.

(11) Listing Fees and Other Rules. The Exchange may, in its discretion, waive listing fees for any issuer of Trust Issued Receipts listed on the Exchange pursuant to Rule 803(j). The provisions of Rules 847, 849, 850 and 851 do not apply to trusts issuing Trust Issued Receipts listed on the Exchange pursuant to Rule 803(j), or to the trustees or the sponsors thereof. In addition, consideration of the suspension of trading in or removal from listing of any Trust Issued Receipts pursuant to Rule 810 will be made pursuant to the criteria set forth in section 6(B) of this Rule 802(j) rather than the specific criteria set forth in subsections (1) through (5) of Rule 810(a).

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## 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 III 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 is proposing listing criteria and additional trading half criteria to allow the Exchange to list trust issued receipts, and to trade

currently issued HOLDRs,<sup>6</sup> a series of trust issued receipts, pursuant to UTP. The Exchange represents that trust issued receipts provide investors with a flexible, cost-effective way to purchase, hold and transfer the securities of one or more specified companies.

a. *Trust Issued Receipts Generally. Description.* Trust issued receipts are negotiable receipts which are issued by a trust representing securities of issuers that have been deposited and are held on behalf of the holders of the trust issued receipts. Trust issued receipts allow investors to hold securities investments from a variety of companies throughout a particular industry in a single, exchange-listed and traded instrument that represents their beneficial ownership of each of the deposited securities. Holders of trust issued receipts maintain beneficial ownership of each of the deposited securities evidenced by trust issued receipts. Holders may cancel their trust issued receipts at any time to receive the deposited securities.

Beneficial owners of the receipts have the same rights, privileges and obligations as they would have if they beneficially owned the deposited securities outside of the trust issued receipt program. For example, holders of the receipts have the right to instruct the trustee to vote the deposited securities evidenced by the receipts; receive reports, proxies and other information distributed by the issuers of the deposited securities to their security holders; and receive dividends and other distributions if any are declared and paid by the issuers of the deposited securities to the trustee.

*Creation of a Trust.* Trust issued receipts will be issued by a trust created pursuant to a depository trust agreement. After the initial offering, the trust may issue additional receipts on a continuous basis when an investor deposits the requisite securities with the trust. An investor in trust issued receipts will be permitted to withdraw his or her deposited securities upon delivery to the trustee of one or more round-lots of 100 trust issued receipts

and to deposit such securities to receive trust issued receipts.

b. *Criteria for Initial and Continued Listing.* The Exchange believes that the listing criteria proposed in its new rule are generally consistent with the "Other Securities" criteria currently found Phlx Rule 803(f) as well as the trust issued receipt listing criteria currently used by the Amex,<sup>7</sup> the Chicago Stock Exchange, Inc. ("CHX"),<sup>8</sup> and the Boston Stock Exchange, Inc. ("BSE").<sup>9</sup>

Under the proposal rule, if trust issued receipts are to be listed on the Exchange, the Exchange will establish a minimum number of trust issued receipts required to be outstanding at the time trading commences on the Exchange and will include that number in any required submission to the Commission.

With respect to continued listing, the proposed rule provides that the Exchange will consider the suspension of trading in, or removal from listing of, a trust upon which a series of trust issued receipts is based in certain circumstances. More specifically, following the initial twelve month period after formation of a trust and commencement of trading on the Exchange, the Exchange will consider the suspension of trading in or removal from listing of a trust upon which a series of trust issued receipts is based if: (1) The trust has more than sixty days remaining until termination and there are fewer than fifty record and/or beneficial holders of trust issued receipts for thirty or more consecutive trading days; (2) the trust has fewer than 50,000 receipts issued and outstanding; (3) the market value of all receipts issued and outstanding is less than \$1,000,000; or (4) such other event shall occur or condition exists which in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

These criteria are designed to eliminate less liquid products while maintaining the flexibility to avoid delisting trust issued receipts (leading to a possible termination of the trust) because of relatively brief fluctuations in market conditions that may cause the number of holders to vary.

