

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55891; File No. SR-Phlx-2007-39)

June 11, 2007

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to its Payment for Order Flow Pilot Program

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 May 18, 2007, 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, II, and III below, which Items have been substantially prepared by the Exchange. Phlx has designated this proposal as one establishing or changing a due, fee, or other charge imposed by Phlx under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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 Phlx proposes to extend its payment for order flow pilot program, which is currently in effect until May 27, 2007, for an additional one-year period until May 27, 2008. This proposal is scheduled to expire on the same date as the one-year pilot program in effect in

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

connection with the provisions of Exchange Rule 1080(l) relating to Directed Orders.<sup>5</sup>

Other than extending the date of the pilot program for an additional year, no other changes to the Exchange's current payment for order flow program are being proposed at this time.

The Exchange is also proposing to make minor clarifying changes to the Exchange's Summary of Equity Option and RUT and RMN Charges fee schedule to update the language that appears in a footnote and to clarify the title relating to the Exchange's payment for order flow fees.

Below is the text of the proposed rule change. Proposed deletions are in [brackets]; proposed additions are underlined.

#### **SUMMARY OF EQUITY OPTION CHARGES (p. 3/6)**

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#### **[EQUITY OPTION] PAYMENT FOR ORDER FLOW FEES\***

- (1) For trades resulting from either Directed or non-Directed Orders that are delivered electronically and executed on the Exchange: Assessed on ROTs, specialists and Directed ROTs on those trades when the specialist unit or Directed ROT elects to participate in the payment for order flow program.\*\*\*
- (2) No payment for order flow fees will be assessed on trades that are not delivered electronically.

QQQQ and options that are trading in the Penny Pilot Program	\$0.25 per contract
Remaining Equity Options	\$0.70 per contract

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<sup>5</sup> The provisions of Phlx Rule 1080(l) are in effect for a one-year pilot period. The Exchange filed a separate proposed rule change to extend the Rule 1080(l) one-year pilot program for an additional year until May 27, 2008. See Securities Exchange Release No. 55803 (May 23, 2007), 72 FR 30413 (May 31, 2007) (SR-Phlx-2007-37).

See Appendix A for additional fees.

\*Assessed on transactions resulting from customer orders and are available to be disbursed by the Exchange according to the instructions of the specialist units/specialists or Directed ROTs to order flow providers who are members or member organizations, who submit, as agent, customer orders to the Exchange or non-members or non-member organizations who submit, as agent, customer orders to the Exchange through a member or member organization who is acting as agent for those customer orders. The [is proposal] payment for order flow fees [will be in effect for trades settling on or after October 1, 2005 and] will remain in effect as a pilot program that is scheduled to expire on May 27, 200[7]8.

\*\*\*Any excess payment for order flow funds billed but not utilized by the specialist or Directed ROT will be carried forward unless the Directed ROT or specialist elects to have those funds rebated to the applicable ROT, Directed ROT or specialist on a pro rata basis, reflected as a credit on the monthly invoices. At the end of each calendar quarter, the Exchange will calculate the amount of excess funds from the previous quarter and subsequently rebate excess funds on a pro-rata basis to the applicable ROT, Directed ROT or specialist who paid into that pool of funds.

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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 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

The Exchange states that the purpose of extending the Exchange's payment for order flow program for an additional year is to remain competitive with other options exchanges that administer payment for order flow programs.<sup>6</sup>

Currently, the following payment for order flow fees are in effect at the Exchange:<sup>7</sup> (1) equity options (other than those options that trade as part of the Exchange's Penny Pilot Program)<sup>8</sup> and options on the Russell 2000® Index<sup>9</sup> traded under the symbol RUT and options

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<sup>6</sup> See e.g., Securities Exchange Act Release Nos. 53969 (June 9, 2006), 71 FR 34973 (June 16, 2006) (SR-CBOE-2006-53); 55265 (February 9, 2007), 72 FR 7697 (February 16, 2007) (SR-CBOE-2007-11); 55271 (February 12, 2007), 72 FR 7699 (February 16, 2007) (SR-ISE-2007-08); and 54152 (July 14, 2006), 71 FR 41488 (July 21, 2006) (SR-ISE-2006-36).

