SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54978; File No. SR-Phlx-2006-63)

December 20, 2006

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed
Rule Change and Amendments No. 1 and 2 Thereto Relating to a Philadelphia Board of Trade
Enterprise License Fee For Dissemination of Certain Market Data

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 September 28, 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 substantially prepared by the Phlx. The Phlx filed Amendment No. 1 to the proposed

rule change on November 1, 2006.[3] The Phlx filed Amendment No. 2 to the proposed rule

change on December 20, 2006.[4] 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 add an Enterprise License Fee of $10,000 per year or $850 per

month that would be assessed by the Exchange's wholly owned subsidiary, the Philadelphia

Board of Trade ("PBOT"), on eligible market data vendors or subvendors (collectively

"Vendors") for certain index values received over PBOT's Market Data Distribution Network

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[1]   15 U.S.C. 78s(b)(1).

[2]   17 CFR 240.19b-4.

[3]   Amendment No. 1 replaces and supersedes the original filing in its entirety.

[4]   Amendment No. 2 replaces and supersedes the original filing in its entirety.

("MDDN").[5] The text of the proposed rule change is available at Phlx, the Commission's Public

Reference Room, and www.phlx.com.

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 add an Enterprise License Fee for eligible

Vendors of market data disseminated over PBOT's MDDN. Phlx has licensed market data in the

form of current and closing index values underlying most of Phlx's proprietary indexes to PBOT

for the purpose of selling, reproducing, and distributing the index values over the MDDN

("Market Data"). The Exchange or its third party designee objectively calculates and makes

available to PBOT real-time index values every 15 seconds and closing index values at the end

of each trading day. Pursuant to agreements with PBOT, Market Data Vendors will make the

real-time Market Data widely available to subscribers.[6]

        On May 11, 2006, the Commission approved the Exchange's proposal to allow PBOT to

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[5]   The MDDN is an Internet protocol multicast network developed by PBOT and SAVVIS
        Communications for the purpose of transmitting index values.

[6]   PBOT has contracted with one or more major Market Data Vendors to receive real-time
        and closing index values over the MDDN and promptly redistribute such values.

charge subscriber fees to Vendors of Market Data for all the values of Phlx's proprietary indexes disseminated by PBOT's MDDN.[7] The subscriber fees are set out in agreements that PBOT executes with various Market Data Vendors for the right to receive, store, and retransmit the current and closing index values transmitted over the MDDN. The fees approved by the Commission in its May 11, 2006 approval order include: a monthly fee of: (a) $ 1.00 per "Device," as defined in the Market Data agreements,[8] that is used by Vendors and their subscribers to receive and re-transmit Market Data on a real-time basis ("device fee"), and (b) $.00025 per request for snapshot data, which is essentially Market Data that is refreshed no more frequently than once every 60 seconds,[9] or $1,500 per month for unlimited snapshot data requests ("snapshot fee").[10]

The Exchange now proposes to add an Enterprise License Fee that would be available to eligible Vendors as an alternative to the device fee or snapshot fee.[11] Specifically, where a

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[7]   See Securities Exchange Act Release No. 53790 (May 11, 2006), 71 FR 28738 (May 17, 2006) (SR-Phlx-2006-04).

[8]   The definition of "Device" in the agreements is complex and incorporates a number of other defined terms. 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. A Subscriber's Device 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. By way of further explanation, an "End User" is 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.

[9]   The Exchange has filed SR-Phlx-2006-59 proposing to increase the snapshot data fee to $.0025 per request. See Securities Exchange Act Release No. 54890 (December 7, 2006), 71 FR 74975 (December 13, 2006) (SR-Phlx-2006-59).

[10]   The index values may also be made available by Vendors on a delayed basis (i.e., no sooner than twenty minutes following receipt of the data by vendors) at no charge.

[11]   A firm that qualifies for the Enterprise License Fee may instead choose to pay the device fee and/or the snapshot fee as appropriate.