The Exchange will not, however, be required to suspend or delist from trading, based on the proposed rule, any trust issued receipts for a period of one

<sup>6</sup> Currently-issued, HOLDRs includes Biotech, Broadband, Business to Business, Internet, Internet Architecture, Internet Infrastructure, Market 2000+, Pharmaceutical, Regional Bank, Semiconductor, Software, Telecom and Utilities HOLDRs, all of which are listed on the American Stock Exchange LLP ("Amex"). Within the next few weeks, the Exchange will file an amendment to the proposed listing standards to accommodate a change in the HOLDRs product related to the composition of the portfolio. The prospectus for Market 2000+ HOLDRs describes this change. Telephone conversation between John Dayton, Assistant Secretary and Counsel, Phlx, and Heather Traeger, Attorney, Division, Commission, on December 21, 2000.

<sup>7</sup> See Securities Exchange Act Release No. 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999) (SR-Emex-99-20).

<sup>8</sup> See Securities Exchange Act Release No. 42056 (October 22, 1999), 64 FR 58870 (November 1, 1999) (SR-CHX-99-22).

<sup>9</sup> See Securities Exchange Act Release No. 42347 (January 13, 2000), 64 FR 4451 (January 27, 2000) (SR-BSE-99-15).

year after the initial listing of such trust issued receipts for trading on the Exchange. Notwithstanding, in the first year and thereafter, if the number of companies represented by the deposited securities drops to less than nine, and each time thereafter the number of companies is reduced, the Exchange will consult with the Commission to confirm the appropriateness of continued listing of the trust issued receipts.

c. *Exchange Rules Applicable to the Trading of Trust Issued Receipts.* Trust issued receipts are considered "securities" under the Rules of the Exchange and are subject to all applicable trading rules, including the provisions of Phlx 2001A, ITS Trade-Throughs and Locked Markets, which addresses trade-throughs for ITS securities, as well as rules governing priority, parity and precedence of orders, market volatility-related trading halt provisions and responsibilities of the assigned specialist firm.<sup>10</sup> Exchange equity margin rules will apply.

Trust issued receipts will trade in the appropriate minimum variation, pursuant to Phlx Rule 125. If the trust issued receipts are also traded on the Amex, those receipts will trade at a minimum variation of  $\frac{1}{16}$  of \$1.00 for trust issued receipts selling at or above \$.25 and  $\frac{1}{32}$  of \$1.00 for those selling below \$.25. If the trust issued receipts are traded on any other exchange or are exclusively listed on the Phlx, different minimum variations may apply. In addition, the Exchange notes that due to industry-wide changes in minimum price variations, trading in trust issued receipts are expected to be converted from fractions to decimals.<sup>11</sup>

The Exchange's surveillance procedures for trust issued receipt will be similar to the procedures used for Trust Shares and will incorporate and rely upon existing Phlx surveillance systems.

Prior to the commencement of trading of each new trust issued receipt, the Exchange will distribute a circular to its members and member organizations alerting them to the unique characteristics of trust issued receipts, including the fact that trust issued receipts are not individually redeemable. The circular will also confirm that trust issued receipts are subject to the Exchange's rule relating to trading halts in certain Exchange traded

funds (Phlx Rule 136) and other criteria set forth in proposed Phlx Rule 136(b).<sup>12</sup> The circular will advise members that, in exercising the discretion described in proposed Phlx Rule 136(b), appropriate Exchange officials may consider a variety of factors, including the extent to which trading is not occurring in an underlying security and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.<sup>13</sup>

d. *Disclosure to Customers.* The Exchange will require its members to provide all purchasers of newly issued trust issued receipts with a prospectus for that series of trust issued receipts. Exchange members will be informed of this requirement through the informational circular on each HOLDRs product to be delivered prior to the commencement of trading. The Exchange believes that delivery of this information will apprise investors of the terms, characteristics, and risks of trading trust issued receipts.

e. *Trading of Currently-Issued HOLDRs.* As noted above, upon approval of the Exchange's listing standards for trust issued receipts, the Exchange intends to begin trading various series of trust issued receipts, specifically currently-issued HOLDRs, pursuant to UTP.<sup>14</sup> All currently issued HOLDRs are listed on the Amex.