<sup>7</sup> See Securities Exchange Act Release Nos. 53841 (May 19, 2006), 71 FR 30461 (May 26, 2006) (SR-Phlx-2006-33); 54297 (August 9, 2006), 71 FR 47280 (August 16, 2006) (SR-Phlx-2006-47); 54485 (September 22, 2006), 71 FR 57017 (September 28, 2006) (SR-Phlx-2006-56); 55290 (February 13, 2007), 72 FR 8051 (February 22, 2007) (SR-Phlx-2007-05); and 55473 (March 14, 2007), 72 FR 13338 (March 21, 2007) (SR-Phlx-2007-12).

<sup>8</sup> Currently, the following option classes, listed by symbol, are traded in the Penny Pilot Program: QQQQ, IWM, SMH, GE, AMD, MSFT, INTC, CAT, WFMI, TXN, A, FLEX, and SUNW. See Securities Exchange Act Release No. 55290 (February 13, 2007), 72 FR 8051 (February 22, 2007) (SR-Phlx-2007-05). The Penny Pilot Program is scheduled to expire on July 26, 2007. If the Penny Pilot Program is not extended, the Exchange intends to file a separate proposed rule change to make any necessary changes to the payment for order flow pilot dates.

<sup>9</sup> Russell 2000® is a trademark and service mark of the Frank Russell Company, used under license. Neither Frank Russell Company's publication of the Russell Indexes nor its licensing of its trademarks for use in connection with securities or other financial products derived from a Russell Index in any way suggests or implies a representation or opinion by Frank Russell Company as to the attractiveness of investment in any securities or other financial products based upon or derived from any Russell Index. Frank Russell Company is not the issuer of any such securities or other financial products and makes no express or implied warranties of merchantability or fitness for any particular purpose with respect to any Russell Index or any data included or reflected therein, nor as to results to

on the one-tenth value Russell 2000® Index traded under the symbol RMN, are all assessed \$0.70 per contract; and (2) options that trade as part of the Exchange’s Penny Pilot Program are assessed \$0.25 per contract. Trades resulting from either Directed or non-Directed Orders that are delivered electronically over AUTOM<sup>10</sup> and executed on the Exchange are assessed a payment for order flow fee,<sup>11</sup> while non-electronically-delivered orders (i.e., represented by a floor broker) are not assessed a payment for order flow fee.<sup>12</sup>

The purpose of making minor technical changes to the payment for order flow fee section of the Exchange’s Summary of Equity Option and RUT and RMN Charges fee schedule is to delete obsolete words. Additionally, the purpose of deleting the words “equity option,” which appear in front of the payment for order flow fee section is to more clearly reflect that RUT and RMN, although index options, are also assessed payment for order flow charges.<sup>13</sup>

This proposal, consistent with the Exchange’s current payment for order flow program, will remain in effect as a pilot program that is scheduled to expire on the same date as the one-

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be obtained by any person or any entity from the use of the Russell Index or any data included or reflected therein.

<sup>10</sup> The term “AUTOM” is used interchangeably with the term “Phlx XL,” the Exchange’s fully electronic trading platform for options. The Exchange intends to file a separate proposed rule change to update its rules to reflect that orders are now delivered electronically over Phlx XL.

<sup>11</sup> Specialists and Directed ROTs who participate in the Exchange’s payment for order flow program are assessed a payment for order flow fee, in addition to ROTs. Therefore, the payment for order flow fee is assessed, in effect, on equity option transactions between a customer and an ROT, a customer and a Directed ROT, or a customer and a specialist.

<sup>12</sup> Electronically-delivered orders do not include orders delivered through the Floor Broker Management System pursuant to Exchange Rule 1063.

<sup>13</sup> See Securities Exchange Act Release No. 55473 (March 14, 2007), 72 FR 13338 (March 21, 2007) (SR-Phlx-2007-12) (The Exchange assesses equity option charges, including payment for order flow charges, on options on RUT and RMN).

year pilot program in effect in connection with the provisions of Exchange Rule 1080(l) relating to Directed Orders.<sup>14</sup>

2. Statutory Basis

The Exchange believes that the proposed rule change to amend its schedule of fees is consistent with Section 6(b) of the Act<sup>15</sup> in general, and Section 6(b)(4) of the Act<sup>16</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

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 not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>17</sup> and Rule 19b-4(f)(2)<sup>18</sup> thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to

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<sup>14</sup> See supra, note 5.

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

<sup>16</sup> 15 U.S.C. 78f(b)(4).

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>18</sup> 17 CFR 240.19b-4(f)(2).

the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in 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. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2007-39 on the subject line.

##### 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-Phlx-2007-39. 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. Copies of such filing also will be available for inspection and copying at the principal office of Phlx. 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-Phlx-2007-39 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

Nancy M. Morris  
Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).