

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53226; File No. SR-Phlx-2005-92)

February 3, 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 Cancellation 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 30, 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 the Phlx. On January 27, 2006, the Phlx submitted an amendment to the proposed rule change ("Amendment No. 1").³ The Phlx has filed the proposed rule change as one establishing or changing a due, fee, or other charge imposed by the Phlx under Section 19(b)(3)(A)(ii)⁴ 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 from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, Phlx clarified the manner in which the fee will be assessed and made technical changes to the rule text.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

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

The Phlx proposes to adopt a cancellation fee of \$1.10 per order to be assessed on member organizations for each cancelled AUTOM-delivered⁶ order in excess of the number of orders executed on the Exchange by that member organization in a given month. The proposed cancellation fee will not be assessed in a month in which fewer than 500 AUTOM-delivered orders are cancelled. Simple cancels and cancel-replacement orders are the types of orders that will be counted when calculating the number of AUTOM-delivered orders.⁷ The text of the proposed rule change is available on the Exchange's Internet Web site (<http://www.phlx.com>), at the principal office of the 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 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

⁶ AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. See Exchange Rules 1014(b)(ii) and 1080.

⁷ A cancel-replacement order is a contingency order consisting of two or more parts which require the immediate cancellation of a previously received order prior to the replacement of a new order with new terms and conditions. If the previously placed order is already filled partially or in its entirety the replacement order is automatically canceled or reduced by such number. For example, if an original order is received for 100 contracts @ \$1.70 and 20 contracts get filled, leaving a remaining balance of 80 contracts, and a cancel-replacement order is received with instructions to cancel the 100 contracts and replace it with 60 contracts @ \$1.80, the replacement order would be for 40 contracts with a price of \$1.80 (because 20 contracts were already executed at the price of \$1.70). See Exchange Rule 1066(c)(7).

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 assessing \$1.10 per order for each cancelled AUTOM-delivered order in excess of the number of orders that the executing member organization executes on the Exchange in a given month is to discourage excessive use of cancellations.⁸ The Exchange believes this proposed fee is necessary given the often disproportionate number of order cancellations received relative to order executions and the increased costs associated with the practice of canceling orders immediately after they are routed electronically to the Exchange. The Exchange believes that a cancellation fee should help to deal with the various operational problems and costs resulting from this practice.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹⁰ in particular, in that it is an equitable allocation of reasonable fees among Exchange members.

⁸ As represented by the Phlx, this proposal does not cover orders delivered through the Floor Broker Management System ("FBMS") because, at this time, FBMS orders are entered and cancelled manually from the floor and do not create the capacity issues that are created in connection with excessive electronically-delivered cancelled orders, as described above. See Exchange Rule 1063. Telephone conversation between Edith Hallahan, Deputy General Counsel, and Cynthia K. Hoekstra, Director, Phlx, and Nancy J. Sanow, Assistant Director, and Ira L. Brandriss, Special Counsel, Division of Market Regulation, Commission, February 1, 2006.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

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.

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 foregoing proposed rule change, as amended, has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act¹¹ and Rule 19b-4(f)(2)¹² thereunder. Accordingly, the proposal will take effect 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 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.¹³

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

¹³ The effective date of the original proposed rule change is December 30, 2005 and the effective date of the amendment is January 27, 2006. For purposes of calculating the 60-day 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 27, 2006, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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-2005-92 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-2005-92. 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-2005-92 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.¹⁴

Nancy M. Morris
Secretary

¹⁴ 17 CFR 200.30-3(a)(12).