

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56750; File No. SR-Phlx-2007-85)

November 6, 2007

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Phlx Rule 607

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 November 1, 2007, 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 and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) 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.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to amend Phlx Rule 607 to remove language regarding the NMS Linkage Plan (“Plan”). The Plan was utilized by certain exchanges, including Phlx, for the purpose of routing and receiving orders in NMS Stocks. The Plan ended by its own terms on June 30, 2007.<sup>5</sup>

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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).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See Securities Exchange Act No. 54551 (September 29, 2006), 71 FR 59148 (October 6, 2006).

The text of the proposed rule change is available at Phlx, the Commission's Public Reference Room, and <http://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 Exchange 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. 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 update Phlx Rule 607 to reflect the termination of the Plan. Phlx Rule 607 permits Phlx to collect the Covered Sale Fee<sup>6</sup> from its members and member organizations. In order to facilitate the collection of the Covered Sale Fee, Phlx amended Phlx Rule 607 to permit the Exchange to enter into agreements with other exchanges and with Participants in NASD's (n/k/a FINRA) Alternative Display Facility ("ADF Participant") to pass the Covered Sale Fee among the applicable exchanges or ADF Participants where the Exchange has collected the Covered Sale Fee from its members and member organizations for sale transactions executed on another exchange or ADF Participant through the

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<sup>6</sup> Under Section 31 of the Act, the Exchange must pay certain fees to the Commission. To help fund the Exchange's obligations to the Commission under Section 31, a Covered Sale Fee is assessed by the Exchange on members and member organizations.

Plan and when other exchanges or ADF Participants have collected the Covered Sale Fee from their members for sale transactions executed on the Exchange through the Plan.<sup>7</sup>

With the termination of the Plan, the agreements with the other exchanges and the ADF Participants are no longer needed.<sup>8</sup> When the Plan began, certain exchanges and ADF Participants were unable to supply clearing or member information on orders routed through the Plan to other markets and therefore routed orders directly through the Plan without identifying a member or subscriber of the destination market.<sup>9</sup> Because no member or subscriber of the destination market was involved in the transaction, there was no mechanism for the destination market to collect the Covered Sale Fee. The agreements provided for in Phlx Rule 607 permitted destination markets to collect the Covered Sale Fee for orders routed through the Plan that did not involve members or subscribers of the destination market. Now that the Plan has terminated, all access to the destination market is provided through members or subscribers, which are subject to the fees charged pursuant to rule or subscriber agreement.

Therefore, Phlx proposes to delete that section of Phlx Rule 607 referring to agreements with other exchanges and ADF Participants. Phlx does not intend this deletion to affect any rights or obligations that have accrued to any party up to this point in time pursuant to any such agreements.

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<sup>7</sup> See Securities Exchange Act Release No. 54555 (October 2, 2006), 71 FR 59577 (October 10, 2006).

<sup>8</sup> See Securities Exchange Act Release Nos. 56361 (September 6, 2007), 72 FR 52192 (September 12, 2007) (SR-Phlx-2007-66, deleting references to the Plan in the XLE Fee Schedule); 55569 (April 2, 2007), 72 FR 17978 (April 10, 2007) (SR-Phlx-2007-31, deleting references to the Intermarket Trading System (“ITS”) Plan in Phlx Rule 607, when the ITS Plan terminated.)

<sup>9</sup> See Securities Exchange Act Release No. 54548 (September 29, 2006), 71 FR 59159 (October 6, 2006) (footnote 6).

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>10</sup> in general and furthers the objectives of Section 6(b)(5)<sup>11</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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.

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

The Exchange does not believe that the proposed rule change would result in 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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup> As required under Rule 19b-4(f)(6)(iii) under the Act,<sup>14</sup> the Exchange

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<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>15</sup> However, Rule 19b-4(f)(6)(iii)<sup>16</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and render the proposed rule change operative immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the 30-day operative delay would enable the Exchange to delete language in Phlx Rule 607 that is no longer needed due to the termination of the Plan as quickly as possible and prevent any potential confusion as to the applicability of this language. For the reasons stated above, the Commission therefore designates the proposal to become operative immediately.<sup>17</sup>

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.

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<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> For purposes of waiving the operative date of this proposal only, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

#### 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-2007-85 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-2007-85. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. 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-2007-85 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>

Florence E. Harmon  
Deputy Secretary

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