

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54555; File No. SR-Phlx-2006-60)

October 2, 2006

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change Relating to NMS Linkage and Phlx's Covered Sale Fee

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 September 25, 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 and II below, which Items have been prepared by Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

Phlx proposes to amend its Rule 607, its Summary of Equity Charges, and the Nasdaq-100 Index Tracking StockSM Fee Schedule³ to allow the Exchange to charge the Covered Sale Fee to members and member organizations engaged in executing sales on another exchange or on a participant in the NASD's Alternative Display Facility ("ADF") that were routed over the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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NMS Linkage Plan or the Intermarket Trading System (“ITS”).⁴ Phlx also proposes to amend its Rule 607 to allow the Exchange to enter into arrangements with ADF participants to pass the Covered Sale Fee among the ADF participants where the Exchange has collected the Covered Sale Fee from its members and member organizations for sales executed on ADF participants through ITS, and when ADF participants have collected a fee from their members for sales executed on the Exchange through ITS. In addition, Phlx also proposes to amend Rule 607 to allow the Exchange to enter into arrangements with other exchanges to pass the Covered Sale Fee among the applicable exchanges where the Exchange has collected the Covered Sale Fee from its members and member organizations for sales executed on another exchange through the NMS Linkage Plan, and when other exchanges have collected a similar fee from their members for sales executed on the Exchange through the NMS Linkage Plan.

The text of the proposed rule change is available on the Exchange’s Web site (<http://www.phlx.com>), at the Exchange’s principal office, 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 III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

⁴ The Commission published a notice relating to the NMS Linkage Plan. See Securities Exchange Act Release No. 54239 (July 28, 2006), 71 FR 44328 (August 4, 2006) (File No. 4-524). An NMS Linkage Plan, dated August 1, 2006, reflecting Phlx’s inclusion as a participant, was sent to the Commission on August 8, 2006. The participants requested that the NMS Linkage Plan commence on October 1, 2006.

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

1. Purpose

The purpose of the proposed rule change is to allow Phlx to accommodate the billing and collection of its Covered Sale Fee⁵ for executions that originated as orders sent to and received from the NMS Linkage Plan, which is proposed to commence on October 1, 2006. Currently, Phlx Rule 607 authorizes Phlx to charge its members and member organizations the Covered Sale Fee for sale executions on the Exchange. Phlx Rule 607 also allows Phlx to enter into arrangements to charge other exchange when their members send orders to Phlx through ITS that result in sales on Phlx. Phlx also charges its members and member organizations a Covered Sale Fee when their orders, sent over ITS, result in a sale at another exchange. Phlx then uses that fee to cover the charge received from that exchange. The NMS Linkage Plan is the successor linkage plan to ITS for the equity markets.⁶ The proposed changes to Phlx Rule 607 and the Phlx Fee Schedule are intended to carry the Covered Sale Fee charges and arrangements that currently exist for ITS into the NMS Linkage Plan and to ADF participants.⁷

⁵ The Covered Sale Fee is currently imposed on members and member organizations engaged in executing sales on the Exchange or executing transactions, which were routed over the ITS, on another exchange during any computational period. The Covered Sale Fee is equal to (i) the Section 31 fee rate multiplied by (ii) the member's aggregate dollar amount of covered sales. See Securities Exchange Act Release No. 53088 (January 6, 2006), 71 FR 2286 (January 13, 2006) (SR-Phlx-2005-87).

⁶ The NASD has not joined the NMS Linkage Plan and will maintain linkage for its ADF participants through ITS.

⁷ Phlx, along with the other exchanges, intends to file a separate proposed rule change that will allow it to charge and be charged fees, including Phlx's Covered Sale Fee, for transactions that result from orders sent over the NMS Linkage Plan. See e.g., Securities Exchange Act Release No. 54480 (September 21, 2006), 71 FR 57596 (September 29, 2006) (SR-NYSE-2006-72). In addition, Phlx intends to make arrangements with ADF participants to charge and be charged fees, including Phlx's Covered Sale Fee, for transactions that result from orders sent over ITS because the NASD will not be joining

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁸ in general, and furthers the objective of Sections 6(b)(4) and 6(b)(5) of the Act⁹ in particular, in that it is an equitable allocation of reasonable fees among Exchange members and issuers and other persons using its facilities, designed to promote just and equitable principles 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, by creating a mechanism for charging the Covered Sale Fee for transactions over the NMS Linkage Plan.

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 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 solicited or received with respect to 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 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

the NMS Linkage Plan and will not be collecting or paying these fees on behalf of the ADF participants.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and (b)(5).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2006-60 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2006-60. 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 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-Phlx-2006-60 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No.1 Thereto

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission believes that the proposal is consistent with Sections 6(b)(4) of the Act, which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members and issuers and other persons using its facilities.

National securities exchanges obtain funds to pay their Section 31 fees to the Commission by charging fees to broker-dealers who generate the covered sales on which Section 31 fees are based. An exchange can obtain most of these funds by imposing a fee on one of its members whenever the member is on the sell side of a transaction. However, when the exchange accepts an ITS commitment to buy, the ultimate seller is a party on another market. The exchange lacks the ability to pass a fee to that seller directly, because the seller may not be a member of the exchange. The Commission previously approved an arrangement whereby Phlx collects fees from broker-dealers that place sell orders routed away over ITS,¹¹ then charges fees to or accepts fees from each other ITS participant exchange, depending on whether it is a net sender or net receiver of executed ITS sell orders with respect to that other exchange. The Commission believes that the current proposal, to continue this practice under the NMS Linkage Plan, is a reasonable means for Phlx to obtain funds to pay its Section 31 fees on covered sales resulting from NMS Linkage Plan trades and is consistent with the Act.

¹⁰ In approving this proposal, as amended, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ See Securities Exchange Act Release No. 52745 (November 7, 2005), 70 FR 69182 (November 14, 2005).

Under Section 19(b)(2) of the Act,¹² the Commission may not approve any proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof, unless the Commission finds good cause for so doing. Granting accelerated approval will permit the Exchange to charge the Covered Sale Fee to members and member organizations engaged in executing sale transactions on another exchange through the NMS Linkage Plan at the start of that plan's operation. Moreover, approving this proposal will enable Phlx to charge fees to or accept fees from an ADF participant that is not a member of the Exchange, depending on the net amount of sales between them conducted through ITS. The Commission expects that a non-member ADF participant will not be charged a fee unless it has entered into an agreement with the Exchange subjecting it to such an arrangement. Therefore, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publishing notice of filing thereof in the Federal Register. The Commission believes that such action is consistent with the protection of investors and the public interest.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹³ that the

¹² 15 U.S.C. 78s(b)(2).

¹³ Id.

proposed rule change (SR-Phlx-2006-60) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Nancy M. Morris
Secretary

¹⁴ 17 CFR 200.30-3(a)(12).