

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-ISE-2008-35. 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-ISE-2008-35 and should be submitted on or before May 27, 2008.

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

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57744; File No. SR-ODD-2008-01]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of Accelerated Delivery of Supplement to the Options Disclosure Document Reflecting Changes to Disclosure Regarding Certain Binary Options and Delayed Start Option Series; and Amendment to the Options Disclosure Document Front Cover Page To Update the Markets in Which Options Are Traded

April 30, 2008.

On December 21, 2007, The Options Clearing Corporation ("OCC") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Rule 9b-1 under the Securities Exchange Act of 1934 ("Act"),¹ five preliminary copies of a supplement to its options disclosure document ("ODD") reflecting changes to disclosure regarding certain binary options and delayed start option series ("DSOs").² The ODD would also be amended to update its front inside cover page so that it contains a current list of the U.S. exchanges that trade options issued by the OCC. On April 25, 2008, the OCC submitted to the Commission five definitive copies of the supplement.³

The ODD currently contains general disclosures on the characteristics and risks of trading standardized options. Recently, the American Stock Exchange, LLC amended its rules to permit the listing and trading of binary options on individual stocks and exchange-traded funds, also known as fixed return options.⁴ The Chicago Board Options Exchange, Incorporated amended its rules to permit the listing and trading of certain DSOs.⁵ The NASDAQ Stock Market LLC ("Nasdaq") began trading options March 31, 2008.⁶ The proposed

supplement amends the ODD to accommodate these changes by providing disclosure regarding certain binary options and DSOs, and to update the front cover page of the ODD.

Specifically, the proposed supplement to the ODD adds new disclosure regarding the characteristics of binary options on individual equity securities, which includes fund shares, as well as the special risks of these binary options other than credit default options.⁷ The proposed supplement to the ODD also adds new disclosure regarding the characteristics of DSOs and the risks associated with their purchase and sale. Finally, the ODD would be amended to add Nasdaq, which currently trades options issued by OCC, and its corporate address to the front cover page of the ODD. This change will ensure that the ODD accurately identifies the markets on which options currently trade. The proposed supplement is intended to be read in conjunction with the more general ODD, which, as described above, discusses the characteristics and risks of options generally.⁸

Rule 9b-1(b)(2)(i) under the Act⁹ provides that an options market must file five copies of an amendment or supplement to the ODD with the Commission at least 30 days prior to the date definitive copies are furnished to customers, unless the Commission determines otherwise, having due regard to the adequacy of information disclosed and the public interest and protection of investors.¹⁰ In addition, five copies of the definitive ODD, as amended or supplemented, must be filed with the Commission not later than the date the amendment or supplement, or the amended options disclosure document, is furnished to customers.

(order approving File Nos. SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080).

⁷ As noted above, the proposed supplement provides disclosure that addresses binary options on individual stock options and exchange-traded fund shares. The Commission also notes that disclosure on credit default options, which are also binary options, is currently addressed in the ODD through the previously issued June 2007 supplement. See Securities Exchange Act Release No. 55921 (June 18, 2007), 72 FR 34495 (June 22, 2007) (SR-ODD-2007-03).

⁸ The Commission notes that the options markets must continue to ensure that the ODD is in compliance with the requirements of Rule 9b-1(b)(2)(i) under the Act, 17 CFR 240.9b-1(b)(2)(i), including when future changes regarding binary options and/or DSOs are made. Any future changes to the rules of the options markets concerning binary options and/or DSOs would need to be submitted to the Commission under Section 19(b) of the Act, 15 U.S.C. 78s(b).

⁹ 17 CFR 240.9b-1(b)(2)(i).

¹⁰ This provision permits the Commission to shorten or lengthen the period of time which must elapse before definitive copies may be furnished to customers.

¹ 17 CFR 240.9b-1.

² See letter from Jean M. Cawley, Senior Vice President and Deputy General Counsel, OCC, to Sharon Lawson, Senior Special Counsel, Division of Trading and Markets ("Division"), Commission, dated December 20, 2007.

³ See letter from Jean M. Cawley, Senior Vice President and Deputy General Counsel, OCC, to Sharon Lawson, Senior Special Counsel, Division, Commission, dated April 25, 2008.

⁴ See Securities Exchange Act Release No. 56251 (August 14, 2007), 72 FR 46523 (August 20, 2007) (SR-Amex-2004-27).

