

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53584; File No. SR-Phlx-2006-04)

March 31, 2006

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 Thereto Relating to Dissemination of Index Values

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 12, 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 filed Amendment No. 1 to the proposed rule change on March 23, 2006 and submitted notification of withdrawal of Amendment No. 1 on March 24, 2006. On March 24, 2006, the Phlx filed Amendment No. 2 to the proposed rule change.³ 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 continue the listing and trading of options on various stock indices upon making certain changes to the procedures for dissemination of the values of the indices. Specifically, Phlx has determined to license the current and closing index values underlying options currently listed pursuant to Commission approval pursuant to Rule 19b-4 rule filings, namely, the Phlx Gold/Silver SectorSM (“XAUSM”), Phlx Oil Service SectorSM (“OSXSM”), Phlx Semiconductor Sector (“SOXSM”), and the Phlx Utility SectorSM (“UTYSM”) (together, the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 2 supersedes and replaces the original filing in its entirety.

“Approved Index Options”), as well as values of most of Phlx’s other proprietary indexes, to its wholly owned subsidiary, the Philadelphia Board of Trade (“PBOT”),⁴ for the purpose of selling, reproducing, and distributing the index values over PBOT’s Market Data Distribution Network (“MDDN”).⁵ The Exchange proposes that the index values underlying the Approved Index Options will no longer be disseminated as described in their respective Rule 19b-4 filings and approval orders.⁶ The Exchange is also seeking approval to cease disseminating the current and closing index values of all its proprietary indexes over the facilities of the Consolidated Tape Association (“CTA”), and to disseminate such values solely over the PBOT’s MDDN.⁷ Finally,

⁴ PBOT is a dormant designated contract market regulated by the Commodity Futures Trading Commission (the “CFTC”). Until November 30, 2005, when it became dormant, PBOT listed futures contracts on a number of foreign currencies. PBOT has applied to the CFTC for reinstatement for dormancy and expects to launch a new electronic trading platform, PBOT XL, in the near future.

⁵ Phlx also lists and trades options on a number of other stock indices whose values will not be disseminated by PBOT. Those indices will continue to be maintained, and options thereon will continue to be listed, as they are today. PBOT has, however, secured a similar license from one other index provider, and Phlx anticipates that PBOT will enter into similar license agreements with proprietors of other indexes underlying options traded on the Phlx.

⁶ See Securities Exchange Act Release Nos. 20437 (December 2, 1983), 48 FR 55229 (December 9, 1983) (XAU); 38207 (January 27, 1997), 62 FR 5268 (February 4, 1997) (OSX); 34546 (August 18, 1994), 59 FR 43881 (August 25, 1994) (SOX); 24889 (September 9, 1987), 52 FR 35021 (September 16, 1987) (UTY).

⁷ Phlx’s proprietary indexes are, in addition to the indexes underlying the Approved Index Options, the Phlx Defense SectorSM, Phlx Drug SectorSM, Phlx Europe SectorSM, Phlx Housing SectorSM, and the Phlx World Energy IndexSM, all of which were listed pursuant to Phlx Rule 1009A(b), the Exchange’s generic index option listing standard rule. Phlx’s proprietary indexes are owned and maintained by Phlx. The Exchange has determined not to remove the Phlx World Energy IndexSM (“XWE”SM) and the Phlx Europe SectorSM (“XEX”SM) from CTA immediately, but is requesting approval to do so when and if the Exchange determines that disseminating these indexes in the same manner as its other proprietary indexes will be appropriate.

the Exchange is seeking approval for the subscriber fees to be charged to market data vendors by PBOT for all the values of Phlx's proprietary indexes disseminated by PBOT's MDDN.

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. 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 effectuate changes to index dissemination procedures whereby PBOT will be disseminating index value information, as described above. Currently, the Exchange realizes no revenues from the sale of current and closing index values disseminated over CTA that are not shared with other CTA Plan participants but wants to going forward.⁸

In anticipation of the launch of PBOT XL, the PBOT's fully electronic matching engine, PBOT has contracted with SAVVIS Communications to provide extranet services for the distribution of certain futures market data. This new internet protocol multicast network is known as the PBOT MDDN.⁹ It is anticipated that PBOT's MDDN will disseminate quote and trade information regarding futures contracts executed on the PBOT, but will not disseminate

⁸ Currently, market data vendors pay a \$200.00 monthly fee to CTA for the right to redistribute current and closing index values on a real time basis, together with delayed last sale data.

⁹ Additional information regarding the PBOT MDDN can be found on the Exchange's Web site at http://www.phlx.com/pbot/Market_Data/mktdata.html.

quote and trade information regarding securities products. Further, as proposed herein, PBOT's MDDN will disseminate index value information.