The Exchange requests approval to trade currently-issued HOLDRs on a UTP basis when it determines it is advisable to do so. Currently-issued HOLDRs will be subject to all Exchange trading rules applicable to securities trading on a UTP basis with the following exceptions. Currently-issued HOLDRs may be acquired, held or transferred only in round-lot amounts (or round-lot multiples) of 100 receipts. Thus, upon implementation of the appropriate systems feature, orders for less than a round-lot will be rejected, while orders for greater than a round-lot, but not a round-lot multiple, will be executed to the extent of the largest round-lot multiple, rejecting the remaining odd-lot.<sup>15</sup> In addition, transactions in currently-issued

HOLDRs have received an exemption from the short sale rule; therefore, they will not be subject to that restriction on the Exchange.<sup>16</sup> Transactions in trust issued receipts may be effected until 4:00 p.m.<sup>17</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act<sup>18</sup> in general, and in particular, with section 6(b)(5),<sup>19</sup> in that it is designed to promote just and equitable principle 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 Exchange believes that trading of currently-issued HOLDRs on a UTP basis should add additional liquidity and provide investors with another choice of venue to conduct trading in these products.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

The Exchange did not receive any written comments on the proposed rule change.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change and Amendments No. 1 and No. 2 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission,

<sup>16</sup> The Exchange understands that the Commission has provided an exemption from the short sale rule, Rule 10a-1 under the act, for transactions in HOLDRs. See SEC Exemption Letter, 1999 WL 1038048 (S.E.C.). The Exchange will issue a notice to its members detailing the terms of the exemption prior to any trading in HOLDRs.

<sup>17</sup> See Amendment No. 1, *supra* note 3. Amendment No. 1 indicates the Phlx Rule 101, Supplementary Material .02 states that equities on the Exchange's Equity Floor trade until 4:00 p.m. unless otherwise announced by the Exchange. The Exchange has confirmed that it will make the appropriate filing with the Commission should it decide to change this time. Telephone conversation between John Dayton, Assistant Secretary and Counsel, Phlx, and Sapna C. Patel, Attorney, Division, Commission, December 14, 2000.

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> The Phlx confirmed the Phlx Rule 133 should be changed to Phlx Rule 136, and that proposed Phlx Rule 133, Supplementary Material .05, should be changed to proposed Phlx Rule 136(b) in accordance with the changes made in Amendment No. 2, *supra* note 4. Telephone conversation between John Dayton, Assistant Secretary and Counsel, Phlx, and Sapna C. Patel, attorney, Division, Commission, December 14, 2000.

<sup>13</sup> *Id.*

<sup>14</sup> See *supra* note 6.

<sup>15</sup> For example, an order for 50 Trust Issued Receipts will be rejected, while an order for 1,050 Trust Issued Receipts will be executed in part (1,000) and rejected in part (50).

<sup>10</sup> If trust issued receipts are traded only in round lots (or round lot multiples), the Exchange's rules relating to odd lot executions will not apply.

<sup>11</sup> The Exchange notes that Semiconductor HOLDRs are participating in the Decimal Pilot Program and therefore, if traded on the Exchange, will trade in the appropriate minimal variation.

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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Phlx-00-31 and should be submitted by January 25, 2001.

#### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

##### A. Generally

The Commission finds that the proposed rule change is consistent with the requirements of section (b)(5) of the Act<sup>20</sup> and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds, as it did in the Amex, the CHX, and the BSE orders approving the listing and trading of trust issued receipts and Internet HOLDRs,<sup>21</sup> that the proposed establishing listing standards for trust issued receipts and to trade Internet HOLDRs will provide investors with a convenient and less expensive way of participating in the securities market. The proposal should advance the public interest by providing investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a single security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day. Accordingly, the Commission finds that the proposal will facilitate transactions in securities, 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.<sup>22</sup>

As noted in the Amex approval order, the Commission believes that trust issued receipts will provide investors with an alternative to trading a broad range of securities on an individual basis, and will give investors the ability to trade trust issued receipts representing a portfolio of securities continuously throughout the business day in secondary market transactions at negotiated prices. Trust issued receipts will allow investors to: (1) Respond quickly to changes in the overall securities markets generally and for the industry represented by a particular trust; (2) trade, at a price disseminated on a continuous basis, a single representing a portfolio of securities that the investor owns beneficially; (3) engage in hedging strategies similar to those used by institutional investors; (4) reduce transaction costs for trading a portfolio of securities; and (5) retain beneficial ownership of the securities underlying the trust issued receipts.

Although trust issued receipts are not leveraged instruments, and, therefore, do not possess any of the attributes of stock index options, their prices will be derived and based upon the securities held in their respective trusts. Accordingly, the level of risk involved in the purchase or sale of trust issued receipts is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for trust issued receipts is based on a basket of securities.<sup>23</sup> Nevertheless, the Commission believes that the unique nature of trust issued receipts raises certain product design, disclosure, trading, and other issues.

