

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53529; File No. SR-Phlx-2006-16)

March 21, 2006

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to its Dividend Spread and Merger Spread Program

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 February 24, 2006, 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 prepared by Phlx. Phlx has designated the proposed rule change as one establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) 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

Phlx proposes to: (1) amend its dividend spread strategy program to assess a \$0.05 per contract side license fee on additional equity option products in connection with dividend spread strategies to recapture license fees associated with the trading of these products; and (2) extend for a period of six months its fee caps on equity option transaction and comparison charges on

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

dividend spread transactions⁵ and merger spread transactions,⁶ and its \$0.05 per contract side license fee imposed for dividend spread transactions. The current fee caps and \$0.05 per contract side license fee are in effect as a pilot program that expired on March 1, 2006. The Exchange proposes to extend the pilot program for a six-month period until September 1, 2006. The Exchange also proposes to make a minor technical change to delete unnecessary text from its fee schedule and to correct a typographical error.

The text of the proposed rule change is available on Phlx's Web site at <http://www.phlx.com>, at the Office of the Secretary at Phlx, 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 proposal. 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.

⁵ For purposes of this proposal, a "dividend spread" transaction is any trade done within a defined time frame pursuant to a strategy in which a dividend arbitrage can be achieved between any two deep-in-the-money options.

⁶ For purposes of this proposal, the Exchange defines a "merger spread" transaction as a transaction executed pursuant to a merger spread strategy involving the simultaneous purchase and sale of options of the same class and expiration date, but different strike prices, followed by the exercise of the resulting long options position, each executed prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock.

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

1. Purpose

Currently, the Exchange imposes a fee cap on equity option transaction and comparison charges on merger spread strategy and dividend spread strategy transactions executed on the same trading day in the same options class. Specifically, Registered Options Traders’ (“ROTs) and specialists’ equity option transaction and comparison charges are capped at \$1,750 for transactions effected pursuant to a merger spread strategy or pursuant to a dividend spread strategy when the dividend is \$0.25 or greater. However, for dividend spread transactions for a security with a declared dividend or distribution of less than \$0.25, the ROTs’ and specialists’ equity option transaction and comparison charges are capped at \$1,000 for transactions effected pursuant to a dividend spread strategy executed on the same trading day in the same options class. The fee caps are implemented after any applicable rebates are applied to ROT and specialist equity option transaction and comparison charges.⁷

In addition, the Exchange assesses a license fee of \$0.05 per contract side for dividend spread strategy transactions in options in connection with certain products that carry license fees.⁸ The license fee of \$0.05 per contract side: (i) is not subject to the \$1,750 or \$1,000

⁷ Currently, the Exchange provides a rebate for certain contracts executed in connection with transactions occurring as part of a dividend spread or merger spread strategy. Specifically, for those options contracts executed pursuant to a dividend spread or merger spread strategy, the Exchange rebates \$0.08 per contract side for ROT executions and \$0.07 per contract side for specialist executions on the business day before the underlying stock’s ex-date. (The “ex-date” is the date on or after which a security is traded without a previously declared dividend or distribution. After the ex-date a stock is said to trade ex-dividend.) See Securities Exchange Act Release No. 51596 (April 21, 2005), 70 FR 22381 (April 29, 2005) (SR-Phlx-2005-19).

⁸ These products are listed on the Exchange’s fee schedule under the section entitled “\$60,000 “Firm Related” Equity Option and Index Option Cap.”

caps described above; (ii) is assessed in addition to any other transaction and comparison charges associated with dividend spread strategy transactions; and (iii) does not count towards reaching the \$1,750 or \$1,000 caps. The Exchange proposes to extend the pilot program for the current fee caps and \$0.05 per contract side license fee for a six-month period until September 1, 2006.⁹

The Exchange also proposes to recoup the license fees owed in connection with the trading of additional products. Specifically, in addition to the products already being charged a license fee under the Exchange's strategy fee pilot program, the Exchange proposes to assess the license fee of \$0.05 per contract side for dividend spread strategy transactions in options on: (1) State Street Global Advisors', a division of State Street Bank and Trust Company ("SSGA"), streetTracks based on the Dow Jones & Co., Inc. ("Dow Jones") Global Titans 50 IndexSM, (DGT); (2) SSGA's streetTracks based on the Dow Jones Wilshire 5000 IndexSM, (TMW); (3) BGI's iShares Dow Jones Select Dividend IndexSM, (DVY); (4) iShares Dow Jones U.S. Total Market IndexSM, (IYY); (5) iShares Dow Jones U.S. Basic Materials IndexSM, (IYM); (6) iShares Dow Jones U.S. Consumer Services Sector IndexSM, (IYC); (7) iShares Dow Jones U.S. Financial Sector IndexSM, (IYF); (8) iShares Dow Jones U.S. Financial Services Sector IndexSM, (IYG); (9) iShares Dow Jones U.S. Healthcare Sector IndexSM, (IYH); (10) iShares Dow Jones U.S. Industrial Sector IndexSM, (IYJ); (11) iShares Dow Jones U.S. Consumer Goods Sector IndexSM, (IYK); (12) iShares Dow Jones U.S. Real Estate Sector IndexSM, (IYR); (13) iShares Dow Jones U.S. Technology Sector IndexSM, (IYW); (14) iShares Dow Jones U.S. Telecommunications Sector IndexSM, (IYZ); (15) iShares Dow Jones U.S. Utilities Sector