Additionally, in order to facilitate creation of revenues from the sale of current and closing values for Phlx proprietary indexes, the Phlx will remove those values from CTA. At that time, those index values will not be available from CTA and will be available only through the PBOT's MDDN.¹⁰ They will, however, continue to be disseminated by major market data vendors, as explained below.¹¹

In contemplation of removing the index values from CTA, the Exchange has entered into a license agreement with PBOT in which the Exchange granted to PBOT, subject to the terms and conditions set forth therein, a non-exclusive, fully-paid, royalty-free, worldwide right and license to sell, offer for sale, perform, display, reproduce and distribute the current and closing index values derived from the Phlx proprietary indices to be disseminated over the MDDN.¹² Phlx or its third party designee will objectively calculate and make available to PBOT every 15 seconds real time current and closing index values on each trading day so that PBOT may market, sell, and distribute the values to third parties. The three industry leading market data vendors will be making the real time market data available to subscribers, as will several mid-tier

¹⁰ As noted above, for business reasons the Phlx World Energy IndexSM and the Phlx Europe SectorSM will not initially be disseminated over the MDDN but will continue to be disseminated over the facilities of CTA. See supra note 7.

¹¹ PBOT has and will also enter into license agreements with one or more third party index providers to sell, reproduce, and distribute index values which underlie other Phlx traded options listed pursuant to Rule 19b-4(e) under the Act. Those index values will also be removed from CTA.

¹² The license does not include the right to sublicense, modify, improve or create derivative works of, the values or the indices.

vendors.¹³ Finally, the parties acknowledged and agreed that the goodwill created from PBOT's exercise of its rights under the agreement would constitute the full consideration for the grant of licenses therein.

PBOT, in turn, will execute and has executed agreements with various vendors of market data for the right to receive, store, and retransmit the current and closing index values transmitted over the MDDN.¹⁴ The subscriber fees payable to PBOT by vendors for the use or resale of these values are set forth in those agreements. Phlx is proposing that all vendors will be charged, based upon usage by their subscribers,¹⁵ a monthly fee of (a) \$1.00 per "Device," as defined in the agreement,¹⁶ that is used by vendors and their subscribers to receive and re-transmit Phlx

¹³ The term "vendors" as used herein includes subvendors which receive the market data feed from vendors rather than directly from PBOT, but which execute the same agreement with PBOT that vendors execute and pay the same subscriber fees.

¹⁴ Approximately 25 vendors, including for example Bloomberg L.P., Telekurs Financial Information Ltd. and Thomson Financial, have already entered into such market data agreements with PBOT. At least three of the vendors have elected to offer only the continuous real-time market data and will not offer snapshot or delayed data. The fees described in this proposed rule change cover values of all the indexes disseminated over the MDDN.

¹⁵ These fees will be subject to the possibility of a 15% Administrative Fee deduction as described in footnote 18.

¹⁶ The definition of "Device" in the agreement is complex and incorporates a number of other defined terms. The agreement provides that

"Device" shall mean, in case of each Subscriber and in such Subscriber's discretion, either any Terminal or any End User. For the avoidance of doubt, 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 or a Subscriber to access and display real time market data that distributed by PBOT over the MDDN; and a "Terminal" is any type of equipment (fixed or portable) that accesses and displays such market data. For example, a vendor whose Subscribers collectively may access the index values on a real-time basis through 10,000 Devices would be assessed a monthly fee of \$10,000. A vendor which makes available unlimited

proprietary sector index current and settlement values on a real time basis and disseminated every 15 seconds, and (b) \$.00025 per request for snapshot data, which is essentially market data that is refreshed no more frequently than once every 60 seconds, or \$1,500 per month for unlimited snapshot data requests.¹⁷ The fees are summarized in table format below:

Fee (per month)	Real-Time Continuous Market Data	Delayed Only
Per Device/User ID/Terminal ID	\$1.00 per Device*	None

Fee (per month)	Snapshot Market Data	Delayed Only
	\$0.0025 per snapshot request*	
	<u>OR</u>	
	\$1,500 per month for unlimited snapshot requests*	None

* Vendors which provide market data to 200,000 or more Devices in any month qualify for a 15% Administrative Fee deduction for that month.¹⁸

snapshot data to its customers would be assessed a monthly fee of \$1500.00 regardless of the number of End Users or Devices involved.

¹⁷ 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. The Exchange also notes that devices used in customer service areas or for purposes such as quality control, software programming, sales demonstrations, or promotions are not subject to any fees.

¹⁸ All market data vendors which provide market data to 200,000 or more Devices in any month qualify for a 15% Administrative Fee deduction for that month, to be deducted from the monthly Subscriber Fees that they collect and are obligated to pay PBOT under the Vendor/Subvendor Agreement. Phlx also believes that the fees to be charged by

Separate charges will apply for futures market data, which is not the subject of this proposed rule change. However, the agreements will provide that PBOT may change any of the fees enumerated in the agreement by giving the vendor or subvendor advance written notice of such changes.¹⁹ Under the agreements and consistent with industry practice, vendors will be free to assess whatever fees they agree to with subscribers.

