

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54381; File No. SR-Phlx-2006-50)

August 29, 2006

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Extending Its Pilot Programs for Dividend, Merger, and Short Stock Interest Strategies

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 August 9, 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 prepared by Phlx. Phlx has designated the proposed rule change as one establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. On August 14, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>5</sup> 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

Phlx proposes to extend for a period of six months, until March 1, 2007, the pilot programs for: (1) fee caps of either \$1,000 or \$1,750, as described below, on equity option

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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> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>5</sup> In Amendment No. 1, Phlx revised the proposed rule text to state that the pilot program would end on March 1, 2007.

transaction and comparison charges on dividend,<sup>6</sup> merger,<sup>7</sup> and short stock interest<sup>8</sup> strategies; and (2) the license fee of \$0.05 per contract side imposed on dividend and short stock interest strategies. The current fee caps on equity option transaction and comparison charges on dividend, merger, and short stock interest strategies and \$0.05 per contract side license fee for dividend and short stock interest strategies are in effect as a pilot program that is currently scheduled to expire on September 1, 2006. Other than extending the pilot program for an additional six-month period until March 1, 2007, no other changes to the Exchange's current dividend, merger, and short stock interest strategy programs are being proposed at this time.

The text of the proposed rule change is available on Phlx's Web site at <http://www.phlx.com>, at the Office of the Secretary at Phlx, 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, as amended, and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in

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<sup>6</sup> For purposes of this proposal, the Exchange defines a "dividend strategy" as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed prior to the date on which the underlying stock goes ex-dividend. See Securities Exchange Act Release No. 54174 (July 19, 2006), 71 FR 42156 (July 25, 2006) (SR-Phlx-2006-40) and Phlx Fee Schedule.

<sup>7</sup> For purposes of this proposal, the Exchange defines a "merger strategy" as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock. See id.

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.

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

1. Purpose

Currently, the Exchange provides a rebate for certain contracts executed in connection with transactions occurring as part of a dividend, merger or short stock interest strategy. Specifically, for these option contracts executed pursuant to a dividend or merger strategy, the Exchange rebates \$0.08 per contract side for Registered Options Trader (“ROT”) executions and \$0.07 per contract side for specialist executions transacted on the business day before the underlying stock’s ex-date. The ex-date is the date on or after which a security is traded without a previously declared dividend or distribution. The Exchange also provides for a rebate of \$0.08 per contract side for ROT executions and \$0.07 per contract side for specialist executions made pursuant to a short stock interest strategy.

The net transaction and comparison charges after the rebate is applied are capped at \$1,000 for short stock interest strategies executed on the same trading day in the same options class and at \$1,750 for merger strategies executed on the same trading day in the same options class.<sup>9</sup> The net transaction and comparison charges are capped at \$1,750 for dividend strategies executed on the same trading day in the same options class, except for a security with a declared

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<sup>8</sup> For purposes of this proposal, the Exchange defines a “short stock interest strategy” as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class. See id.

<sup>9</sup> See Securities Exchange Act Release Nos. 54174 (July 19, 2006), 71 FR 42156 (July 25, 2006) (SR-Phlx-2006-40); 53529 (March 21, 2006), 71 FR 15508 (March 28, 2006) (SR-Phlx-2006-16); 53115 (January 13, 2006), 71 FR 3600 (January 23, 2006) (SR-Phlx-2005-82); 51657 (May 5, 2005), 70 FR 24851 (May 11, 2005) (SR-Phlx-2005-22); and 51596 (April 21, 2005), 70 FR 22381 (April 29, 2005) (SR-Phlx-2005-19).

dividend or distribution of less than \$0.25. In that instance, the net transaction and comparison charges, after any applicable rebate is applied, are capped at \$1,000 for dividend strategies executed on the same trading day in the same options class.<sup>10</sup>

In addition, the Exchange assesses a license fee of \$0.05 per contract side for dividend and short stock interest strategies in connection with certain products that carry license fees.<sup>11</sup> The license fee is assessed on every transaction and is not subject to the \$1,750 or \$1,000 fee caps described above, nor does it count towards reaching the \$1,750 or \$1,000 fee caps. The \$1,000 and \$1,750 fee caps and the \$0.05 per contract license fee are subject to a pilot program that is scheduled to expire on September 1, 2006.

The Exchange represents that the purpose of extending the pilot program for the Exchange's \$1,000 or \$1,750 fee caps on equity option transaction and comparison charges on dividend, merger, and short stock interest strategies and its \$0.05 per contract side license fee imposed for dividend and short stock interest strategies until March 1, 2007 is to continue to attract additional liquidity to the Exchange and to remain competitive. In addition, the Exchange represents that the purpose of this proposal is to recoup the license fees owed in connection with the trading of products that carry license fees. Even with the assessment of the \$0.05 license fee per contract side, the Exchange believes that the fee caps and rebates should continue to encourage specialists and ROTs to provide liquidity for dividend spread strategies.

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<sup>10</sup> The fee caps are implemented after any applicable rebates are applied to ROT and specialist equity option transaction and comparison charges. See Securities Exchange Act Release Nos. 54174 (July 19, 2006), 71 FR 42156 (July 25, 2006) (SR-Phlx-2006-40) and 53529 (March 21, 2006), 71 FR 15508 (March 28, 2006) (SR-Phlx-2006-16).

<sup>11</sup> For a complete list of these product symbols, see the Exchange's \$60,000 Firm-Related Equity Option and Index Option Cap Fee Schedule.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and Section 6(b)(4),<sup>13</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among its members.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that proposed rule change, as amended, 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 either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>14</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>15</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>16</sup>

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<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(4).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

<sup>16</sup> The effective date of the original proposed rule change is August 9, 2006, the date of the original filing, and the effective date of Amendment No.1 is August 14, 2006, the filing date of the amendment. For purposes of calculating the 60-day abrogation period within which the Commission may summarily abrogate the proposed rule change, as amended,

#### 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-2006-50 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-2006-50. 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 Phlx. All comments

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under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on August 14, 2006, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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-2006-50 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>17</sup>

Nancy M. Morris  
Secretary

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