

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58420; File No. SR-Phlx-2008-62)

August 25, 2008

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Exchange's Fee Schedule Concerning Complex Orders

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 22 2008, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. 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, pursuant to Section 19(b)(1) of the Act³ and Rule 19b-4 thereunder,⁴ proposes to amend its option fee schedule by establishing that certain fees would not be assessed on contracts that are executed electronically as part of a Complex Order⁵ on the Exchange's electronic trading platform for options, Phlx XL,⁶ and that contract volume thresholds

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

⁵ The Exchange recently filed, and the Commission approved, a proposed rule change with the Commission to automate the process for handling and executing complex orders. See Securities Exchange Act Release No. 58361 (August 14, 2008) (SR-Phlx-2008-50) ("Approval Order"). A Complex Order is composed of two or more option components and is priced as a single order (a "Complex Order Strategy") on a net debit or net credit basis.

⁶ See Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR-Phlx-2003-59).

applicable to certain Exchange subsidies, volume bonuses and discounts would not include contracts that are executed electronically as part of a Complex Order.

This proposal is effective upon filing and will be implemented beginning with the rollout of the automated complex order system on the Exchange on August 22, 2008. The rollout date will be posted on the Exchange's website at <http://www.phlx.com/index.aspx>.

The text of the proposed rule change is available on the Exchange's Website at http://www.phlx.com/regulatory/reg_rulefilings.aspx.

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 revise the Exchange's fee schedule in order to launch the Exchange's automated Complex Order system, and to compete for and encourage the submission electronic Complex Order flow to the Exchange. Pursuant to this proposal, the Exchange intends to amend the Exchange's: (i) Summary of Equity Option, and MNX, NDX, RUT and RMN Charges; (ii) Summary of Index Option Charges; (iii) Summary of U.S Dollar-Settled Foreign Currency Option Charges;

(iv) Market Access Provider Subsidy; and (v) Options Floor Broker Subsidy, as described in detail below.

Summary of Equity Option, and MNX, NDX, RUT and RMN Charges

Currently, the Exchange assesses various option transaction charges for equity options, depending on such factors as the category of person(s) submitting orders for execution (e.g., customers, specialists, broker-dealers, Registered Options Traders (“ROTs”)⁷ and Firms are all charged differently, on a per contract basis, ranging from \$0.00 per contract to \$0.45 per contract) and the manner in which the order is delivered to the Exchange. For example, broker-dealer orders submitted electronically to the Exchange’s systems are charged \$0.45 per contract, whereas broker-dealer orders submitted through means other than the Exchange’s electronic system are charged \$0.25 per contract. Customers submitting orders in equity options are generally not charged transaction fees⁸ whereas ROTs and Firms are charged.

The Exchange also assesses an option comparison charge of \$.03 per contract for ROTs and \$.04 per contract for Firms that submit proprietary orders. Customers and broker-dealers are not charged.

The Exchange currently provides a discount for ROTs (on-floor) and specialists that exceed 4.5 million contracts in a given month (the “Volume Threshold”) by assessing \$0.01 per contract on contract volume above the Volume Threshold instead of the applicable options transaction charge and option comparison charge described in the Summary of Equity Option,

⁷ ROT equity option transaction charges are referred to on the Exchange’s fee schedule as “Registered Option Trader (on floor).” This charge applies to ROTs, Streaming Quote Traders (“SQTs”), and Remote Streaming Quote Traders (“RSQTs”). SQTs and RSQTs are considered to be ROTs pursuant to Exchange Rule 1014. ROT transactions entered from off-floor would continue to be included in the broker/dealer equity option transaction charges for billing purposes, as set forth in footnote 3 of the Exchange’s Summary of Equity Option, and MNX, NDX, RUT and RMN Charges fee schedule.

⁸ Customers are charged \$0.12 per contract for executions in MNX and NDX options.

and MNX, NDX, RUT and RMN Charges. Complex Order volume will not be used in calculating the Volume Threshold.

In order to compete for order flow respecting Complex Orders in equity options, the Exchange proposes to amend the fee schedule to clarify that the option comparison charge and the option transaction charge will not be assessed on contracts in equity options that are executed electronically as part of a Complex Order.

Summary of Index Option Charges

The Exchange currently assesses an option comparison charge and an option transaction charge for index option transactions, as described in the Exchange's Summary of Index Option Charges. The Exchange proposes to amend the fee schedule to clarify that the option comparison charge and the option transaction charge will not be assessed on contracts in Index Options that are executed electronically as part of a Complex Order.

Summary of U.S Dollar-Settled Foreign Currency Option Charges

The Exchange currently assesses an option comparison charge and an option transaction charge for transactions in options overlying U.S. dollar-settled foreign currencies, as described in the Exchange's Summary of U.S Dollar-Settled Foreign Currency Option Charges. The Exchange proposes to amend the fee schedule to clarify that the option comparison charge and the option transaction charge will not be assessed on contracts in U.S dollar-settled foreign currency options that are executed electronically as part of a Complex Order.

Market Access Provider Subsidy

In August 2007, the Exchange amended its fee schedule to provide a per contract subsidy (the "Subsidy") for certain Exchange members known as Market Access Providers ("MAPs").⁹

⁹ See Securities Exchange Act Release No. 56274 (August 16, 2007), 72 FR 48720 (August 24, 2007) (SR-Phlx-2007-54).

