

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56221; File No. SR-Phlx-2007-48)

August 8, 2007

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto to Adopt a Monthly Fee for Stock Execution Clerks that Handle Stand-Alone Equity Orders

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 June 28, 2007, 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 substantially prepared by Phlx. On August 7, 2007, Phlx amended the proposed rule change.³ The Exchange filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act⁴ and Rule 19b-4(f)(2)⁵ thereunder, as establishing or changing a due, fee, or other charge applicable to a member, which renders the proposed rule change effective upon filing with the Commission.⁶ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Amendment No. 1.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

⁶ For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on August 7, 2007, the date the Exchange filed Amendment No. 1.

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

Phlx proposes to adopt a monthly fee of \$500.00 for stock execution clerks that handle stand-alone equity orders, such as to hedge traders' options positions. Those stock execution clerks who are assessed the \$500.00 monthly fee will no longer pay the \$25.00 Trading Floor Personnel Registration Fee, as the \$500.00 monthly fee will encompass the \$25.00 Trading Floor Personnel Registration Fee. The text of the proposed rule change is available at www.phlx.com, the Phlx, and the Commission's Public Reference Room.

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

A stock execution clerk is currently defined in Exchange Rule 1090 as any clerk other than a specialist clerk on the Exchange trading floor who functions as an intermediary in a transaction (i) consummated on the Exchange; (ii) entered verbally for execution other than on the Exchange; or (iii) entered into a third party system designed

to execute transactions other than on the Exchange.⁷ All stock execution clerks must register as such with the Exchange.⁸

Generally, “stock execution” refers to the service used by options traders to hedge their options trades with the underlying stock. Although stock execution today is often done electronically, stock execution clerks provide a service to Exchange members on the options floor by accepting orders for the purchase and sale of securities underlying options transactions. Once such orders are accepted, the stock execution clerk forwards such orders to the appropriate marketplace for execution. The transactions executed are typically hedging transactions in underlying stocks for Exchange specialists and Registered Options Traders. The transaction may be contingent on an options transaction⁹ or may stand independently (“stand-alone equity orders”).

The purpose of this proposal is to assess fees commensurate with the activities of stock execution clerks that handle stand-alone equity orders (i.e. orders that are not contingent on an options transaction). For those stock execution clerks that handle orders that are contingent on an options transaction, i.e. orders that are packaged with an options trade, the Exchange currently assesses charges associated with those contingency orders, such as options floor brokerage assessment and option transaction charges. The Exchange, however, does not assess fees in connection with stand-alone equity orders, which may be handled by a variety of intermediaries and which may be executed on

⁷ See Exchange Rule 1090, Commentary .01(a).

⁸ See Exchange Rule 620(b).

⁹ A contingency order is a limit or market order to buy or sell that is contingent upon a condition being satisfied while the order is at the post. For certain options contingency orders, the contingency involves buying or selling the underlying security (generally called “stock” in this proposal). See Exchange Rule 1066(c).

different equity markets. The Exchange believes it is appropriate to charge a fee for stock execution clerks performing this function on the options floor because such clerks and such businesses generally are not subject to fees for doing business from the Exchange's options floor.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act¹¹ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that it is equitable and reasonable to charge a fee for stock execution clerks that handle stand-alone equity orders because such clerks are generally not subject to Exchange fees for doing business from the Exchange's options floor. The Exchange believes that the \$500.00 monthly fee, which encompasses the \$25.00 Trading Floor Personnel Registration Fee, is a reasonable amount to charge stock execution clerks for the ability to perform this service on the options floor. In addition, the monies received as a result of the \$500 monthly fee should help raise revenue for the Exchange.

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.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

A written comment was received by the Exchange.¹²

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

The foregoing proposed rule change has become effective upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act¹³ and Rule 19b-4(f)(2) thereunder,¹⁴ in that the proposed rule change establishes or changes a member due, fee, or other charge imposed by the self-regulatory organization. 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

¹² A written comment in the form of an email message from Larry Johnson at Wedbush Morgan Securities was sent to Kevin Kennedy (an Exchange employee) on May 29, 2007. In the email message, Mr. Johnson stated, in part, that the \$500 fee was “in no way an impediment for us.” This written comment was received in connection with various discussions between Exchange staff and Wedbush, which related in part to what types of activity (including stock execution business) would be allowed on the Exchange’s options floor due to the fact that the Exchange was closing its physical equity trading floor and migrating to XLE, the Exchange’s new equity trading system. The Exchange was addressing this issue, in general, in order to notify former equity floor members who may have been considering establishing some form of operation on the Exchange’s options trading floor and possibly connecting to XLE.

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 240.19b-4(f)(2).

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-2007-48 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-2007-48. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the

principal office of 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-2007-48 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

Florence E. Harmon
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).