##### B. Trading of Trust Issued Receipts—Listing and UTP

The Commission finds that the Phlx's proposal contains adequate rules and procedures to govern the trading of trust issued receipts whether by listing or pursuant to UTP. Trust issued receipts are equity securities that will be subject to the full panoply of Phlx rules governing the trading of equity securities on the Phlx, including, among others, rules governing the priority,

parity and precedence of orders, responsibilities of the specialist, account opening and customer suitability requirements, and the election of a stop or limit order.<sup>24</sup>

In addition, the Phlx had developed specific listing and delisting criteria for trust issued receipts that will help to ensure that a minimum level of liquidity will exist for trust issued receipts to allow for the maintenance of fair and orderly markets. The delisting criteria also allows the Phlx to consider the suspension of trading and the delisting of a trust issued receipt if an event occurred that made further dealings in such securities inadvisable. This will give the Phlx flexibility to delist trust issued receipts if circumstances warrant such action. The Phlx's proposal also provides procedures to halt trading in trust issued receipts in certain enumerated circumstances.

Moreover, in approving this proposal, the Commission notes the Exchange's belief that trust issued receipts will not trade at a material discount or premium in relation to the overall value of the trusts' assets because of potential arbitrage opportunities. The Exchange represents that the potential for arbitrage should keep the market price of a trust issued receipt comparable to the overall value of the deposited securities.

Furthermore, the Commission believes that the Exchange's proposal to trade trust issued receipts in minimum fractional increments of  $\frac{1}{16}$  of \$1.00 is consistent with the Act.<sup>25</sup> The Commission believes that such trading should enhance market liquidity, and should promote more accurate pricing, tighter quotations, and reduced price fluctuations. The Commission also believes that such trading should allow customers to receive the best possible execution of their transactions in trust issued receipts.

Finally, the Phlx will apply surveillance procedures for trust issued receipts that will be similar to the procedures used for Trust Shares and will incorporate and rely upon existing Phlx surveillance procedures governing equities. The Commission believes that these surveillance procedures are adequate to address concerns associated

<sup>20</sup> *Id.*

<sup>21</sup> See *supra* note 9 (approving listing and trading of trust issued receipts and Internet HOLDRs on the BSE pursuant to UTP); see *supra* note 8 (approving listing and trading of trust issued receipts and Internet HOLDRs on the CHX pursuant to UTP); and see *supra* note 7 (approving listing and trading of trust issued receipts and Internet HOLDRs on the Amex).

<sup>22</sup> In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>23</sup> The Commission has concerns about continued trading of the trust issued receipts whether listed or pursuant to UTP, if the number of component securities falls to a level below nine securities, because the receipts may no longer adequately reflect a cross-section of the selected industry. Accordingly, the Phlx has agreed to consult the Commission concerning continued trading, once the trust has fewer than nine component securities, and for each subsequent loss of a security thereafter. Telephone conversation between John Dayton, Assistant Secretary and Counsel, Phlx, and Heather Traeger, Attorney, Division, Commission, November 29, 2000.

<sup>24</sup> Trading rules pertaining to the availability of odd-lot trading do not apply because trust issued receipts only can be traded in round-lots.

<sup>25</sup> The Exchange notes, however, that due to industry-wide changes in minimum price variations, trading in trust issued receipts are expected to be converted from fractions to decimals. More specifically, the Exchange notes that semiconductor HOLDRs are participating in the Decimal Pilot Program and therefore, if traded on the Exchange, will trade in the appropriate minimal variation.

with listing and trading trust issued receipts, including any concerns associated with purchasing and redeeming round-lots of 100 receipts. Accordingly, the Commission believes that the rules governing the trading of trust issued receipts provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

#### *C. Disclosure and Dissemination of Information*

The Commission believes that the Exchange's proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading trust issued receipts. The prospectus will address the special characteristics of a particular trust issued receipt basket, including a statement regarding its redeemability and method of creation. The Commission notes that all investors in trust issued receipts who purchase in the initial offering will receive a prospectus. In addition, anyone purchasing a trust issued receipt directly from the trust (by delivering the underlying securities to the trust) will also receive a prospectus. Finally, all Phlx member firms who purchase trust issued receipts from the trust for resale to customers must deliver a prospectus to such customers.