A MAP is an Exchange member organization that offers to customers automated order routing systems and electronic market access to U.S. options markets. The Exchange pays a per-contract MAP Subsidy to any Exchange member organization that qualifies as a MAP (an “Eligible MAP,” as described in footnote 5(b) of the Market Access Provider Subsidy section of the Exchange’s fee schedule). The Subsidy is paid on contract volume that exceeds the “Baseline Order Flow” in “Eligible Contracts” as described in the MAP Subsidy section. The Exchange also pays a monthly Volume Bonus to MAPs that exceed certain volume thresholds in Eligible Contracts in a given month.

The Exchange proposes to amend the Market Access Provider Subsidy section of the fee schedule by clarifying that volume in Complex Orders that is submitted and executed electronically on Phlx XL will not be counted towards the MAP’s Baseline Order Flow and that the Exchange will not use Complex Order volume to determine eligibility for the Monthly MAP Volume Bonus. The Exchange proposes to state in the MAP Subsidy section of the fee schedule that contracts executed electronically on Phlx XL as part of a Complex Order would not be considered to be “Eligible Contracts,” and thus will not be included in the Exchange’s calculation of Baseline Order Flow and will not be included in its calculation of monthly volume in determining a MAP’s eligibility for the Monthly Volume Bonus.

Options Floor Broker Subsidy

The Exchange currently pays an Options Floor Broker Subsidy to member organizations with registered Floor Brokers based on two volume thresholds. In order to be eligible for the Options Floor Broker Subsidy, the member organization must have an average daily volume in a particular calendar month in excess of 75,000 contracts, and must have 40,000 executed contracts or more per day for at least 8 trading days during that same month.

The Exchange proposes to amend the Options Floor Broker Subsidy section of the fee schedule by establishing that only the largest component of a complex order (i.e., the component that includes the greatest number of contracts) will be included in the calculation of the two above-mentioned volume thresholds, and that, while the largest component's volume will count towards the volume threshold, the Exchange will not pay the Options Floor Broker Subsidy for any contracts that are executed electronically as part of a Complex Order.

Cancellation Fees

The Exchange currently charges a cancellation fee of \$1.10 per order for each order (in equity, index and U.S. dollar-settled foreign currency options) that is delivered electronically that exceeds the number of orders executed on the Exchange by a member organization in a given month. The cancellation fee is not assessed in a month in which fewer than 500 electronically delivered orders are cancelled. For example, if a member organization delivers 1700 orders in a given month, and 700 of those orders are executed on the Exchange but the member organization cancels 1,000 of those orders in a given month, the Exchange will assess a cancellation fee of \$330.00 ($\1.10×300 orders cancelled in excess of the 700 executed orders). The cancellation fee will not apply to Complex Orders that are submitted electronically in equity, index and U.S. dollar-settled foreign currency options.

Miscellaneous Fees and Charges

There are several current charges that will continue to be assessed for contracts executed electronically as part of a Complex Order, and thus are not proposed to be amended.

First, the Exchange charges a real-time risk management fee in equity and index options of \$.0025 per contract for firms receiving information on a real-time basis. The real-time risk

management fee will apply to Complex Orders that are executed electronically as part of a Complex Order in equity and index options.

Secondly, the Exchange assesses per-contract payment for order flow fees on transactions resulting from customer orders in equity options as described in the Equity Option, and MNX, NDX, RUT and RMN Charges. Such fees, if applicable, will apply to Complex Orders that are executed electronically as part of a Complex Order in equity options.

Third, the Exchange charges a specialist deficit (shortfall) fee of \$0.35 per contract for specialists trading any Top 120 equity option if 12% of the total national monthly contract volume (volume threshold) is not effected on the Exchange. The Exchange will include contracts executed electronically as part of a Complex Order in its calculation of the volume threshold.

Finally, the Exchange currently “caps” the specialist deficit (shortfall) fee for any Top 120 equity option listed after February, 2004 and for any Top 120 equity option acquired by a new specialist unit¹⁰ within the first 60 days of operations, by establishing increasing volume thresholds (beginning at 0% for the first month of operations, ramping up to 12% in the fifth month of operations and thereafter). The Exchange will include contracts executed electronically as part of a Complex Order in its calculation of the “new specialist unit” volume threshold.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with

¹⁰ A “new specialist unit” is one that is approved to operate as a specialist unit by the Exchange’s Options Allocation, Evaluation and Securities Committee on or after February 1, 2004.

Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹² in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. Specifically, the Exchange believes that this proposal is equitable because it generally should result in the effective waiver of comparison and transaction charges that would otherwise be assessed to specialists, ROTs, SQTs, RSQTs and Floor Brokers submitting Complex Orders to the Exchange, thus encouraging the submission of electronic Complex Orders to the Exchange for execution.

The Exchange further believes that the inclusion of contract volume executed electronically as part of Complex Orders in its calculation of certain volume thresholds relating to the various volume discounts and volume bonuses enumerated above is equitable because it generally applies to all market participants that qualify for such volume bonuses and discounts. The Exchange also believes that the exclusion of Complex Orders and contract volume executed electronically as part of Complex Orders from certain fees should create incentives for member organizations to submit electronic Complex Orders to the Exchange, thus enhancing the depth and liquidity of the Exchange's markets.

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 either solicited or received.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

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 Act¹³ and paragraph (f)(2) of Rule 19b-4¹⁴ thereunder. 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-2008-62 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Phlx-2008-62. 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

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 240.19b-4(f)(2).

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 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-2008-62 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon
Acting Secretary

¹⁵ 17 CFR 200.30-3(a)(12).