

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55071; File No. SR-Phlx-2006-84)

January 9, 2007

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto to Adopt an Appeal Fee

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 December 8, 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 substantially prepared by the Exchange. On December 20, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</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, as modified by Amendment No. 1, from interested persons.

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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> In Amendment No. 1, the Exchange modified the scope of its proposal to exempt appeals of decisions of the Nominating, Elections and Governance Committee from the proposed fee. Amendment No. 1 replaced the original filing in its entirety.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

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

The Exchange proposes to adopt a \$250.00 appeal fee for Appeals to the Board of Governors from decisions of Standing Committees<sup>6</sup> ("Appeal Fee"). An appeal from a decision of the Business Conduct Committee, the Hearing Officer, or a Hearing Panel, pursuant to Exchange Rule 960.9 and By-Law Article XI, Section 11-3, as well as an appeal from a decision of the Nominating, Elections and Governance Committee, pursuant to By-Law Article XI, Section 11-1, will not be subject to the Appeal Fee.<sup>7</sup> The Appeal Fee, which will be paid by appellant at the time of filing an appeal, will be refunded to the appellant in the event the Board of Governors overturns the decision of the Standing Committee.

This fee became effective January 1, 2007. The text of the proposed rule change is available at the Commission's Public Reference Room, the Exchange's Web site at <http://www.phlx.com/exchange/rulefilings/2006/SR-2006-84.pdf>, and at the Exchange.

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.

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<sup>6</sup> See Exchange By-Law Article X, Section 10-1 for the list of Standing Committees of the Exchange.

<sup>7</sup> Telephone conversation between Leah Mesfin, Special Counsel, Division of Market Regulation, Commission, and Angela Dunn, Director and Counsel, Phlx, on December 21, 2006.

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

1. Purpose

The Exchange represents that the purpose of the proposed rule change is to reduce the number of frivolous appeals by assessing a fee for all appeals that are upheld. Currently, three Governors hear appeals from decisions of Standing Committees, with the exception of an appeal from the Nominating, Elections and Governance Committee, which is heard by a majority of Governors who are not then candidates for office. The appeal may require several hours of time from each Governor. The Exchange believes that the appeal process is subject to abuse by members, participants, member organizations and participant organizations who incur no downside to filing repeated appeals, whether valid or otherwise. The Exchange believes that, currently, the ease with which an appeal can be filed and receive a "second look" at no cost creates a potential for abuse. This fee will become effective January 1, 2007.

An appeal from a decision of the Business Conduct Committee, the Hearing Officer or a Hearing Panel, pursuant to Exchange Rule 960.9 and By-Law Article XI, Section 11-3, and an appeal from a decision of the Nominating, Elections and Governance Committee, pursuant to By-Law Article XI, Section 11-1, will not be subject to the Appeal Fee. The Appeal Fee, which will be paid by appellant at the time of filing an appeal, will be refunded to the appellant in the event the Board of Governors overturns the decision of the Standing Committee.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>9</sup> in particular in

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78(f)(b)(5).

that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove the impediments to and perfect the mechanism of a free and open market and a national market system. Finally, the proposed rule change furthers the objectives of Section 6(b)(4) of the Act<sup>10</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 Phlx 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 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 Act<sup>11</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>12</sup> 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.<sup>13</sup>

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<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

<sup>13</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change the Commission considers the period to commence on December 20, 2006, the date on which the Exchange filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2006-84 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-2006-84. 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-2006-84 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>14</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).