

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57075; File No. SR-Phlx-2007-75)

December 31, 2007

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change as Modified By Amendments No. 1 and 2 Thereto Relating to Market Data Distribution Network Fees

I. Introduction

On September 27, 2007, the Philadelphia Stock Exchange, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposal to eliminate: (1) a fee assessed by the Exchange’s wholly owned subsidiary, the Philadelphia Board of Trade (“PBOT”), for certain equity index values that subscribers receive over PBOT’s Market Data Distribution Network (“MDDN”);<sup>3</sup> and (2) a discount applicable to certain market data vendors. Phlx filed Amendment No. 1 to the proposed rule change on November 7, 2007. The proposed rule change, as amended, was published for comment in the Federal Register on November 28, 2007.<sup>4</sup> On December 14, 2007, Phlx filed Amendment No. 2 to the proposed rule change.<sup>5</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change, as amended.

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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> The MDDN is an Internet protocol multicast network developed by PBOT and SAVVIS Communications.

<sup>4</sup> See Securities Exchange Act Release No. 56827 (November 20, 2007), 72 FR 67334.

<sup>5</sup> In Amendment No. 2, Phlx corrected Exhibit 5 to the Form 19b-4 it submitted to accurately reflect the proposed deletions and additions of the rule text. Phlx also clarified in footnote 1 of Exhibit 5 that the Administrative Fee deduction applies only to the per-

## II. Description of the Proposal

Phlx licenses to PBOT the current and closing index values underlying most of Phlx's proprietary indexes, and Hapoalim Securities USA, Inc. licenses to PBOT the current and closing Hapoalim American Israeli Index™ (HAI<sup>SM</sup>) values. PBOT distributes those values over the MDDN. The Exchange or its third-party designee calculates and makes available to PBOT a real-time value for each index every 15 seconds during each trading day and a closing index value at the end of the day. In exchange for subscriber fees paid to PBOT, market data vendors may receive and widely disseminate this market data to their subscribers.<sup>6</sup>

Presently, subscriber fees are assessed in one of three ways:<sup>7</sup> (a) a monthly fee of \$1.00 per "Device"<sup>8</sup> that is used by vendors and their subscribers to receive and re-transmit market data on a real-time basis ("device fee"); (b) a fee of \$0.0025 per request for snapshot data,<sup>9</sup> which is essentially market data that is refreshed no more frequently than once every 60 seconds, or

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device fee and to Index Data. Because Amendment No. 2 is technical in nature, it is not subject to notice and comment.

<sup>6</sup> PBOT has contracted with several major vendors to receive real-time and closing index values over the MDDN and promptly redistribute such values.

<sup>7</sup> See Securities Exchange Act Release No. 53790 (May 11, 2006), 71 FR 28738 (May 17, 2006) ("Original Approval Order"). The applicable subscriber fees are set out in Vendor/Subvendor Agreements that PBOT executed with various market data vendors for the right to receive, store, and retransmit the current and closing index values transmitted over the MDDN.

<sup>8</sup> The agreements provide that "Device" shall mean, in case of each Subscriber and in such Subscriber's discretion, either any Terminal or any End User. Devices may be exclusively Terminals, exclusively End Users, or a combination of Terminals or End Users, and shall be reported in a manner that is consistent with the way the vendor identifies such Subscriber's access to vendor's data. An "End User" is defined as an individual authorized or allowed by a vendor to access and display real-time market data that is distributed by PBOT over the MDDN; and a "Terminal" is any type of equipment (fixed or portable) that accesses and displays such market data.

<sup>9</sup> See Securities Exchange Act Release No. 55111 (January 16, 2007), 72 FR 3188 (January 24, 2007) (increasing the snapshot fee to \$0.0025 per request).

