

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53790; File No. SR-Phlx-2006-04)

May 11, 2006

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No. 2 Thereto Relating to Dissemination of Index Values

I. Introduction

On January 12, 2006, the Philadelphia Stock Exchange, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposal to license the current and closing index values underlying the Exchange’s proprietary options to its wholly owned subsidiary, the Philadelphia Board of Trade (“PBOT”), and to allow PBOT to collect subscriber fees from market data vendors. 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. The proposed rule change, as amended, was published for comment in the Federal Register on April 7, 2006.³ The Commission received no comments regarding the proposal.⁴ This order approves the proposed rule change, as amended.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 53584 (March 31, 2006), 71 FR 17938.

⁴ Although the Commission received no written comments on the proposed rule change, the Exchange did receive one comment opposing the Exchange’s underlying decision to remove index values from the consolidated tape and disseminate them through PBOT. See e-mail from Brian Schaer to the Exchange dated Thursday, August 25, 2005. The Exchange believes that the continued listing and trading of the Approved Index Options, the relocation of Phlx

II. Description of the Proposal

A. Dissemination of Index Values

The Phlx proposes to license the current and closing index values underlying most of the Phlx's proprietary indexes including the following options to PBOT for the purpose of selling, reproducing, and distributing the index values over PBOT's Market Data Distribution Network ("MDDN")⁵: the Phlx Gold/Silver SectorSM ("XAUSM"), Phlx Oil Service SectorSM ("OSXSM"), Phlx Semiconductor Sector ("SOXSM"), and the Phlx Utility SectorSM ("UTYSM") (together, the "Approved Index Options"). The Exchange proposes that the index values underlying the Approved Index Options no longer be disseminated as described in their respective Rule 19b-4 filings and approval orders.⁶

proprietary index values from the consolidated tape to PBOT, and the fees to be assessed by PBOT after underlying index values are removed from the consolidated tape are appropriate and consistent with the Act so long as the index values continue to be widely disseminated by one or more market data vendors.

⁵ 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.

Phlx also lists and trades options on a number of other stock indices whose values will not be disseminated by PBOT. Phlx represents that those indices will continue to be maintained, and options thereon will continue to be listed, as they are today. Phlx further represents that 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). In the 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 proposes to cease disseminating the current and closing index values of certain of its proprietary indexes⁷ over the facilities of the Consolidated Tape Association (“CTA”). The Exchange states that it has entered into a license agreement with PBOT pursuant to which PBOT will disseminate such values solely over the PBOT’s MDDN.⁸ The Exchange 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. The three industry leading market data vendors would make the real time market data widely available to subscribers, as would several mid-tier vendors.⁹

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 represents that it has determined not to remove the Phlx World Energy IndexSM (“XWE”SM) and the Phlx Europe SectorSM (“XEX”SM) from CTA immediately but proposes to move these index values to the PBOT MDDN at a future date.

⁸ The MDDN is a new internet protocol multicast network developed by PBOT and SAVVIS Communications. The Exchange states that its licensing agreement grants PBOT the exclusive, royalty-free, worldwide right to sell, offer for sale, perform, display, reproduce and distribute the current and closing index values derived from the Exchange’s proprietary indices. Phlx represents that the license does not include the right to sublicense, modify, improve or create derivative works of, the values or the indices. Phlx also states 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.

⁹ 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.

B. Subscriber Fees

The Exchange also proposes to allow PBOT to charge subscriber fees to vendors of market data for all the values of Phlx's proprietary indexes disseminated by PBOT's MDDN. The subscriber fees are set out in agreements that PBOT would execute and has executed with various market data vendors for the right to receive, store, and retransmit the current and closing index values transmitted over the MDDN.¹⁰ Phlx proposes that all vendors will be charged, based upon usage by their subscribers, a monthly fee of \$1.00 per "Device," as defined in the agreement,¹¹ that is used by vendors and their subscribers to receive and re-transmit Phlx proprietary sector index current and settlement values on a real time basis and disseminated every 15 seconds. This monthly fee would be reduced by 15% for those vendors which provide market data to 200,000 or

¹⁰ The Exchange represents that 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.

