

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53287; File No. SR-Phlx-2006-10)

February 14, 2006

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Imposing Licensing Fees in Connection with the Firm-Related Equity Option and Index Option Fee Cap

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 February 2, 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 the Phlx. The Phlx has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ 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

The Phlx proposes to amend its schedule of fees to adopt a license fee of \$.10 for options traded on the following products:⁵ (1) State Street Global Advisors’, a division of State Street Bank and Trust Company (“SSGA”), streetTracks based on the Dow Jones & Co., Inc. (“Dow

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ This fee will be charged only to Exchange Members.

Jones”) Global Titans 50 IndexSM, traded under the symbol DGT; (2) SSGA’s streetTracks based on the Dow Jones Wilshire 5000 IndexSM, traded under the symbol TMW; (3) BGI’s iShares Dow Jones Select Dividend IndexSM, traded under the symbol DVY; (4) iShares Dow Jones U.S. Total Market IndexSM, traded under the symbol IYY; (5) iShares Dow Jones U.S. Basic Materials IndexSM, traded under the symbol IWM; (6) iShares Dow Jones U.S. Consumer Services Sector IndexSM, traded under the symbol IYC; (7) iShares Dow Jones U.S. Financial Sector IndexSM, traded under the symbol IYF; (8) iShares Dow Jones U.S. Financial Services Sector IndexSM, traded under the symbol IYG; (9) iShares Dow Jones U.S. Healthcare Sector IndexSM, traded under the symbol IYH; (10) iShares Dow Jones U.S. Industrial Sector IndexSM, traded under the symbol IYJ; (11) iShares Dow Jones U.S. Consumer Goods Sector IndexSM, traded under the symbol IYK; (12) iShares Dow Jones U.S. Real Estate Sector IndexSM, traded under the symbol IYR; (13) iShares Dow Jones U.S. Technology Sector IndexSM, traded under the symbol IYW; (14) iShares Dow Jones U.S. Telecommunications Sector IndexSM, traded under the symbol IYZ; (15) iShares Dow Jones U.S. Utilities Sector IndexSM, traded under the symbol IDU; and (16) First Trust’s ETF based on the Dow Jones Select Microcap IndexSM, traded under the symbol FDM, (collectively “Dow Jones products”)⁶ to be assessed per contract

⁶ “Dow Jones” and “SSGA’s streetTracks based on the Dow Jones Global Titans 50 IndexSM”, “SSGA’s streetTracks based on the Dow Jones Wilshire 5000 IndexSM”, “BGI’s iShares Dow Jones Select Dividend IndexSM”, “iShares Dow Jones U.S. Total Market IndexSM”, “iShares Dow Jones U.S. Basic Materials IndexSM”, “iShares Dow Jones U.S. Consumer Services Sector IndexSM”, “iShares Dow Jones U.S. Financial Sector IndexSM”, “iShares Dow Jones U.S. Financial Services Sector IndexSM”, “iShares Dow Jones U.S. Healthcare Sector IndexSM”, “iShares Dow Jones U.S. Industrial Sector IndexSM”, “iShares Dow Jones U.S. Consumer Goods Sector IndexSM”, “iShares Dow Jones U.S. Real Estate Sector IndexSM”, “iShares Dow Jones U.S. Technology Sector IndexSM”, “iShares Dow Jones U.S. Telecommunications Sector IndexSM”, “iShares Dow Jones U.S. Utilities Sector IndexSM”, and “First Trust’s ETF based on the Dow Jones Select Microcap IndexSM”, are service marks of Dow Jones & Company, Inc. and have been licensed for use for certain purposes by the

side for equity option “firm” transactions (comprised of equity option firm/proprietary comparison transactions, equity option firm/proprietary transactions and equity option firm/proprietary facilitation transactions). This license fee will be imposed only after the Exchange’s \$60,000 “firm-related” equity option and index option comparison and transaction charge cap, described more fully below, is reached.

Currently, the Exchange imposes a cap of \$60,000 per member organization⁷ on all “firm-related” equity option and index option comparison and transaction charges combined.⁸ Specifically, “firm-related” charges include equity option firm/proprietary comparison charges, equity option firm/proprietary transaction charges, equity option firm/proprietary facilitation transaction charges, index option firm/proprietary comparison charges, index option firm/proprietary transaction charges, and index option firm/proprietary facilitation transaction charges (collectively the “firm-related charges”). Thus, such firm-related charges in the aggregate for one billing month may not exceed \$60,000 per month per member organization.

