

*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-NASDAQ-2007-055. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. 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-NASDAQ-2007-055 and should be submitted on or before July 27, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-55974; File No. SR-NYSE-2007-52]

**Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Exclude Interest Expense on Financial Instruments Classified Under GAAP as Liabilities From the Exchange's Earnings Standard**

June 28, 2007.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Act of 1934 (the "Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on June 11, 2007, New York Stock Exchange LLC (the "NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes as described in Items I and II below, which items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

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

The Exchange proposes to amend the earnings standard of Section 102.01C(I) of the Exchange's Listed Company Manual (the "Manual"). The amendment will enable the Exchange to adjust companies' earnings for purposes of the earnings standard to exclude actual historical interest expense paid on financial instruments classified as liabilities under generally accepted accounting principles ("GAAP") that are either retired with the proceeds of an offering occurring in conjunction with the listing or converted into common stock in conjunction with the company's initial public offering ("IPO") at the time of listing. The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the Exchange's Office of the Secretary, 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 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 NYSE 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 Exchange proposes to amend the earnings standard of Section 102.01C(I) of the Manual. The amendment will enable the Exchange to adjust the earnings of companies listing in conjunction with an IPO by excluding actual historical interest expense paid on financial instruments classified as liabilities under GAAP that are either retired with the proceeds of an offering occurring in conjunction with the listing or converted into common stock in conjunction with the company's IPO at the time of listing.

Nonpublic companies engaging in pre-IPO financings often raise capital through the sale of preferred stock. Preferred stock is also sometimes issued by pre-IPO companies to service providers in lieu of cash compensation. At the time of the company's IPO, the preferred stock may be converted into common stock. Companies may also redeem some or all of the outstanding preferred stock with a portion of the proceeds from the IPO.

Section 102.01C(I) currently provides that a company's historical earnings may be adjusted for purposes of the earnings standard to reflect the elimination of the actual historical interest on debt retired with offering proceeds. If the event giving rise to the adjustment occurred during a time period such that pro forma amounts are not set forth in the SEC registration statement, the company must prepare the relevant adjusted financial data to reflect the adjustment to its historical financial data, and its outside audit firm must provide a report of having applied agreed-upon procedures with respect to such adjustments. Such report must be prepared in accordance with the standards established by the American Institute of Certified Public Accountants. Preferred stock generally entitles the holders to the payment of regular dividends. Prior to the adoption of FASB Statement No. 150, many companies treated accreted dividends on preferred stock as a charge to stockholders' equity. Under FASB

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

Statement No. 150, companies are now required to treat certain preferred stock as a liability and, accordingly, any dividends accrued or paid on such preferred stock are treated as interest expense on the income statement. The Exchange believes that it is appropriate to allow the same adjustment to all retired financial instruments classified as liabilities under GAAP as is made for interest paid on retired debt so as to eliminate the effect of dividend payments that are classified as interest expense on earnings when the instrument is retired out of the proceeds of the offering. The Exchange also believes that it is logical to apply the same treatment to the interest associated with any debt or other financial instrument which is converted into common stock at the time of a company's IPO occurring in conjunction with its listing, as the instrument that has given rise to the obligation to pay interest is extinguished at that time. The Exchange believes that this extension is reasonable given the purpose of the earnings standard, which is to determine the suitability for listing of companies on a forward-looking basis. The Exchange anticipates that this amendment will primarily benefit companies retiring preferred stock in connection with their IPOs.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>4</sup> of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</sup> in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

### *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 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*

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest,<sup>7</sup> it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

Under Rule 19b-4(f)(6) of the Act,<sup>10</sup> the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. NYSE has requested that the Commission waive the 30-day operative delay so that it may immediately implement this proposal. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and make this proposed rule change immediately effective.<sup>11</sup>

The Commission notes that, according to the Exchange, Manual Section 102.01(C)(1)(a)(i) already provides for certain adjustments to reflect the net proceeds of an offering, and the intended application of such proceeds to pay off a company's existing debt, including the elimination of actual historical interest on debt being retired with offering proceeds or by conversion into common stock. The proposed rule change would add language to the Manual to clarify that such adjustments to "debt" may properly be made to exclude interest expense on any

<sup>7</sup> Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day pre-filing notice requirement.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> *Id.*

<sup>11</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

financial instrument classified under GAAP as a liability. In this respect, the Commission believes that the change represents an effort by the Exchange to interpret the term "debt" as being consistent with the treatment of certain financial instruments considered liabilities under GAAP. Moreover, the proposal will extend the interest expense exclusion from the Exchange's earnings standard to interest associated with debt extinguished by conversion into common stock at the time of a company's IPO occurring in connection with listing. Given the purpose of the Exchange's earnings standard, which is to determine the suitability of applicants for listing on a forward-looking basis, the Commission believes that this change is consistent with such purposes and is reasonable.

