

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56274; File No. SR-Phlx-2007-54)

August 16, 2007

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments No. 1 and 2 Thereto Relating to Market Access Providers

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 August 6, 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 Phlx. The Phlx filed Amendments No. 1 and 2 to the proposed rule change on August 14, 2007 and August 16, 2007, respectively. The Phlx filed the proposed rule change pursuant to Section 19(b)(3)(A) 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, as amended, from interested persons.

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

The Phlx proposes to amend its schedule of fees to institute a new subsidy program (the “Subsidy”), which would be available to qualifying Phlx member organizations that offer to customers automated order routing systems and electronic market access to U.S. options markets (“Market Access Providers” or “MAPs”) and which would provide such qualified Market Access

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

Providers incentives to route additional option orders to the Phlx and to offer to their customers certain services that are intended to promote the business of the Phlx.

The Subsidy would be applicable to any Exchange member organization that qualifies as a MAP who elects to participate by submitting any application(s) and/or form(s) required by the Exchange and complying with other conditions enumerated below. The Subsidy would apply to any MAP that has elected to participate for the calendar month that commences following the satisfaction by such MAP of all conditions of participation, and for each calendar month thereafter, provided that such conditions continue to be satisfied.

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 Phlx 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 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 purpose of the proposed rule change is to provide incentives to Exchange member organizations and their customers.

For a MAP to be eligible for the Subsidy, a MAP (an "Eligible MAP") would be required to:

- (1) submit any required Exchange applications and/or forms for Exchange approval to participate as an Eligible MAP;

(2) provide to its customers systems that enable the electronic routing of equity option orders to all of the U.S. options exchanges, including the Phlx;

(3) provide to its customers current consolidated market data from the U.S. options exchanges;

(4) interface with the Phlx's API to access the Exchange's electronic options trading platform, Phlx XL;⁵

(5) offer to its customers a customized interface and routing functionality (including sweep function described below) such that:

(A) the Phlx will be the default destination for all equity option orders (whether marketable or not), provided that in the case of marketable orders, the Phlx is at the national best bid or offer ("NBBO") on the appropriate side of the market (i.e., the contra-side of the order that is routed to the Phlx), regardless of size or time, up to the Phlx's disseminated size; and

(B) the MAP's option order routing functionality incorporates a feature that causes equity option orders at a specified price to be routed simultaneously to multiple exchanges with a single click (a "sweep function"), which is configured to route all such orders (or, if such orders are for a size larger than the size disseminated by the Phlx on the opposite side of the market, at least the portion of the order that corresponds to the Phlx's disseminated size) to the Phlx as the default destination for execution for a size up to the full size quoted on the Phlx, provided that, in the case of marketable orders, the Phlx disseminated price on the appropriate side of the market is at the NBBO;

⁵ See Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR-Phlx-2003-59).

(6) configure its own option order routing functionality such that it is configured as described in sub-paragraphs 5(A) and (B) above, with respect to all equity option orders as to which the MAP has discretion as to routing (“MAP Routing Orders”);

(7) ensure that the customized functionality described in sub-paragraphs (5) and (6) above permits users submitting equity option orders through such system(s) to manually override the Phlx as the default destination on an order-by-order basis; and

(8) enter into and maintain an agreement with the Exchange to function as an Eligible MAP and be in compliance with all terms thereof.

The Agreement

In the agreement referred to in sub-paragraph (8) above, Eligible MAPs will undertake to offer to their customers the customized interface described in sub-paragraph (5) above. In addition, Eligible MAPs will also undertake to provide support for such customized interface for those customers that receive the service described in sub-paragraph (5) above. Nothing in the agreement would obligate a MAP’s customer to exclusively use an Eligible MAP’s order routing system.

Furthermore, nothing in the agreement would relieve Eligible MAPs from complying with their best execution obligations. Specifically, the Eligible MAP would need to, on a regular and at least a quarterly basis, conduct best execution evaluations. If, based upon its regular best execution analysis, the Eligible MAP determines that the routing of MAP Routing Orders to the Phlx using the feature described in sub-paragraph (6) above would, with respect to particular options, be inconsistent with the highest quality of execution standards, then the Eligible MAP may disable and suspend the features described in sub-paragraphs (5) and (6) above with respect to such options and for such period the Eligible MAP determines such inconsistency exists.

Eligible MAPs will covenant to refrain from entering into arrangements with other exchanges or execution venues where such exchange or execution venue will have the same routing position as, or priority over, the Phlx as the default destination for option orders described in sub-paragraphs (5) and (6) above, unless the Phlx otherwise consents. Such covenant will terminate on the date which is the last calendar day of the year that is one year from the date of the agreement; provided that the Phlx may, by giving written notice to the Eligible MAP, elect to extend such covenant for additional one year terms, in which case the per contract fee (as described in the first paragraph under “Calculation of the Subsidy” below) during any extension period for that Eligible MAP shall be \$0.01 per contract greater than the Subsidy Rate (as defined below) then in effect at the date of renewal, so long as such covenant remains in effect. Notwithstanding the termination of the covenant as described above, the agreement shall otherwise remain in effect.

Calculation of the Subsidy

The Subsidy, payable to Eligible MAPs monthly, would be an amount per contract (the “Subsidy Rate”) of \$0.10 for each Eligible Contract (as defined below) in the immediately preceding calendar month above the particular Eligible MAP’s Baseline Order Flow (as defined below).

“Eligible Contracts” means contracts that result from the execution on the Phlx of: (1) equity option orders (other than crosses) sent electronically to an Eligible MAP (and routed to the Phlx electronically by the Eligible MAP) by its customers; and (2) MAP Routing Orders (other than crosses) sent electronically by the Eligible MAP.

“Baseline Order Flow” for an Eligible MAP means the higher of: (1) 500,000 contracts; or (2) the average contracts per month, calculated for the 3-month period immediately preceding

the Eligible MAP entering into the agreement with the Phlx as described in sub-paragraph (8) above, that resulted from the execution on the Phlx of equity option orders (other than crosses) routed to the Phlx electronically by such Eligible MAP.

The Volume Bonus

The Exchange will pay each Eligible MAP \$50,000 per month (the “Volume Bonus”) for each month in which the Eligible Contracts of such Eligible MAP in the immediately preceding calendar month exceed the higher of: (1) 1,500,000; or (2) three times the Baseline Order Flow of such Eligible MAP. The Volume Bonus shall be in addition to the amount for any Subsidy that is payable.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act⁷ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, as well as to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open national market system, and, in general, to protect investors and the public interest, by establishing a Subsidy that encourages the routing of equity options business to the Exchange.

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.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4) and (5).

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 proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and Rule 19b-4(f)(2)⁹ thereunder, because it involves a member 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

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-2007-54 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.

⁸ 15 U.S.C. 78(s)(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

All submissions should refer to File Number SR-Phlx-2007-54. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of the 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-2007-54 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.¹⁰

Florence E. Harmon
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).