

**SECURITIES AND EXCHANGE
COMMISSION**

[Release No. 34-56738; File No. PCAOB-2006-03]

**Public Company Accounting Oversight
Board; Order Approving Proposed
Rule Change and Amendment No. 1
Thereo Relating to Inspections**

November 2, 2007.

I. Introduction

On December 20, 2006, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission") proposed rule amendments (PCAOB-2006-03) pursuant to section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Act"), relating to the Board's rules governing inspections of registered public accounting firms. On May 31, 2007, the Board amended its filing because certain of the information described in the original filing had changed. Notice of the proposed rule amendments, including Amendment No. 1 to the proposed amendments, was published in the **Federal Register** on October 1, 2007.¹ The Commission received no comment letters relating to the proposed rule amendments. For the reasons discussed below, the Commission is granting approval of the proposed rule amendments.

II. Description

The PCAOB adopted its initial inspection rules at its public meeting on October 7, 2003, and authorized filing the rules with the Commission. After the appropriate comment period, the Commission approved the rules on June 1, 2004. On December 19, 2006, the PCAOB adopted amendments to its inspection rules to temporarily adjust the inspection frequency requirements for firms with 100 or fewer issuer audit clients and to provide for technical amendments to PCAOB Rule 4006, *Duty to Cooperate with Inspectors*, and PCAOB Rule 4009, *Firm Response to Quality Control Defects*. The PCAOB solicited public comments on the proposed amendments at that time. After reviewing the public comments received on the proposed amendments, the PCAOB adopted Amendment No. 1 to the proposed amendments and submitted an amended Form 19b-4 proposed rule change to the Commission. Pursuant to the requirements of section 107(b) of the Act and section 19(b) of the Securities

Exchange Act of 1934 (the "Exchange Act"), the Commission published the proposed amendments for public comment on October 1, 2007.

III. Discussion

The Commission received no public comments relating to the PCAOB's proposed amendments relating to its rules governing inspections of registered public accounting firms. Section 104 of the Act requires the PCAOB to conduct a continuing program of inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with the Act, the rules of the PCAOB, the rules of the Commission, and professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers. Section 104(b)(1)(B) of the Act requires the PCAOB to conduct an inspection, at least once every three years, of each registered firm that regularly provides audit reports for 100 or fewer issuers, and section 104(b)(2) of the Act authorizes the PCAOB to adopt rules adjusting that frequency.

In 2003, the PCAOB adopted Rule 4003(b), which provides that the PCAOB will conduct inspections, on a triennial basis, not only of each firm that regularly provides audit reports for 100 or fewer issuers, but also of any firm that issues any audit report or that plays a substantial role in the preparation or furnishing of an audit report. In the course of inspection planning, including in connection with the Board's budget process, the Board identified a way in which a temporary adjustment to Rule 4003 would, over time, maximize the Board's ability to allocate its inspection resources more evenly, consistently, and effectively year-to-year. The Board explained that the issue arises because the first three years of inspections, 2004 to 2006, coincided with the Board's initial growth period and, as a consequence, the resources available for and devoted to the inspections of firms with 100 or fewer issuer audit clients increased from year to year. The resources available in each year necessarily informed the extent of the inspection work performed in that year, including with respect to both the numbers of firms inspected and the size of firms inspected. This resulted in a year-to-year fluctuation that, because of the minimum frequency requirements of Rule 4003(b), the Board would to some extent be locked into repeating in succeeding three-year periods.

On December 19, 2006, the PCAOB adopted a proposed amendment to its Rule 4003 to temporarily adjust the minimum inspection frequency

requirement applicable to certain firms. The Board explained that the proposed amendment will allow the Board to approach long-term inspection planning with the flexibility to eliminate the fluctuation generated in the start-up cycle, including the flexibility to make adjustments that will result in a relatively consistent, from year to year, mix of firms in terms of the size and nature of audit practice.

The proposed amendment to PCAOB Rule 4003 provides that, with respect to firms that became registered in 2003 or 2004, (1) the PCAOB need not conduct the firm's first inspection sooner than the fourth year after the firm, while registered, first issues an audit report or plays a substantial role in an audit, and (2) the PCAOB need not conduct the firm's second inspection sooner than the fifth year after the firm, while registered, first issues an audit report or plays a substantial role. Amendment No. 1 to the proposed amendments removes a sunset provision relating to Rule 4003 from the proposed amendments, which would have caused the proposed amendment to Rule 4003 to expire on June 30, 2007. The proposed amendments also include technical amendments to make corrections to PCAOB Rules 4006 and 4009.