¹¹ 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 snapshot data to its customers would be assessed a monthly fee of \$1500.00 regardless of the number of End Users or Devices involved.

more Devices in any month (“15 Percent Administrative Fee Deduction”). For snapshot data, which is essentially market data that is refreshed no more frequently than once every 60 seconds, Phlx proposes that vendors will be charged \$.00025 per request or \$1,500 per month for unlimited snapshot data requests.¹²

III. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange¹³ and, in particular, the requirements of Section 6 of the Act.¹⁴ Specifically, as discussed in detail below, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁵ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, 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. In addition, the Commission believes that the

¹² 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.

¹³ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78f.

¹⁵ 15 U.S.C. 78f(b)(5).

proposal is consistent with Section 6(b)(4) of the Act,¹⁶ in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and issuers and other persons using its facilities as described below. The subscriber fees are also consistent with Rule 603 under the Act.¹⁷

A. Dissemination of Index Values

The Commission believes that the Exchange's proposal to disseminate the index values of its proprietary index options through PBOT is consistent with the Commission's requirement that the index values underlying exchange traded options and other products be frequently and widely disseminated.¹⁸ The Exchange has represented that under its proposal current index values for the Phlx proprietary indexes would be widely disseminated by one or more major market data vendors at least every 15 seconds during Exchange trading hours and that closing index values would be promptly disseminated.¹⁹

¹⁶ 15 U.S.C. 78f(b)(4).

¹⁷ 17 CFR 242.603.

¹⁸ See Securities Exchange Act Release Nos. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998), at 70960; 52572 (October 7, 2005), 70 FR 60125 (October 14, 2005) (SR-Phlx-2005-57) (amending the listing standards for Trust Shares and Index Fund Shares to provide that the current value of the underlying index must be widely disseminated by one or more market data vendors every 15 seconds); and 51748 (May 26, 2005), 70 FR 32684 (June 3, 2005) (SR-NASD-2005-024) (revising the listing standards for Portfolio Depository Receipts and Index Fund Shares to provide that the current value of the underlying index must be widely disseminated by one or more major market data vendors at least every 15 seconds); 51868 (June 17, 2005), 70 FR 36672 (June 24, 2005) (SR-Amex-2005-044).

¹⁹ This is consistent with Phlx Rule 1100A(a), which 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." Current underlying index values for narrow-based index options trading pursuant

The Commission notes that, apart from changing the mechanism by which index values are disseminated, the Exchange represents that it will continue to maintain the indexes underlying the Approved Index Options as described in their respective Rule 19b-4 filings and approval orders. Thus, the Commission believes the proposal will continue to provide investors with the pricing information necessary for the orderly trading of options and derivative securities based on these indexes.

B. Subscriber Fees

The Exchange represents that the fees to be charged by PBOT are consistent with the requirements of Rule 603 under the Act in that the fees are fair and reasonable and not unreasonably discriminatory.²⁰ The Commission believes that PBOT's proposed fee structure is reasonable 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.²¹

With regard to the 15 percent Administrative Fee Deduction proposed by the Exchange, the Commission does not believe it to be unreasonably discriminatory. As proposed by the Exchange, vendors which provide market data to 200,000 or more

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).

²⁰ 17 CFR 242.603 (Distribution, consolidation, and display of information with respect to quotations for and transactions in NMS stocks). The Exchange represents that the Vendor/Subvendor Agreements between PBOT and the market data vendors 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. The Commission notes that any such fee changes would need to be submitted to the Commission under Section 19(b) of the Act.

²¹ The Exchange represents that it does not presently realize any revenue from the sale of current and closing index values disseminated over CTA that are not shared with other CTA Plan participants. 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.

Devices in any given month would receive a credit against the fees charged and collected by PBOT pursuant to the vendor agreement. Any vendor that meets the 200,000 Device standard will qualify for and receive the 15 Percent Administrative Fee Deduction. The Exchange represents that PBOT is offering the 15 Percent Administrative Fee Deduction as an incentive for large market data vendors to carry the data disseminated by the PBOT network. The Commission recognizes that volume-based discounts of fees are not uncommon, and where the discount can be applied objectively, it is consistent with Rule 603. For the same reasons noted above, the Commission believes that the fee structure meets the standard in Section 6(b)(4) of the Act²² in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and issuers and other persons using its facilities.

²² 15 U.S.C. 78f(b)(4).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²³ that the proposed rule change (SR-Phlx-2006-04), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁴

Nancy M. Morris
Secretary

²³ 15 U.S.C. 78s(b)(2).

²⁴ 17 CFR 200.30-3(a)(12).