

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53670; File No. SR-Phlx-2006-21)

April 18, 2006

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Delaying Implementation of Its Cancellation Fee

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 March 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 the Phlx. The Phlx has filed the proposed rule change as one establishing or changing a due, fee, or other charge imposed by the Phlx under Section 19(b)(3)(A)(ii)³ 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 Exchange proposes to amend the effective date for the cancellation fee it recently established⁵ from January 2, 2006 to May 1, 2006. The Exchange also proposes to clarify that the cancellation fee will not be assessed on any cancellation orders received prior to the opening of trading.

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 See Securities Exchange Act Release No. 53226 (February 3, 2006), 71 FR 7602 (February 13, 2006) (SR-Phlx-2005-92).

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

Previously, the Exchange adopted a cancellation fee of \$1.10 per cancellation order to be assessed on member organizations for each cancelled AUTOM-delivered⁶ order in excess of the number of orders executed on the Exchange by that member organization in a given month.⁷ The cancellation fee was not to be assessed in a month in which fewer than 500 AUTOM-delivered orders were cancelled. Simple cancels and cancel-replacement orders were the types of orders that were to be counted when

⁶ AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. See Exchange Rules 1014(b)(ii) and 1080.

⁷ See supra note 5.

calculating the number of AUTOM-delivered orders.⁸ The objective of the fee was to discourage excessive use of cancellations.⁹

Prior to implementing the cancellation fee, the Exchange analyzed data and then discussed with member organizations the potential effect of the fee. However, it later came to the attention of the Exchange that the data analyzed by the Exchange was incomplete. Therefore, member organizations, based on the Exchange's analysis, did not believe it was necessary to monitor the use of cancellation orders by any of their respective customers. In actuality, the assessment of the cancellation fee for some member organizations greatly exceeded the estimated amount that was communicated to them.

At this time, the Exchange has discussed with the affected member organizations the amount of the cancellation fees that would have been incurred based on revised and complete January and February 2006 data. Therefore, the Exchange proposes to delay implementation of the cancellation fee until May 1, 2006 to allow member organizations the opportunity either to change behavior or to determine how to most effectively deal with these charges. The Exchange believes it is appropriate to delay implementation of the cancellation fee due to the incomplete data that had been previously communicated to

⁸ A cancel-replacement order is a contingency order consisting of two or more parts, which require the immediate cancellation of a previously received order prior to the replacement of a new order with new terms and conditions. If the previously placed order is already filled partially or in its entirety, the replacement order is automatically canceled or reduced by such number. See Exchange Rule 1066(c)(7).

⁹ The proposal did not cover orders delivered through the Exchange's Floor Broker Management System.

the member organizations.¹⁰ In addition, the Exchange seeks to clarify that pre-market cancellations are not included in the calculation of the cancellation fee because this is not the type of behavior that the Exchange is trying to discourage. No other changes are being proposed in connection with the delayed assessment of the cancellation fee.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹² in particular, in that it is an equitable allocation of reasonable fees and other charges among 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 either solicited or received.

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

The foregoing proposed rule change has been designated as a fee change pursuant

¹⁰ The Exchange indicated that no rebates need to be processed. Although January and February cancellation charges were billed on the February invoice, the Exchange separately discovered a billing issue and credited the amount of cancellation charges billed to member organizations while the billing issue was reviewed.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

to Section 19(b)(3)(A)(ii) of the Act¹³ and Rule 19b-4(f)(2)¹⁴ thereunder. Accordingly, the proposal will take effect upon filing with the Commission. 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. Please include File Number SR-Phlx-2006-21 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-2006-21. 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

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 240.19b-4(f)(2).

<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 the 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-2006-21 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).