Philadelphia Stock Exchange, Inc. The Dow Jones products are not sponsored, endorsed, sold or promoted by Dow Jones, and Dow Jones makes no representation regarding the advisability of investing in such product(s).

⁷ The firm/proprietary comparison or transaction charge applies to member organizations for orders for the proprietary account of any member or non-member broker-dealer that derives more than 35% of its annual, gross revenues from commissions and principal transactions with customers. Member organizations will be required to verify this amount to the Exchange by certifying that they have reached this threshold by submitting a copy of their annual report, which was prepared in accordance with Generally Accepted Accounting Principles (“GAAP”). In the event that a member organization has not been in business for one year, the most recent quarterly reports, prepared in accordance with GAAP, will be accepted. See Securities Exchange Act Release No. 43558 (November 14, 2000), 65 FR 69984 (November 21, 2000) (SR-Phlx-00-85).

⁸ See Securities Exchange Act Release No. 51024 (January 11, 2005), 70 FR 3088 (January 19, 2005) (SR-Phlx-2004-94).

The Exchange also imposes a license fee of \$0.10 per contract side for equity option and index option “firm” transactions on certain licensed products (collectively “licensed products”) after the \$60,000 cap, as described above, is reached.⁹ Therefore, when a member organization exceeds the \$60,000 cap (comprised of combined firm-related charges), the member organization is charged \$60,000, plus license fees of \$0.10 per contract side for any contracts in licensed products (if any) over those that were included in reaching the \$60,000 cap. In other words, if the cap is reached, the \$0.10 license fee is imposed on all subsequent equity option and index option firm transactions; these license fees are charged in addition to the \$60,000 cap.

The Exchange proposes to adopt a \$.10 license fee per contract side for the Dow Jones products for equity option firm transactions, which will be imposed after the \$60,000 cap is reached in the same way as the current licensed product fees are assessed. Thus, when a member organization exceeds the \$60,000 cap, the member organization will be charged \$60,000 plus any applicable license fees for trades of licensed products, including the Dow Jones products, over those trades that were counted in reaching the \$60,000 cap.¹⁰

This proposal is scheduled to become effective for transactions settling on or after February 2, 2006.

⁹ For a complete list of the licensed products that are assessed a \$.10 license fee per contract side after the \$60,000 cap is reached, see \$60,000 “Firm Related” Equity Option and Index Option Cap on the Exchange’s fee schedule. See also, Securities Exchange Act Release No. 52220 (August 5, 2005), 70 FR 46899 (August 11, 2005) (SR-Phlx-2005-49).

¹⁰ Consistent with current practice, when calculating the \$60,000 cap, the Exchange first calculates all equity option and index option transaction and comparison charges for products without license fees and then equity option and index option transaction and comparison charges for products with license fees (i.e., QQQ license fees) that are assessed by the Exchange after the \$60,000 cap is reached. See Securities Exchange Act Release No. 50836 (December 10, 2004), 69 FR 75584 (December 17, 2004) (SR-Phlx-2004-70).

The text of the proposed rule change is available at the Commission's Public Reference Room, at the Exchange and at the Exchange's Web site:

http://www.phlx.com/exchange/phlx_rule_fil.html.

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 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

The purpose of assessing the Dow Jones products license fee of \$.10 per contract side after reaching the \$60,000 cap as described in this proposal is to help defray licensing costs associated with the trading of these products, while still capping member organizations' fees enough to attract volume from other exchanges. The cap operates this way in order to offer an incentive for additional volume without leaving the Exchange with significant out-of-pocket costs.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(4)

¹¹ 15 U.S.C. 78f(b).

of the Act¹² in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members.

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

The Exchange believes that the proposed rule change will not 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

The Exchange has neither solicited nor received comments on the proposed rule change. The Phlx has not received any unsolicited written comments from members or other interested parties.

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,¹³ and paragraph (f)(2) of Rule 19b-4 thereunder¹⁴ 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.

¹² 15 U.S.C. 78f(b)(4).

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 240.19b-4(f)(2).

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 Number SR-Phlx-2006-10 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-2006-10. 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 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-2006-10 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.¹⁵

Nancy M. Morris
Secretary

¹⁵ 17 CFR 200.30-3(a)(12).