

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54424; File No. SR-Phlx-2006-55)

September 11, 2006

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending its Dividend, Merger, and Short Stock Interest Strategy Program

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 31, 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. The Commission is publishing this notice to solicit comments on the proposed rule change 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> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</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 Phlx proposes to amend its dividend,<sup>5</sup> merger,<sup>6</sup> and short stock interest<sup>7</sup> strategies to: (1) replace the current \$1,750 fee cap on equity option transaction and comparison charges for both merger strategies executed on the same trading day in the same options class as well as for dividend strategies executed on the same trading day in the same options class, except for a security with a declared dividend or distribution of less than \$0.25, with a \$1,000 fee cap; and (2) adopt a \$25,000 per member organization fee cap on equity option transaction and comparison charges incurred in one month for dividend, merger and short stock interest strategies combined.

The \$1,000 and \$25,000 caps will be implemented after any applicable rebates, as more fully described below, are applied to Registered Options Trader ("ROT") and specialist equity option transaction and comparison charges occurring as part of a dividend, merger or short stock interest strategy.

In addition, the Exchange will continue to assess a \$0.05 per contract side license fee for dividend and short stock interest strategies in connection with certain products that carry license fees, if applicable. The applicable license fee will be assessed on every transaction and will not

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<sup>5</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).

<sup>6</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.

be subject to the \$1,000 or \$25,000 fee caps described above, nor will it count towards reaching the \$1,000 or \$25,000 caps.

This proposal is scheduled to become effective for trades settling on or after September 1, 2006 and the \$1,000 and \$25,000 fee caps on equity option transaction and comparison charges as described above will be subject to the pilot program currently in effect until March 1, 2007.<sup>8</sup> 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 and discussed any comments it received on the proposal. 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.

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 strategy, the Exchange

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<sup>7</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>8</sup> The current fee caps on equity option transaction and comparison charges on dividend, merger and short stock interest strategies and the \$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 March 1, 2007. See Securities Exchange Act Release No. 34-54381 (August 29, 2006), 71 FR 52598 (September 6, 2006) (SR-Phlx-2006-50).

rebates \$0.08 per contract side for 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 merger or short stock interest strategy.

At present, the net transaction charges and comparison charges for specialists and ROTs 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 dividend or distribution of less than \$0.25. In that instance, the net transaction and comparison charges are capped at \$1,000 for dividend strategies executed on the same trading day in the same options class.<sup>10</sup> Pursuant to this proposal, the net transaction charge and comparison charges, after the rebate is applied, will be capped at \$1,000 for dividend, merger and short stock interest strategies as described above and further capped at \$25,000 per month per member organization for dividend, merger and short stock interest strategies combined for that month.

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<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).

<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).

In addition, the Exchange currently 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 Exchange will continue to assess the \$0.05 per contract side license fee for dividend and short stock interest strategies in connection with certain products that carry license fees if applicable.<sup>12</sup> The applicable license fee will be assessed on every transaction and will not be subject to the \$1,000 or \$25,000 fee caps, nor will it count towards reaching the \$1,000 or \$25,000 caps, consistent with the Exchange's current practice.

This proposal is scheduled to become effective for trades settling on or after September 1, 2006 and the \$1,000 and \$25,000 fee caps on equity option transaction and comparison charges, as described above, will be subject to the pilot program currently in effect until March 1, 2007.<sup>13</sup> The purpose of the proposal is to attract additional order flow to the Exchange. The Exchange believes that implementing a lower fee cap of \$1,000 and a monthly \$25,000 per month per member organization fee cap, should increase the Exchange's ability to compete with other options exchanges for order flow in connection with these types of options strategies.

## 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>14</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>15</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among

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<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.

<sup>12</sup> Id.

<sup>13</sup> See footnote 8.

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

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

Exchange members.

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 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 solicited or received on the proposed rule change.

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>16</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>17</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.

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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2006-55 on the subject line.

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

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-2006-55. 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 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-2006-55 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>18</sup>

Nancy M. Morris  
Secretary

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