

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52095; File No. SR-Phlx-2005-46)

July 21, 2005

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change Relating to the Extension of a Pilot Program Relating to Transaction Charges 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-4² thereunder, notice is hereby given that on July 15, 2005, the Philadelphia Stock Exchange, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II, below, which Items have been prepared by the Phlx. 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 extend, for a one-year period, a pilot relating to transaction fees included in the Exchange’s schedule of dues, fees and charges applicable to the execution of Principal Acting as Agent Orders (“P/A Orders”)³ and Principal Orders (“P Orders”)⁴ sent to the Exchange pursuant to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the “Plan”).⁵ The Exchange proposes to extend the pilot through July 31, 2006.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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 Exchange Rule 1083(k)(i).

⁴ A P Order is an order for the principal account of an Eligible Market Maker and is not a P/A Order. See Exchange Rule 1083(k)(ii).

⁵ On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage (“Linkage”) proposed by the American Stock Exchange

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 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

In July, 2004, the Exchange established, on a one-year pilot basis, a fee of \$.45 per contract for inbound P Orders (the “pilot”).⁶ Subsequently, in February, 2005, the Exchange modified the pilot by (i) reducing the transaction charge for inbound P Orders from \$.45 per contract to \$.15 per contract, and (ii) establishing a transaction charge of \$.15 per contract for inbound P/A Orders.⁷ The purpose of the proposed rule change is to extend the pilot for one year, through July 31, 2006.

Thus, the Exchange’s current schedule of dues, fees and charges includes a transaction charge of \$.15 per contract applicable to Linkage P/A Orders and P Orders sent to the Exchange

LLC, Chicago Board Options Exchange, Inc., and International Securities Exchange, Inc. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx, Pacific Exchange, Inc., and Boston Stock Exchange, Inc. joined the Linkage Plan. See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

⁶ See Securities Exchange Act Release No. 50125 (July 30, 2004), 69 FR 47479 (August 5, 2004) (SR-Phlx-2004-44).

⁷ See Securities Exchange Act Release No. 51257 (February 25, 2005), 70 FR 10736 (March 4, 2005) (SR-Phlx-2005-10).

pursuant to the Plan. The pilot is scheduled to expire on July 31, 2005. The Exchange proposes to extend the current pilot for an additional one-year period, through July 31, 2006.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(4) of the Act⁹ 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

No written comments were either solicited or 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-2005-46 on the subject line.

Paper comments:

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-Phlx-2005-46. 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 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-2005-46 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,¹⁰ and, in particular, with the requirements of Section 6(b) of

¹⁰ In approving this rule, the Commission notes that it has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

the Act¹¹ and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹² 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 the extension of the Linkage fee pilot until July 31, 2006 will give the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹³ for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the Federal Register. The Commission believes that granting accelerating approval will preserve the Exchange's existing pilot program for Linkage fees without interruption as the Phlx and the Commission further consider the appropriateness of Linkage fees.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

¹³ 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act¹⁴ that the proposed rule change (SR-Phlx-2005-46) is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland
Deputy Secretary

¹⁴ Id.

¹⁵ 17 CFR 200.30-3(a)(12).