\$1,500 per month for unlimited snapshot data requests (“snapshot fee”);<sup>10</sup> or (c) an Enterprise License Fee of \$10,000 per year or \$850 per month for unlimited real-time data as an alternative to the device fee.<sup>11</sup> All vendors that provide market data to 200,000 or more Devices in any month qualify for a 15% Administrative Fee credit for that month, to be deducted from the monthly Subscriber Fees that they collect and are obligated to pay PBOT under the Vendor/Subvendor Agreement. This credit is also currently given to vendors paying the Enterprise License Fee.

Phlx proposes to eliminate the ability to access the market data on a “snapshot” basis and consequently proposes to eliminate the snapshot data fee, effective January 1, 2008. The Exchange states that only a few vendors currently elect to use snapshot data. Consequently, PBOT seeks to eliminate the associated operational and accounting expenses of administering the snapshot data fee. Phlx is also proposing to eliminate the applicability of the 15% Administrative Fee credit to market data vendors paying the Enterprise License Fee.

### III. Discussion

After careful consideration, the Commission finds that the amended proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable

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<sup>10</sup> The index values may also be made available by vendors on a delayed basis (i.e., no sooner than 20 minutes following receipt of the data by vendors) at no charge.

<sup>11</sup> A vendor is eligible for the Enterprise License Fee if it is a firm acting as a retail broker-dealer conducting a material portion of its business via one or more proprietary Internet Web sites by which the firm distributes market data to predominately non-professional market data users with whom the firm has a brokerage relationship (“Eligible Firm”). An Eligible Firm may also distribute market data to professional users with whom such firm has a brokerage relationship, provided such market data distribution is predominantly to non-professional users. The Eligible Firm’s market data distribution to professional users cannot exceed 10%. See Securities Exchange Act Release No. 55424 (March 8, 2007), 72 FR 12242 (March 15, 2007) (SR-Phlx-2006-63).

to a national securities exchange.<sup>12</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>13</sup> which requires, among other things, that the rules of a national securities exchange be 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. The Commission also finds that the proposal is consistent with Section 6(b)(4) of the Act,<sup>14</sup> which requires the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and issuers and other persons using its facilities. The Commission also continues to believe that PBOT's MDDN fee structure is consistent with Rule 603 under the Act<sup>15</sup> regarding the distribution, consolidation, and display of information with respect to quotations for and transactions in NMS stocks.

The Commission believes that the Exchange's proposal to eliminate snapshot requests for index value data and the associated fee is consistent with the Act. The Exchange makes available the same market data through other means, and, in the absence of a compelling regulatory concern, it is a reasonable exercise of the Exchange's business judgment to choose the means of delivery of this data.

With respect to Phlx's proposal to eliminate the applicability of the Administrative Fee credit to vendors electing to pay the Enterprise License Fee, the Commission believes that the rule change is reasonable. The Exchange represents that, unlike vendors electing to receive market data pursuant to the device fee, vendors electing to receive market data pursuant to the

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<sup>12</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78f(b)(4).

<sup>15</sup> 17 CFR 242.603.

Enterprise License Fee are not required to bear the same ongoing administrative expenses. In particular, vendors paying the device fee must prepare and deliver to PBOT a detailed monthly accounting and report of Devices. By contrast, a vendor paying the Enterprise License Fee is required only to submit an initial certification, and must notify PBOT of any changes to its qualification, but has no requirement to submit any on-going accounting to PBOT.<sup>16</sup> Thus, the administrative costs to a firm associated with monitoring its ongoing eligibility for the Enterprise License Fee should be substantially less than the administrative costs to a vendor subject to the device fee.

#### IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change (SR-Phlx-2007-75), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

Nancy M. Morris  
Secretary

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<sup>16</sup> The Exchange notes that several large vendors are currently paying the Enterprise License Fee. To be eligible for the Enterprise License Fee, a vendor must certify to PBOT that it qualifies for the Enterprise License Fee, including that market distribution is predominantly to non-professional users, and must immediately notify PBOT if it can no longer certify its qualification.

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> 17 CFR 200.30-3(a)(12).