In the various proposed rule changes filed by the Exchange seeking Commission approval for the listing and trading of the Approved Index Options, the Exchange made certain representations regarding the manner in which index values would be disseminated. The Commission's approval orders also described the index value dissemination procedures in some cases. The Exchange now proposes to continue the listing and trading of options on various stock indices upon ceasing the dissemination of index values over CTA Tape B as described above. However, current index values will continue to be disseminated as required by Phlx Rule 1100A.²⁰ Moreover, the current index values will be widely disseminated by one or more major market data vendors at least every 15 seconds during trading hours on the Exchange.²¹ Phlx will also continue to maintain the indexes underlying the Approved Index Options as described in

PBOT are consistent with the requirements of Commission Rule 603, Distribution, consolidation, and display of information with respect to quotations for and transactions in NMS stocks, in that the fees are fair and reasonable and not unreasonably discriminatory.

¹⁹ The Commission notes that any such fee changes would need to be submitted under Section 19(b) of the Act.

²⁰ Phlx Rule 1100A(a) provides that “[t]he Exchange shall disseminate or shall assure that the closing index value is disseminated after the close of business and the current index value is disseminated from time-to-time on days on which transactions in index options are made on the Exchange.”

²¹ Current underlying index values for narrow-based index options trading pursuant to Phlx Rule 1009A(b) and Rule 19b-4(e) under the Act are also reported at least once every 15 seconds during the time the index options are traded on the Exchange pursuant to Phlx Rule 1009A(b)(10).

their respective Rule 19b-4 filings and approval orders. Phlx anticipates that it may list options on new Phlx proprietary indexes in the future, in which event the underlying current and closing values of those new indexes will also be disseminated over the PBOT MDDN and not over CTA Tape B. Further, the Exchange may determine at a later date to remove the Phlx World Energy IndexSM (“XWE”SM) and the Phlx Europe SectorSM (“XEX”SM) and disseminate their values over PBOT’s MDDN, like the other Phlx proprietary indexes.

2. Statutory Basis

The Exchange believes that its amended proposal is consistent with Section 6(b) of the Act²² in general, and furthers the objectives of Section 6(b)(5) of the Act²³ 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 investors and the public interest, by permitting the Exchange to cause the dissemination of index values in a manner that will enhance the value to the Exchange of indexes which the Exchange owns, while continuing to maintain the listing and trading of options on these indices as an investment alternative available to investors. The Exchange also believes that its proposal furthers the objectives of Section 6(b)(4) of the Act²⁴ in particular, in that it is an equitable allocation of reasonable fees among persons using its facilities. The Exchange believes that PBOT’s proposed fee structure is reasonable and equitable, as it is based on the type of data received (real-time, delayed and snapshot), which is, in turn, generally based on the timeliness of the data. As noted above, market data vendors which provide market data to 200,000 or more Devices in any given month qualify for a 15% Administrative Fee for that month, to be deducted

²² 15 U.S.C. 78f(b).

²³ 15 U.S.C. 78f(b)(5).

²⁴ 15 U.S.C. 78f(b)(4).

from the monthly subscriber fees that they collect and are obligated to pay PBOT under the Vendor/Subvendor Agreement.²⁵ The Exchange believes that the 15% Administrative Fee is equitable because any vendor which provides market data to 200,000 or more Devices in any given month will qualify for the Administrative Fee. PBOT is offering the Administrative Fee as an incentive for large market data vendors to carry the data disseminated by the PBOT network. Phlx also believes that the fees to be charged by PBOT are consistent with the requirements of Commission Rule 603, Distribution, consolidation, and display of information with respect to quotations for and transactions in NMS stocks, in that the fees are fair and reasonable and not unreasonably discriminatory.

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

Although the Exchange received no written comments on the proposed rule change to continue listing and trading the Approved Index Options following changes in the index dissemination procedures or the level of fees to be charged by PBOT, the Exchange did receive one comment on the Exchange's underlying decision to remove index values from the consolidated tape and disseminate them over the PBOT MDDN.²⁶ While the commenter did not specify the basis for his conclusion that the proposed changes would reduce the volume in index options to zero, the Exchange continues to believe that continued listing and trading of the Approved Index Options after underlying index values are removed from the consolidated tape is

²⁵ See footnote 18 above.

²⁶ See e-mail from Brian Schaer to the Exchange dated Thursday, August 25, 2005.

appropriate, as are the relocation of all Phlx proprietary index values from the consolidated tape to the PBOT MDDN and the fees to be assessed by PBOT, and, so long as the values continue to be widely disseminated by one or more market data vendors, is consistent with the Act.

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.

The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.²⁷

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the amended 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-2006-04 on the subject line.

²⁷ The Phlx has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice of the filing thereof, following the conclusion of a 15-day comment period.

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-2006-04. 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-2006-04 and should be submitted on or before [insert date 15 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁸

Nancy M. Morris
Secretary

²⁸ 17 CFR 200.30-3(a)(12).