

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53761; File No. SR-Phlx-2006-20)

May 5, 2006

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 2 Thereto Establishing a Pilot Option Transaction Charge Credit for Specialists that Send Certain Principal Acting as Agent Orders for Execution Via the Intermarket Option Linkage

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 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 Exchange. On April 25, 2006, the Exchange filed Amendment No. 1 to the proposed rule change, and withdrew Amendment No. 1 on May 4, 2006. On May 5, 2006, the Exchange filed Amendment No. 2.<sup>3</sup> The Exchange 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 Act<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission.<sup>6</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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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> In Amendment No. 2, the Exchange clarified that the proposed rule change is a pilot that will expire on July 31, 2006. In Amendment No. 2, the Exchange also clarified the purpose of the proposed rule change and made technical changes to the proposed rule change, including the proposed rule text.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

<sup>6</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change the Commission considers the period to

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

The Exchange proposes to establish an option transaction charge credit of \$0.21 per contract for Exchange options specialist units<sup>7</sup> that incur Phlx option transaction charges when a customer order is delivered to the limit order book via the Exchange's Options Floor Broker Management System ("FBMS")<sup>8</sup> and is then sent to an away market and executed via the Intermarket Option Linkage ("Linkage") under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Plan")<sup>9</sup> as a Principal Acting as Agent Order ("P/A Order").<sup>10</sup>

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commence on May 5, 2006, the date on which the Exchange filed Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

<sup>7</sup> The Exchange uses the terms "specialist" and "specialist unit" interchangeably in its proposed rule change.

<sup>8</sup> The FBMS is a component of the Exchange's Automated Options Market (AUTOM) System designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. The Options FBMS also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. See Phlx Rule 1080, Commentary .06.

<sup>9</sup> See Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000); and 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (order approving Phlx as a participant in the Plan).

<sup>10</sup> A P/A Order is an order for the principal account of a specialist (or equivalent entity on another participant exchange that is authorized to represent public customer orders), reflecting the terms of a related unexecuted public customer order for which the specialist is acting as agent. See Phlx Rule 1083(k)(i).

This proposal is a pilot that will expire on July 31, 2006, is in connection with an existing pilot program that is currently scheduled to expire on July 31, 2006,<sup>11</sup> and applies to transactions settling on or after April 3, 2006.

The text of the proposed rule change is available at the Commission's Public Reference Room, at the Office of the Secretary of the Exchange, and on the Exchange's Web site at <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. 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 this proposed rule change is to alleviate the potential economic burden of multiple transaction charges imposed on Exchange specialist units by establishing a credit for Exchange option transaction charges incurred by an Exchange specialist unit when a customer

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<sup>11</sup> Fees for Linkage P and P/A orders are currently subject to a pilot program scheduled to expire on July 31, 2006. See, e.g., Securities Exchange Act Release No. 52095 (July 21, 2005), 70 FR 43733 (July 28, 2005) (SR-Phlx-2005-46).

limit order placed on the limit order book by a Floor Broker<sup>12</sup> results in an execution of a P/A Order that is sent to another exchange via Linkage.

Currently, when an Exchange specialist sends a P/A Order through Linkage to an away market, the specialist unit ultimately pays fees to execute the order at both the Exchange and the away market center. The Exchange believes that the imposition of both fees may place an economic burden on Exchange specialist units. The purpose of this proposal is to credit the specialist for the fee that is charged by the Exchange. The Exchange believes that an options transaction charge credit of \$0.21 per contract should encourage the use of the Linkage and reduce the potential economic burden of multiple fees that may be incurred by specialist units when a customer order is delivered to the limit order book via the FBMS and is then sent and executed via the Linkage. In addition, this proposal should allow the Exchange to remain competitive with other exchanges with respect to the assessment of Linkage-related fees.<sup>13</sup>

This proposal is a pilot that will expire on July 31, 2006, is in connection with an existing pilot program that is currently scheduled to expire on July 31, 2006,<sup>14</sup> and applies to transactions settling on or after April 3, 2006.

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<sup>12</sup> A Floor Broker who wishes to place a limit order on the limit order book must submit such a limit order electronically through the FBMS. See Exchange Rule 1063, Commentary .01. See also, Exchange Rule 1080, Commentary .02(b).

<sup>13</sup> See Securities Exchange Act Release Nos. 53526 (March 21, 2006), 71 FR 15794 (March 29, 2006) (SR-PCX-2006-19) (rebate of the transaction fees charged to Market Makers when they use the Linkage to send a P/A Order to another options exchange); and 53372 (February 24, 2006), 71 FR 11003 (March 3, 2006) (SR-CBOE-2006-10) (rebate of certain transaction fees to Designated Primary Market Makers related to the execution of outbound P/A Orders).

<sup>14</sup> See supra at note 11.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act<sup>15</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>16</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and issuers and other persons using its facilities.

### 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 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 establishes or changes a due, fee, or other charge applicable only to a member pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>17</sup> and Rule 19b-4(f)(2) thereunder.<sup>18</sup> Accordingly, the proposal took 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.<sup>19</sup>

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

<sup>16</sup> 15 U.S.C. 78f(b)(4).

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>18</sup> 17 CFR 240.19b-4(f)(2).

<sup>19</sup> See supra at note 6.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2006-20 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-2006-20. 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 Exchange. 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-2006-20 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>20</sup>

Nancy M. Morris  
Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).