The proposed amendments do not limit the PCAOB's authority to conduct inspections at any time, and do not affect registered firms' obligations under the Act. Even with this adjustment, the Board expects that each U.S. firm that issued an original audit report in 2003 or 2004 after registering with the Board will have its first inspection within the three-year period after first issuing an original audit report. The flexibility provided by the adjustment would come into play principally with respect to the timing of the second inspection of some of those firms, the timing of the first two inspections of some non-U.S. firms, and the timing of inspections of firms that play a substantial role but do not issue audit reports. The adjustment would have no continuing effect on the timing of any inspections after the second inspections of firms that registered in 2003 and 2004, and would have no effect on the timing of any inspection of any firm that registered after 2004. As the Board explained, the adjustment will facilitate the reduction of certain year-to-year fluctuations in the inspection program, which otherwise could interfere with the Board's ability to implement a program consistently and effectively with relatively stable resources from year to year. The adjustment will accomplish this while delaying only a relatively small portion

¹ See SEC Release No. 34-56517 (Sep. 25, 2007); 72 FR 55839 (October 1, 2007).

of inspections, and delaying them only for a short period.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed amendments to the Board's rules governing inspections of registered public accounting firms are consistent with the requirements of the Act and the securities laws and are necessary and appropriate in the public interest and for the protection of investors.

It is therefore ordered, pursuant to section 107 of the Act and section 19(b)(2) of the Exchange Act, that the proposed rule amendments (File No. PCAOB-2006-03) be and hereby are approved.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56725; File No. SR-Phlx-2007-82]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Market Access Provider Subsidy Section of the Exchange's Fee Schedule

October 31, 2007.

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 October 23, 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. 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 amend the Exchange's fee schedule to reflect a Market Access Provider ("MAP") Marketing Subsidy of \$25,000.00 per month for a maximum of three months.

The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.Phlx.com/exchange/phlx-rule-fil.htm>.

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 proposed rule change is to provide marketing incentives to Exchange member organizations, and to encourage additional options order flow to the Exchange.

Market Access Provider

In August 2007, the Exchange amended its fee schedule to provide a per contract subsidy (the "Subsidy") for certain Exchange members known as MAPs.³ A MAP is an Exchange member organization that offers to customers automated order routing systems and electronic market access to U.S. options markets. The Exchange pays a per-contract MAP Subsidy to any Exchange member organization that qualifies as a MAP (an "Eligible MAP")⁴ who elects to participate by submitting any application(s) and/or form(s) required by the Exchange and complying with other conditions.

The Proposal

The proposal would provide an incentive for Eligible MAPs to market the Exchange as a destination for orders routed by the MAP. Specifically, the Exchange would pay a MAP Marketing Subsidy of \$25,000.00 per month, for a maximum of three months (totaling \$75,000.00), to Eligible MAPs, in

³ See Securities Exchange Act Release No. 56274 (August 16, 2007), 72 FR 48720 (August 24, 2007) (SR-Phlx-2007-54).

⁴ The term "Eligible MAP" is defined in current footnote 4(b) of the Market Access Provider Subsidy section of the Exchange's fee schedule (the instant proposal would re-number that footnote to 5(b)).

addition to the current per-contract Subsidy.

The MAP Marketing Subsidy is intended to be used by the Eligible MAP to: (i) Promote the Subsidy program; (ii) provide technical assistance and information to its customers on the equity options order routing functionality that pertains to the Subsidy program; and (iii) analyze the volume based usage of such order routing functionality by the Eligible MAP and its customers, in each case with a view towards the successful launch of the Eligible MAP's participation in the Subsidy for Eligible MAPs.

The maximum aggregate Marketing Subsidy that an Eligible MAP would be entitled to receive is \$75,000 (*i.e.*, 3 monthly payments). The Exchange's obligation to pay this Marketing Subsidy will be conditioned upon (a) execution by the Eligible MAP of an agreement to function as a MAP with the Exchange and compliance in all respects with the requirements specified therein, and (b) continued participation of the Eligible MAP in the Subsidy program, including compliance in all respects with the requirements of the program.

The Exchange believes that the MAP Marketing Subsidy should assist MAPs in their marketing efforts to route order flow to the Exchange, which should, in turn, encourage more options order flow to the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act⁵ in general, and furthers the objectives of section 6(b)(5) of the Act⁶ in particular, in that it is 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 by enhancing the Exchange's competitive position by providing the MAP Marketing Subsidy to Eligible MAPs and increasing order flow to the Exchange.

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.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.