Vendor 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 such firm distributes Market Data to predominately non-professional Market Data users with whom such firm has a brokerage relationship ("Eligible Firm"),[12] that Eligible Firm may pay an Enterprise License Fee of $10,000 per year or $850 per month for its receipt and re-transmittal of Market Data. 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.[13] Market Data distribution will be considered to be "predominantly to non-professional users" so long as the Eligible Firm's Market Data distribution to professional users when compared to Market Data distribution to all (professional and non-professional) users does not exceed 10%.[14]

To be eligible for the Enterprise License Fee, an Eligible Firm shall have to certify to PBOT that it qualifies for the Enterprise License Fee, including in regard to distribution to

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[12]   To be eligible for the Enterprise License Fee, the Exchange would view a retail broker dealer as conducting a material portion of its business via one or more Internet websites if at least twenty percent (20%) of the broker dealer's business were conducted via the Internet.

[13]   A non-professional user is defined in the fee schedule as any natural person who is not: (a) registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (b) engaged as an "investment advisor" as that term is defined in Section 202(11) of the Investment Advisors Act of 1940, 15 U.S.C. 80b-2(11), (whether or not registered or qualified under that Act); nor, (c) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

[14]   As an example, if data recipient ABC Corp. has 100 customers that receive PBOT Market Data of which 10 are professional users and 90 are retail (non-professional) users the Enterprise License Fee would be available to the firm because 10 professional users / 100 total users = 10%.

professional and non-professional users, and shall need to immediately notify PBOT if it can no longer certify its qualification.[15]

In developing the Enterprise License Fee, PBOT considered inquiries from actual and potential broker dealer data recipients regarding the availability of an Enterprise License for data transmitted over the MDDN and considered that certain industry organizations have offered fee structures that are available to some but not all data recipients, similarly to the Enterprise License Fee.[16] The Exchange believes that the proposed fee of $10,000 per year or $850 per month is fair and reasonable and consistent with industry practice.

        2.   Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[17] in general, and furthers the objectives of Section 6(b)(5) of the Act[18] in particular, in that it is 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

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[15]   A firm that has entered into an agreement with PBOT to receive Market Data over the MDDN but is not qualified for the Enterprise License Fee may pay the device fee and/or the snapshot fee as appropriate.

[16]   For example, the Nasdaq Stock Market, Inc. ("Nasdaq"), a self regulatory organization, has fee schedules that are as much as twenty times higher for professional or corporate subscribers than for non-professional subscribers for UTP Level 1 fees, TotalView fees and Nasdaq MAX fees; and offers a TotalView Non-Professional Enterprise Fee License to qualified firms that distribute TotalView to their non-professional users with whom they have a professional relationship. The Options Price Reporting Authority ("OPRA"), a national market system, offers an Enterprise Professional Subscriber Fee to certain professional options data subscribers (these professional subscribers do not qualify for the reduced fees charged to nonprofessional subscribers) that is based on the number of professional users that the subscribers have instead of the number of devices. In addition, the Exchange believes that some industry data vendors offer different fee structures to qualified data recipients.

[17]   15 U.S.C. 78f(b).

[18]   15 U.S.C. 78f(b)(5).

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investors and the public interest, by providing an alternate fee structure to market data recipients and thereby encouraging re-distribution of such data. The Exchange believes that its proposal, which is designed to encourage dissemination of market data, is likewise consistent with Section 6(b)(4) of the Act[19] in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and issuers and other persons using its facilities as described herein.

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 either solicited or received.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A)   by order approve such proposed rule change, or

(B)   institute proceedings to determine whether the proposed rule change should be disapproved.

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[19]   15 U.S.C. 78f(b)(4).

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 No. SR-Phlx-2006-63 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Phlx-2006-63. 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 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-2006-63 and should be submitted on or before [insert date 21 days from the date of publication in the <u>Federal Register</u>].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Florence E. Harmon
Deputy Secretary

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[20]   17 CFR 200.30-3(a)(12).