

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53115; File No. SR-Phlx-2005-82)

January 13, 2006

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to its Dividend Spread Strategy Program License Fees

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 December 14, 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, II and III below, which items have been prepared by Phlx. On January 11, 2006, the Exchange filed Amendment No. 1 to the proposal.³ Phlx has designated the proposed rule change as one establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act⁴ and Rule 19b-4(f)(2) thereunder,⁵ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Phlx proposes to amend its dividend spread strategy program in order to: (i) recapture license fees associated with certain equity option and index option contracts that carry a license fee and that are executed as part of a dividend spread strategy transaction, and (ii) make minor

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, Phlx revised the proposed rule text and its discussion to clarify which products would be subject to the license fee, that the license fee is not subject to and does not count towards the fee cap, and that the proposed license fee is part of a pilot program due to expire on March 1, 2006.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

technical changes to its fee schedule. The license fee proposal is scheduled to become effective for dividend strategy transactions settling on or after December 15, 2005, and it will remain in effect as a pilot program that is scheduled to expire on March 1, 2006.

The text of the proposed rule change is available on Phlx's Web site at <http://www.phlx.com>, at the Office of the Secretary at Phlx, and at 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, as amended, and discussed any comments it received on the proposal. 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

Currently, the Exchange imposes a fee cap on equity option transaction and comparison charges for dividend spread strategy transactions⁶ executed the day immediately prior to the ex-date⁷ and occurring on the same trading day in the same options class. Specifically, Registered Options Traders' ("ROTs) and specialists' equity option transaction and comparison charges are capped at \$1,750 for transactions effected pursuant to a dividend spread strategy when the

⁵ 17 CFR 240.19b-4(f)(2).

⁶ A "dividend spread" is any trade done within a defined timeframe in which a dividend arbitrage can be achieved between any two (2) deep-in-the-money options.

⁷ The ex-date is the date on or after which a security is traded without a previously declared dividend or distribution. After the ex-date a stock is said to trade ex-dividend.

declared dividend or distribution is \$0.25 or greater. However, for dividend spread transactions for a security with a declared dividend or distribution of less than \$0.25, the ROTs' and specialists' equity option transaction and comparison charges are capped at \$1,000 for transactions effected pursuant to a dividend spread strategy executed on the same trading day in the same options class. The fee caps are implemented after any applicable rebates are applied to ROT and specialist equity option transaction and comparison charges.⁸

The Exchange is now proposing to assess a license fee associated with certain equity option and index option contracts executed as part of a dividend spread strategy transaction. Specifically, the Exchange is proposing to assess a license fee of \$0.05 per contract side for dividend spread strategy transactions in options on: Nasdaq-100 Index Tracking Stocksm⁹ traded under the symbol QQQQ; Russell 1000 Growth iShares, traded under the symbol IWF; Russell 2000 iShares, traded under the symbol IWM; Russell 2000 Value iShares, traded under the symbol IWN; Russell 2000 Growth iShares, traded under the symbol IWO; Russell Midcap Growth iShares, traded under the symbol IWP; Russell Midcap Value iShares, traded under the symbol IWS; NYSE Composite Index, traded under the symbol NYC; NYSE U.S. 100 Index,

⁸ Currently, the Exchange provides a rebate for certain contracts executed in connection with transactions occurring as part of a dividend spread strategy. Specifically, for those options contracts executed pursuant to a dividend spread strategy, the Exchange rebates \$0.08 per contract side for ROT executions and \$0.07 per side for specialist executions on the business day before the underlying stock's ex-date.

⁹ The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 SharesSM, Nasdaq-100 TrustSM, Nasdaq-100 Index Tracking StockSM, and QQQSM are trademarks or service marks of The Nasdaq Stock Market, Inc. ("Nasdaq") and have been licensed for use for certain purposes by the Phlx pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (the "Index") is determined, composed, and calculated by Nasdaq without regard to the licensee, the Nasdaq-100 TrustSM, or the beneficial owners of Nasdaq-100 SharesSM. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

traded under the symbol NY; Standard & Poor's Depository Receipts®¹⁰, Trust Series 1, traded under the symbol SPY; iShares Lehman 1-3 Year Treasury Bond Fund, traded under the symbol SHY; iShares Lehman 7-10 Year Treasury Bond Fund, traded under the symbol IEF; iShares Lehman 20+ Treasury Bond Fund, traded under the symbol TLT; iShares Lehman Aggregate Bond Fund, traded under the symbol AGG; iShares Lehman TIPS Bond Fund, traded under the symbol TIP; KBW Capital Markets Index,¹¹ traded under the symbol KSX; KBW Insurance Index, traded under the symbol KIX; Phlx/KBW Bank Index, traded under the symbol BKX; iShares S&P 100 Index, traded under the symbol OEF; iShares S&P Europe 350, traded under the symbol IEV; iShares S&P Global 100 Index, traded under the symbol IOO; iShares S&P Global Energy Sector Index, traded under the symbol IXC; iShares S&P Global Financial Sector Index, traded under the symbol IXG; iShares S&P Global Healthcare Sector Index, traded under the symbol IXJ; iShares S&P Global Information Technology Sector Index, traded under the symbol IXN; iShares S&P Global Telecom Sector Index, traded under the symbol IXP; iShares S&P Latin America 40, traded under the symbol ILF; iShares S&P MidCap 400, traded under the symbol IJH; iShares S&P SmallCap 600, traded under the symbol IJR; iShares S&P TOPIX 150, traded under the symbol ITF; iShares S&P 500, traded under the symbol IVV; S&P Industrial Select Sector SPDR, traded under the symbol XLI; S&P Technology Select Sector SPDR, traded under the symbol XLK; S&P Utilities Select Sector SPDR, traded under the