⁵ See Securities Exchange Act Release No. 56855 (November 28, 2007), 72 FR 68610 (December 5, 2007) (SR-CBOE-2006-90). CBOE Rule 24.9(d)(1) permits it to trade DSOs on any security index approved for options trading on the CBOE.

⁶ See Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008)

¹⁶ 17 CFR 200.30-3(a)(12).

The Commission has reviewed the proposed supplement and finds, having due regard to the adequacy of information disclosed and the public interest and protection of investors, that the proposed supplement may be furnished to customers as of the date of this order.

It is therefore ordered, pursuant to Rule 9b-1 under the Act,¹¹ that definitive copies of the proposed supplement to the ODD (SR-ODD-2008-01), reflecting changes to disclosure regarding binary options, DSOs and the front cover page, may be furnished to customers as of the date of this order.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57737; File No. SR-Phlx-2008-28]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Position and Exercise Limits for Options on the DIAMONDS Trust

April 29, 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. ("Exchange" or "Phlx") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 1001 (Position Limits) to establish increased position limits for options on the Diamonds Trust, Series 1 ("DIA" or "DIA Options").

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

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

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange is proposing to amend Phlx Rule 1001 pertaining to position limits for options on DIA. In particular, the Exchange proposes to increase position limits for DIA Options to 300,000 contracts on the same side of the market, which should encourage a more liquid and competitive market environment to the benefit of customers interested in the product. The Commission previously approved a similar proposal of the Chicago Board Options Exchange ("CBOE").⁵

The Exchange also recently made permanent increased position limits for certain equity options on Phlx, which

were in effect on a pilot basis.⁶ The Exchange stipulated, as part of its proposal for such permanent approval, that "its surveillance procedures . . . and reporting procedures, in conjunction with the financial requirements and risk management review procedures already in place at the clearing firms and the Options Clearing Corporation, will serve to adequately address any concerns the Commission may have respecting account(s) engaging in manipulative schemes or assuming too high a level of risk exposure."⁷ These representations also apply to the current proposal to increase the position limits for DIA Options. The Exchange now seeks to increase the position and exercise limits for options on DIA on Phlx to the level that such limits are in effect on other options exchanges such as BOX and CBOE (300,000 contracts on the same side of the market).

The Exchange believes that the justifications behind the Commission's approval of CBOE's proposal to increase position limits on DIA Options should support the same increased position limits on such options on Phlx. Specifically, the Exchange believes that the "structure of the DIA options and the considerable liquidity of both the underlying cash and options market for DIA options lessen the opportunity for manipulation of this product and disruption in the underlying market that a lower position limit may protect against."⁸ The Exchange believes that the reporting requirements imposed under the Phlx rules will help protect against potential manipulation.⁹ Additionally, the Exchange believes that an increase in position limits on DIA Options on Phlx is also required for competitive purposes as well as for purposes of consistency and uniformity among the competing options exchanges. This, taken in conjunction with the permanent establishment of other increased position limits for certain equity options on Phlx,¹⁰ supports the Exchange's proposal related to increased position limits applicable to DIA Options.

⁶ See Securities Exchange Act Release No. 57418 (March 3, 2008), 73 FR 12493 (March 7, 2008) (SR-Phlx-2008-14).

⁷ *Id.*

⁸ See Securities Exchange Act Release No. 47346, *supra* note 5.

⁹ See Phlx Rule 1003.

¹⁰ See Securities Exchange Act Release No. 57418, *supra* note 6. See also Securities Exchange Act Release No. 57597 (April 1, 2008), 73 FR 18846 (April 7, 2008) (SR-Phlx-2008-24) (IWM position limits).

¹¹ 17 CFR 240.9b-1.

¹² 17 CFR 200.30-3(a)(39).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See Securities Exchange Act Release No. 47346 (February 11, 2003), 68 FR 8316 (February 20, 2003) (SR-CBOE-2002-26) (approving an increase in the position limits and exercise limits to 300,000 for DIA options). The Commission stated that "given the surveillance capabilities of the [CBOE] and the depth and liquidity in both the DIA options and the underlying cash market in DIAs, the Commission believes it is permissible to significantly raise position and exercise limits for DIA options without risk of disruption to the options or underlying cash markets." The Commission also stated that "financial and reporting requirements . . . should allow [CBOE] to detect and deter trading abuses arising from the increased position and exercise limits, and will also allow [CBOE] to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if deemed necessary."