

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50676; File No. SR-Phlx-2004-67)

November 16, 2004

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Assessing Index Option Charges for FXI Options

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 October 19, 2004, 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 and II below, which Items have been prepared by the Phlx. On November 16, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> 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 Phlx proposes to amend its Summary of Index Option Charges fee schedule to include options listed on the iShares FTSE/Xinhua China 25 Index Fund (“FXI Options”),<sup>4</sup> an exchange-traded fund (“ETF”). Specifically, the Exchange proposes to charge transactions involving FXI Options according to the Exchange’s Summary of Index Option Charges, as opposed to the fees set forth in the Exchange’s Summary of Equity Option Charges.

The Exchange also proposes to delete references on its fee schedule to the Specialist Unit

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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> Amendment No. 1 made a minor technical change to the proposed Summary of Index Option and FXI Options Charges.

<sup>4</sup> The Exchange started listing and trading FXI Options, a product that is an equity option, on October 19, 2004.

Fixed Monthly Fee (“fixed monthly fee”), as that fee is no longer in effect.<sup>5</sup>

The proposal to include the FXI options in the Exchange’s Summary of Index Options is effective for transactions settling on or after October 19, 2004.

The text of the proposed rule change, including the Exchange’s Summary of Equity Option Charges, Summary of Index Option Charges, and fixed monthly fee schedule is available at the Phlx and at the Commission.

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

The purpose of the proposed rule change is to charge for the FXI Options in the same manner that the Exchange charges for index options. The Exchange believes that charging for FXI Options according to the rates set forth in the Exchange’s Summary of Index Option Charges is reasonable for these types of products because the higher charges should help defray some of the license fees incurred by the Exchange in connection with the listing and trading of FXI Options.

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<sup>5</sup> The fixed monthly fee was in effect for transactions settling through August 31, 2004. See Securities Exchange Act Release Nos. 49467 (March 24, 2004), 69 FR 17017 (March 31, 2004) (SR-Phlx-2004-17); 49693 (May 12, 2004), 69 FR 28974 (May 19, 2004) (SR-Phlx-2004-30); and 50229 (August 23, 2004), 69 FR 52953 (August 30, 2004) (SR-Phlx-2004-42).

The purpose of the proposed rule change as it relates to deleting references to the fixed monthly fee is to update the Exchange's fee schedule to accurately reflect the fees currently charged by the Exchange.

## 2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>7</sup> in particular, in that it provides for an equitable allocation of reasonable dues, 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 inappropriate burden on competition.

### 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 proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and Rule 19b-4(f)(2) thereunder.<sup>9</sup> Accordingly, the proposal has become effective 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

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78(s)(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

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>10</sup>

#### 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-2004-67 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-Phlx-2004-67. 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

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<sup>10</sup> For purposes of calculating the 60-day abrogation period, the Commission considers the proposal to have been filed on November 15, 2004, the date the Phlx filed Amendment No. 1.

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-2004-67 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>11</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).