The Commission also notes that upon the initial listing of any trust issued receipts, the Exchange will issue a circular to its members explaining the unique characteristics and risks of this type of security. The circular also will note the Exchange members' prospectus delivery requirements, and highlight the characteristics of purchases in trust issued receipts. The circular also will inform members of Exchange policies regarding trading halts in issued receipts.

#### *D. Accelerated Approval*

The Phlx has requested that the Commission find good cause for approving the proposed rule change and Amendments No. 1 and No. 2 to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission believes that the Exchange's proposal to trade trust issued receipts, and specifically the existing series of HOLDRs<sup>26</sup> pursuant to UTP privileges, will provide investors with a convenient and less expensive way of participating in the securities markets. The Commission believes that the proposed rule change should produce added benefits to investors

through the increased competition between other market centers trading the product. Specifically, the Commission believes that by increasing the availability of trust issued receipts, and in particular Internet HOLDRs, as an investment tool, the Phlx's proposal should help provide investors with increased flexibility in satisfying their investment needs, by allowing them to purchase and sell a single security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day. The Commission notes, however, that notwithstanding approval of the listing standards for trust issued receipts, other similarly structured products, including trust issued receipts based on other industries, will require review by the Commission prior to being traded on the Exchange. Additional series cannot be listed by the Exchange prior to contacting Division staff. In addition, the Phlx may be required to submit a rule filing prior to trading a new issue or series on the Exchange.

As noted above, the Commission has approved the listing and trading of trust issued receipts, including various series of HOLDRs, at the Amex, the CHX, and the BSE, under rules that are substantially similar to Phlx Rule 803(j). The trading requirements of trust issued receipts at the Phlx will be substantially similar to the trading requirements of trust issued receipts at the Amex, the CHX, and the BSE. The Commission published those rules in the **Federal Register** for the full notice and comment period. No comments were received on the proposed rules, and the Commission found them consistent with the Act.<sup>27</sup> The Commission does not believe that trading of this product raises novel regulatory issues that were not addressed in the previous filing.

The Commission also finds good cause for approving Amendments No. 1 and No. 2 prior to the thirtieth day after notice of the Amendments is published in the **Federal Register** pursuant to section 19(b)(2) of the Act.<sup>28</sup> Amendment No. 1 makes technical changes to the proposed rule text, deletes proposed Phlx Rule 803(j)(4) because the 4:00 p.m. deadline until which trust issued receipts can trade is already mentioned in current Phlx Rule 101, Supplementary material .02, and indicates that the Phlx is reserving Phlx Rule 803(j)(4) for future use. Amendment No. 2 rennumbers proposed Phlx Rule 133, Supplementary Material .05 as proposed Phlx Rule 136(b) to place this proposed rule in the

appropriate section of the Phlx Rules. Phlx Rule 136 was created in a separate Phlx filing and relates to trading halts in certain exchange traded funds. In Amendment No. 2, the Phlx also clarifies certain changes to the rule text made in Amendment No. 1. The Commission finds that accelerated approval of Amendments No. 1 and No. 2 is appropriate in order to permit the Phlx to establish accurate and orderly rules regarding the listing and trading of trust issued receipts.

Accordingly, the Commission finds good cause for approving the proposed rule change and Amendments No. 1 and No. 2 prior to the thirtieth day after the date of publication of notice in the **Federal Register**.

*It is Therefore Ordered*, pursuant to section 19(b)(2) of the Act,<sup>29</sup> that the proposed rule change (SR-Phlx-00-31) and Amendments No. 1 and No. 2 are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>30</sup>

**Jonathan G. Katz,**  
*Secretary.*

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## **DEPARTMENT OF STATE**

### **Office of Defense Trade Controls**

**[Public Notice 3531]**

### **Notifications to the Congress of Proposed Commercial Export Licenses**

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

**EFFECTIVE DATE:** As shown on each of the nine letters.

**FOR FURTHER INFORMATION CONTACT:** Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202 663-2700).

**SUPPLEMENTARY INFORMATION:** Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and

<sup>26</sup> See *supra* note 6.

<sup>27</sup> See *supra* note 21.

<sup>28</sup> 15 U.S.C. 78s(b)(2).

<sup>29</sup> *Id.*

<sup>30</sup> 17 CFR 200.30-3(a)(12).