

should provide investors with more tailored options on the Index and extend to investors the benefits of a listed, exchange market in customized index options.³⁸ The benefits of the PHLX's options market include, but are not limited to, a centralized market center, an auction market with posted transparent market quotations and transaction reporting, parameters and procedures for clearance and settlement, and the guarantee of OCC for all contracts traded on the PHLX. In addition, the Commission believes that the proposal to list and trade FLEX Index Options and Mini-Flex Index Options could help the PHLX to compete with the over-the-counter ("OTC") market in customized index options and help the PHLX to meet the demands of portfolio managers and other institutional investors who may use the OTC market to meet their hedging needs. The Commission notes that the PHLX rules governing the trading of FLEX index options, including the minimum size requirement for an RFQ, will apply to Mini-Flex Index Options.³⁹

Under the PHLX's rules, FLEX Index Options and Mini-Flex Index Options can be constructed with expiration exercise settlement based on the closing values of the Index's component securities, which potentially could result in adverse effects for the markets in these securities.⁴⁰ Although the Commission continues to believe that basing the settlement of index products on opening as opposed to closing prices on Expiration Friday helps to alleviate stock market volatility,⁴¹ these market impact concerns are reduced in the case of FLEX Index Options and Mini-Flex Index Options because the expiration of these options will not correspond to the normal expiration of any non-FLEX options (including options overlying the Index), stock index futures, and options on stock index futures. In particular, FLEX options may never expire on any "Expiration Friday" because under the PHLX's rules the expiration date of a FLEX option may not occur on a day that is on, or within, two business days of the expiration date of a non-FLEX option.⁴² The Commission believes that this should reduce the possibility that the exercise of FLEX Index Options or Mini-Flex Index Options at expiration will cause any additional pressure on

the market for the underlying securities at the same time non-FLEX Index Options expire.

F. Exclusive Licensing Agreement

As noted above, both commenters raised concerns about the PHLX's exclusive licensing agreement with Nasdaq to trade the Index Options. The Commission notes that the ISE has filed a petition for rulemaking to amend Rule 19c-5 under the Act⁴³ to prohibit options exchanges from entering into exclusive licensing agreements with respect to index option products.⁴⁴ The Commission believes that the issues raised by the commenters and by ISE in its petition for rulemaking regarding the exclusive licensing of index option products should be considered comprehensively rather than on an *ad hoc* basis in the context of a particular index option product or products, such as the Index Options. In addition, the Commission believes that investors will benefit from the availability of the Index Options because, as described above, they will provide investors with additional hedging and trading vehicles. Accordingly, the Commission believes that it is appropriate in the public interest to approve the current proposal in order to make the Index Options available to investors while the Commission considers the issues presented by the exclusive licensing of index option products in the context of the ISE's petition for rulemaking.

G. Accelerated Approval of Amendment No. 3

The Commission finds good cause to approve Amendment No. 3 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 3 strengthens the proposal by representing that the PHLX will notify the Commission staff upon the occurrence of certain changes in the Index. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,⁴⁵ to approve Amendment 3 on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether Amendment No. 3 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. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-PHLX-2003-66. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, your comments should be sent in hardcopy or by e-mail but not by both methods. 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 PHLX. All submissions should refer to File No. SR-PHLX-2003-66 and should be submitted by January 5, 2004.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁴⁶ that Amendment No. 3 be approved on an accelerated basis and that the proposed rule change (SR-PHLX-2003-66), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴⁷

Margaret H. McFarland,
Deputy Secretary.

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SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3555, Amdt. 3]

State of California

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective December 2, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning October 21, 2003 and continuing through December 2, 2003.

⁴⁶ 15 U.S.C. 78s(b)(2).

⁴⁷ 17 CFR 200.30-3(a)(12).

³⁸ FLEX options allow investors to customize certain terms, including size, term to expiration, exercise style, exercise price, and exercise settlement value.

³⁹ See note 10 *supra* and accompanying text.

⁴⁰ See 1992 Order.

⁴¹ See 1992 Order.

⁴² See PHLX Rule 1079(a)(6).

⁴³ 17 CFR 240.19c-5.

⁴⁴ See letter from David Krell, President and Chief Executive Officer, ISE, to Jonathan Katz, Secretary, Commission, dated November 1, 2002.

⁴⁵ 15 U.S.C. 78f(b)(5) and 78s(b)(2).