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 furtherance of the purposes of the Act.

### **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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2007-52 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-NYSE-2007-52. 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

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

<sup>5</sup> 15 U.S.C. 78a.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. 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-NYSE-2007-52 and should be submitted on or before July 27, 2007.

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. 34-55972; File No. SR-Phlx-2007-47]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Automating the Rebate Request Process for Dividend, Merger and Short Stock Interest Strategies

June 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 June 15, 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 Phlx. Phlx has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule pursuant

to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(1) 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 from interested persons.

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

The Exchange proposes to eliminate the members' requirement to manually submit rebate request forms and to automate the rebate request process for dividend, merger, and short stock interest strategies, effective for transactions settling on or after July 1, 2007.

The text of the proposed rule change is available on the Exchange's Web site ([http://www.phlx.com/exchange/phlx\\_rule\\_fil.html](http://www.phlx.com/exchange/phlx_rule_fil.html)), at the Exchange's principal office, 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 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 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 provides a rebate for certain contracts executed in connection with transactions occurring as part of a dividend,<sup>5</sup> merger,<sup>6</sup> or short stock interest<sup>7</sup> strategy. Specifically, for

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

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

<sup>5</sup> For purposes of this proposal, the Exchange defines a "dividend strategy" as transactions done to achieve a dividend arbitrage involving the purchase, sale, and exercise of in-the-money options of the same class, executed prior to the date on which the underlying stock goes ex-dividend.

<sup>6</sup> For purposes of this proposal, the Exchange defines a "merger strategy" as transactions done to achieve a merger arbitrage involving the purchase, sale, and exercise of options of the same class and expiration date, executed prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.*, cash or stock.

<sup>7</sup> For purposes of this proposal, the Exchange defines a "short stock interest strategy" as

these option contracts executed pursuant to a dividend strategy, the Exchange rebates \$0.08 per contract side for Registered Options Trader ("ROT") executions and \$0.07 per contract side for specialist executions transacted on the day prior to the date on which the underlying stock goes ex-dividend. The Exchange also provides for a rebate of \$0.08 per contract side for ROT executions and \$0.07 per contract side for specialist executions made pursuant to a merger or short stock interest strategy.<sup>8</sup>

The Exchange currently uses a manual procedure to process rebate requests. To qualify a transaction for the rebate process, a written rebate request form, along with supporting documentation, must be submitted to the Exchange within three business days following the end of the previous month.

The Exchange proposes to eliminate the manual rebate process and replace it with an automated process. In order to capture the necessary information electronically, the Exchange has modified its trade tickets to allow for members to designate on the trade ticket whether the trade involves a dividend, merger, or short stock interest strategy.

The purpose of eliminating the manual procedure is to increase efficiency in connection with the processing of the dividend, merger, and short stock interest rebate request forms.

For transactions settling in June 2007, members must continue to submit the required written rebate request forms as described above. Beginning with transactions settling on or after July 1, 2007, written rebate request forms will no longer be accepted by the Exchange as the rebates will be processed automatically.

###### 2. Statutory Basis

The Exchange believes that its proposal to automate its procedures relating to processing the rebate request forms for dividend, merger, or short stock interest strategies as described above is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>10</sup> in particular, as the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster

transactions done to achieve a short stock interest arbitrage involving the purchase, sale, and exercise of in-the-money options of the same class.

<sup>8</sup> See, *e.g.*, Securities Exchange Act Release Nos. 54174 (July 19, 2006), 71 FR 42156 (July 25, 2006) (SR-Phlx-2006-40) and 53094 (January 10, 2006), 71 FR 2975 (January 18, 2006) (SR-Phlx-2005-75).

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<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.