¹⁰ Standard & Poor's®, "S&P®," "S&P 500®," "Standard & Poor's 500®," "Standard & Poor's Depository Receipts®," and "500" are trademarks of The McGraw-Hill Companies, Inc., and have been licensed for use by the Phlx in connection with the listing and trading of SPDRs on the Phlx. These products are not sponsored, sold or endorsed by S&P, a division of The McGraw-Hill Companies, Inc., and S&P makes no representation regarding the advisability of investing SPDRs.

¹¹ "KBW," "Keefe, Bruyette & Woods Capital Markets Index," and "KBW Capital Markets Index" are trademarks of Keefe, Bruyette & Woods, Inc. and have been licensed for use by the Phlx. Keefe, Bruyette & Woods, Inc. makes no recommendations concerning the advisability of investing in options based on the KBW Capital Markets Index.

symbol XLU; S&P Consumer Staples Select Sector SPDR, traded under the symbol XLP; S&P Energy Select Sector SPDR, traded under the symbol XLE; S&P Financial Select Sector SPDR, traded under the symbol XLF; S&P Health Care Select Sector SPDR, traded under the symbol XLV; S&P Materials Select Sector SPDR, traded under the symbol XLB; S&P Consumer Discretionary Select Sector SPDR, traded under the symbol XLY; MidCap SPDR, traded under the symbol MDY; Keefe, Bruyette & Woods Regional Banking Index or the KBW Regional Banking Index, traded under the symbol KRX; and Keefe, Bruyette & Woods Mortgage Finance Index or the KBW Mortgage Finance Index, traded under the symbol MFV.

The license fee of \$0.05 per contract side will be assessed on every transaction and will not be subject to the \$1,750 or \$1,000 caps described above. Thus, this fee will be assessed in addition to any other transaction and comparison charges associated with dividend spread strategy transactions, and it will not count towards reaching the \$1,750 or \$1,000 caps. The license fee proposal is scheduled to become effective for dividend strategy transactions settling on or after December 15, 2005, and it will remain in effect as a pilot program that is scheduled to expire on March 1, 2006.

The purpose of this proposal is to recoup the license fees owed in connection with the trading of the products listed above. Even with the assessment of the \$0.05 license fee per contract side, Phlx believes that the fee caps and rebates should continue to encourage specialists and ROTs to provide liquidity for dividend spread strategy transactions.

The Exchange is also proposing to add a “Q” to the trading symbol “QQQ” on its \$60,000 “Firm Related” Equity Option and Index Option Cap Fee Schedule to reflect the current trading symbol of the Nasdaq-100 Index Tracking Stocksm. In addition, the Exchange proposes to delete WellSpring Bio-Clinical Trials Index from the \$60,000 “Firm Related” Equity Option

and Index Option Cap Fee Schedule, traded under the symbol WHC,¹² as that product is no longer listed or traded at the Exchange.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act¹³ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁴ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were solicited or received on the proposed rule change, as amended.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁵ and subparagraph (f)(2) of Rule 19b-4 thereunder¹⁶ because it establishes or changes a due, fee, or other charge. 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

¹² WellSpring Bio-Clinical Trials Index ("WHC"), "ORCHIDs," and "WellSpring" are trademarks of WellSpring BioCapital Partners, LLC ("WellSpring LLC") and have been licensed for use by the Phlx. WellSpring LLC makes no recommendations concerning the advisability of investing in options based on the WellSpring Bio-Clinical Trials Index.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

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.¹⁷

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. Please include File Number SR-Phlx-2005-82 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 20549-9303.

All submissions should refer to File Number SR-Phlx-2005-82. 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

¹⁶ 17 CFR 240.19b-4(f)(2).

¹⁷ The effective date of the original proposed rule change is December 14, 2005, the date of the original filing, and the effective date of Amendment No.1 is January 11, 2006, the filing date of the amendment. For purposes of calculating the 60-day abrogation period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on January 11, 2006, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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 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-2005-82 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.¹⁸

Nancy M. Morris
Secretary

¹⁸ 17 CFR 200.30-3(a)(12).