

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**Release No. 34-55371; File No. SR-Phlx-2007-06]**

### **Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Port Fees as Modified by Amendment No. 1**

February 28, 2007.

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 January 26, 2007, 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 substantially prepared by the Phlx. On February 28, 2007, the Exchange submitted Amendment No. 1 to the proposed rule change. The Exchange has designated this proposal as one establishing or changing a due, fee or other charge imposed by the Exchange under Section 19(b)(3)(A),<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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**

The Phlx proposes to implement a fee for connecting into the Exchange's system to enter quotes ("SQF<sup>5</sup> port fee"). The SQF port fee would operate as follows: for the first 5 active SQF ports,<sup>6</sup> a member organization would be

charged \$250 per port per month and, for each additional active SQF port (over the first 5 active SQF ports), the member organization would be charged \$1,000 per port per month. Additionally, the same member organization would be credited \$0.02 per side for every option contract executed on the Phlx in that same month (excluding executions resulting from dividend, merger and short stock interest strategies)<sup>7</sup> up to the amount of the SQF port fees when the member organization or one of its employees is designated as a specialist, streaming quote trader ("SQT") or remote streaming quote trader ("RSQT") and the transaction is billed according to the specialist or Registered Option Trader ("ROT") transaction and/or comparison rates.<sup>8</sup> The SQF port fee and corresponding credit would be applied per member organization.

The SQF port fee (assessed monthly) became effective February 1, 2007 and the corresponding \$0.02 credit (assessed per side per executed contract) became effective for trades settling on or after February 1, 2007.

The text of the proposed rule change is available at <http://www.Phlx.com>, at 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 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 SQF port fee and corresponding credit is to encourage more efficient quoting, which should, in turn, promote a more efficient use of SQF ports. The Exchange believes that using fewer ports should assist in addressing the current and growing

quoting and efficiency issues. The number of ports correlates to quoting efficiency, in that more efficient quoting uses fewer ports and fewer ports means the Exchange's systems are being used to process the same number of quotes more quickly. The credit should also encourage member organizations to send more business to the Exchange. More efficient quoting should, in turn, result in more executions on the Phlx, for which the member organization will receive a credit up to the amount of any SQF port fees that are incurred.

###### **2. Statutory Basis**

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

A written comment was received requesting that the Exchange grant an extension regarding the implementation date for the port fee.<sup>11</sup>

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

The foregoing rule change has become effective pursuant to Section

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> In an email dated January 17, 2007, a member requested that the date of implementation for the port fee be delayed. In August 2006, the Exchange distributed a memorandum, which notified members/member organizations of the Exchange's intention to adopt an SQF port fee in order to provide such members/member organizations with the opportunity to change their port arrangements before the SQF port fee took effect. Originally, the Exchange anticipated that the port fee would become effective on November 1, 2006. The Exchange, however, delayed the implementation date until February 1, 2007 to allow members/member organizations additional time to change their port arrangements. The Exchange believes that sufficient notice was given to members/member organizations regarding the proposed port fee, which includes the August 2006 memorandum and a delay in the implementation date from November 1, 2006 until February 1, 2007. Therefore, the Exchange believes that a further delay in the implementation date as requested was not warranted.

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

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

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

<sup>5</sup> SQF stands for specialized quote feed and is a proprietary quoting system that allows specialists, streaming quote traders and remote streaming quote traders to connect and send quotes into Phlx XL, by-passing the Exchange's Auto-Quote System. See Exchange Rule 1080, commentary .01(b).

<sup>6</sup> Active ports refer to ports that receive inbound quotes at any time within that month.

<sup>7</sup> See e.g., Securities Exchange Act Release No. 54424 (September 11, 2006), 71 FR 54699 (September 18, 2006) (SR-Phlx-2006-55).

<sup>8</sup> SQTs and RSQTs are assessed fees pursuant to the ROT rates as SQTs and RSQTs are deemed to be ROTs. See Exchange Rule 1014(b)(ii)(A) and (B).

19(b)(3)(A)(ii) of the Act<sup>12</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>13</sup> since it establishes or changes a due, fee or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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 the furtherance of the purposes of the Act.<sup>14</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 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-2007-06 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-2007-06. 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-2007-06 and should be submitted on or before March 27, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55375; File No. SR-Phlx-2006-31]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change as Modified by Amendment Nos. 1, 2, and 3 Thereto Relating to Electronically Submitted Limit Orders

February 28, 2007.

#### I. Introduction

On May 5, 2006, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to offer an additional mechanism for participants on the Exchange's electronic trading platform for options, Phlx XL, to trade against orders and electronic quotations. On December 8, 2006, the Exchange filed Amendment No. 1 to the proposed rule change. The Exchange filed Amendment No. 2 to the proposed rule change on January 11, 2007. The proposed rule change, as modified by Amendment Nos. 1 and 2, was published for comment in the **Federal Register** on January 24, 2007.<sup>3</sup> The Exchange filed Amendment No. 3 on February 28, 2007.<sup>4</sup> The Commission

received no comment letters on the proposed rule change. This order approves the proposed rule change as modified by Amendment Nos. 1, 2, and 3.

#### II. Description of the Proposal

The purpose of the proposed rule change is to offer an additional mechanism for participants on the Exchange's electronic trading platform for options, Phlx XL,<sup>5</sup> to trade against orders and electronic quotations. Specifically, the proposal permits SQTs and RSQTs to enter Immediate or Cancel ("IOC")<sup>6</sup> orders electronically and expands the types of orders that non-SQT ROTs and specialists may enter for their proprietary accounts to include electronically entered IOC orders. The proposal also changes the minimum order size for a ROT Limit Order from ten contracts to one contract if such contract is designated IOC.

The Exchange further proposes to amend Commentary .02 and .03 of Phlx Rule 1082 to reduce the one-second "counting period" to ¼ of one second during which SQTs, RSQTs and/or specialists may eliminate the locked or crossed markets caused by their electronic quotations. Any unresolved locked or crossed markets remaining after the counting period are automatically executed.

#### III. Discussion

After careful review of the proposal, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the Phlx's proposal to expand the order types that SQTs, RSQTs, non-SQT ROTs

<sup>5</sup> See Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR-Phlx-2003-59).

<sup>6</sup> An immediate-or-cancel order is an order that is to be executed in whole or in part as soon as such order is submitted. Any portion not so executed is to be treated as cancelled.

<sup>7</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

<sup>14</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, the Commission considers the period to commence on February 28, 2007, the date on which the Exchange filed Amendment No. 1.

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 55121 (January 18, 2007), 72 FR 3186.

<sup>4</sup> Amendment No. 3 made minor clarifying changes to Commentary .04 to Phlx Rule 1080.