⁹ Telephone conversation between Leah Mesfin, Special Counsel, Commission, and Cynthia Hoekstra, Director, Phlx, on March 21, 2006.

IndexSM, (IDU); and (16) First Trust's ETF based on the Dow Jones Select Microcap IndexSM, (FDM).¹⁰

Even with the assessment of the \$0.05 license fee per contract side, the Exchange believes that the fee caps and rebates should continue to encourage specialists and ROTs to provide liquidity for dividend spread strategy transactions. In addition, the purpose of extending the pilot program is to continue to attract additional liquidity to the Exchange and to remain competitive.

The reference to the \$1,000 and \$1,750 caps that are subject to a pilot program that expired on March 1, 2006 inadvertently appears twice on the fee schedule in the same paragraph. Therefore, the purpose of removing this sentence is to clarify and simplify the text relating to the caps and the pilot program as it appears on the Exchange's fee schedule. In addition, the purpose of changing one reference to the symbol "IWM" to "IYM" is to correct a typographical error. The symbol "IYM" is the symbol for iShares Dow Jones U.S. Basic Material IndexSM.¹¹

¹⁰ The products listed in this proposal were recently the subject of a proposed rule change filed with the Commission to include them on the list of products that are assessed a license fee of \$0.10 per contract side in connection with the Exchange's \$60,000 "Firm Related" Equity Option and Index Option Cap. This same list of products is also used to designate the products that are assessed a license fee of \$0.05 per contract side for dividend spread strategies in connection with transactions other than firm-related transactions. See Securities Exchange Act Release No. 53287 (February 14, 2006), 71 FR 9186 (February 22, 2006) (SR-Phlx-2006-10).

¹¹ "Dow Jones" and "SSGA's streetTracks based on the Dow Jones Global Titans 50 IndexSM", "SSGA's streetTracks based on the Dow Jones Wilshire 5000 IndexSM", "BGI's iShares Dow Jones Select Dividend IndexSM", "iShares Dow Jones U.S. Total Market IndexSM", "iShares Dow Jones U.S. Basic Materials IndexSM", "iShares Dow Jones U.S. Consumer Services Sector IndexSM", "iShares Dow Jones U.S. Financial Sector IndexSM", "iShares Dow Jones U.S. Financial Services Sector IndexSM", "iShares Dow Jones U.S. Healthcare Sector IndexSM", "iShares Dow Jones U.S. Industrial Sector IndexSM", "iShares Dow Jones U.S. Consumer Goods Sector IndexSM", "iShares Dow Jones U.S. Real Estate Sector IndexSM", "iShares Dow Jones U.S. Technology Sector IndexSM", "iShares Dow Jones U.S. Telecommunications Sector IndexSM", "iShares Dow Jones U.S. Utilities Sector IndexSM", and "First Trust's ETF based on the Dow Jones

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,¹² in general, and Section 6(b)(4),¹³ in particular, in that it is an equitable allocation of reasonable fees and other charges among its members.

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

The Exchange does not believe that proposed rule change will impose any burden on competition that is 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 either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁴ and subparagraph (f)(2) of Rule 19b-4 thereunder¹⁵ because it establishes or changes a due, fee, or other charge. 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 furtherance of the purposes of the Act.

IV. Solicitation of Comments

Select Microcap IndexSM, are service marks of Dow Jones & Company, Inc. and have been licensed for use for certain purposes by the Philadelphia Stock Exchange, Inc. The Dow Jones products are not sponsored, endorsed, sold or promoted by Dow Jones, and Dow Jones makes no representation regarding the advisability of investing in such product(s).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

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. Please include File Number SR-Phlx-2006-16 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-2006-16. 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

¹⁵ 17 CFR 240.19b-4(f)(2).

available publicly. All submissions should refer to File Number SR-Phlx-2006-16 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.¹⁶

Nancy M. Morris
Secretary

¹⁶ 17 CFR 200.30-3(a)(12).