

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51257; File No. SR-Phlx-2005-10)

February 25, 2005

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto Relating to Fees Applicable to Linkage P and P/A 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 January 28, 2005, 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 Exchange. On February 16, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is granting accelerated approval of the proposed rule change, as amended, on a pilot basis.

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

The Exchange proposes to amend its schedule of fees to: (1) reduce from \$.45 per contract to \$.15 per contract the Exchange’s equity option transaction charge⁴ applicable to Principal Orders (“P Orders”) sent to the Exchange via the Intermarket Options Linkage (“Linkage”) pursuant to the Plan for the Purpose of Creating and Operating an Intermarket

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Form 19b-4 dated February 16, 2005 (“Amendment No. 1”). Amendment No. 1 replaced and superseded the original filing in its entirety.

⁴ The equity option transaction charge would apply to equity options and to options overlying Exchange-Traded Fund Shares.

Option Linkage (“Plan”);⁵ and (2) adopt a \$.15 per contract equity option transaction charge for Linkage Principal Acting as Agent Orders (“P/A Orders”).⁶

The Exchange would charge the clearing member firm of the sender of inbound Linkage P and P/A Orders. Consistent with current practice and with the Plan, the Exchange would not charge for the execution of Satisfaction Orders sent through Linkage.

The Exchange intends to incorporate this new fee structure as part of an existing pilot program, which is scheduled to expire July 31, 2005.⁷

The text of the proposed rule change is available on the Phlx’s Web site (www.phlx.com), at the Phlx’s Office of the Secretary, and at the Commission’s Public Reference Room.

⁵ See Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000); (order approving the Plan); and 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (order approving Phlx as a participant in the Plan).

⁶ Under Section 2(16) of the Plan and Exchange Rule 1083(k), a “Linkage Order” means an Immediate or Cancel order routed through the Linkage as permitted under the Plan. There are three types of Linkage Orders:

- (i) “Principal Acting as Agent Order,” which 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;
- (ii) “Principal Order,” which is an order for the principal account of an Eligible Market Maker and is not a P/A Order; and
- (iii) “Satisfaction Order,” which is an order sent through the Linkage to notify a member of another Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

⁷ See Securities Exchange Act Release No. 50125 (July 30, 2004), 69 FR 47479 (August 5, 2004) (SR-Phlx-2004-44). In that filing, the Exchange established, on a pilot basis, a fee of \$.45 per contract for inbound P Orders. The instant proposed rule change would reduce the fee for inbound P Orders from \$.45 per contract to \$.15 per contract, and would establish, as part of the pilot, a fee of \$.15 per contract for inbound P/A Orders.

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 had received on the proposed rule change. The text of these statements may be examined at the places specified in Item III 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 reducing the charge for P Orders from \$.45 to \$.15 is to encourage additional order flow to the Exchange and remain competitive. The purpose of adopting a \$.15 fee for P/A Orders is to raise revenue for the Exchange. The Exchange notes that other exchanges that are participants in the Plan ("Participants") also charge fees for P and P/A Orders.⁸

The Exchange specifically requests that the Commission approve the proposal such that it would apply to transactions that settle on or after February 1, 2005.

⁸ See e.g., Securities Exchange Act Release Nos. 50124 (July 30, 2004), 69 FR 47963 (August 6, 2004) (SR-BSE-2004-32); 50010 (July 13, 2004), 69 FR 43649 (July 21, 2004) (SR-ISE-2004-25); 50048 (July 20, 2004), 69 FR 45102 (July 28, 2004) (SR-CBOE-2004-40); 50082 (July 26, 2004), 69 FR 45875 (July 30, 2004) (SR-PCX-2004-68); and 50116 (July 29, 2004), 69 FR 47473 (August 5, 2004) (SR-Amex-2004-54).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁰ in particular, in that it is an equitable allocation of reasonable fees 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

Written comments on the proposed rule change were neither solicited nor received.

III. 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-2005-10 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.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

All submissions should refer to File Number SR-Phlx-2005-10. 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 publicly available. All submissions should refer to File Number SR-Phlx-2005-10 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange,¹¹ and, in particular, the requirements of Section 6(b) of the

¹¹ In approving this proposal, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Act¹² and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹³ which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission believes that lowering the fee for inbound P Orders retroactively to transactions that settled on or after February 1, 2005 should reduce a financial disincentive to send P Orders to the Phlx. The Commission also believes that implementing a fee for inbound P/A Orders is consistent with the practices of the other Participants. The Commission believes that approving the proposed rule change, as amended, on a pilot basis, until July 31, 2005, will give the Exchange and the Commission further opportunity to evaluate whether Linkage fee are appropriate.

The Commission believes that the proposed rule change, as amended, is generally consistent with the practices of other Participants and presents no new regulatory issues. Accordingly, the Commission finds good cause pursuant to Section 19(b)(2) of the Act,¹⁴ for approving this proposed rule change, as amended, prior to the thirtieth day after publication of notice thereof in the Federal Register.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

¹⁴ 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-Phlx-2005-10), as amended, is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland
Deputy Secretary

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).