

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57851; File No. SR-Phlx-2008-38)

May 22, 2008

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Its Payment for Order Flow Pilot Program

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 May 19, 2008, 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 Exchange. Phlx has designated this proposal as one establishing or changing a due, fee, or other charge imposed by Phlx under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ 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 Substance of the Proposed Rule Change

The Phlx proposes to extend its payment for order flow pilot program, which is currently in effect until May 27, 2008, for an additional one-year period until May 27, 2009. The Exchange also proposes to make a minor clarifying amendment to the payment for order flow fee section of the Exchange’s fee schedule. Other than extending the date of the pilot program for an additional year and making the minor technical amendment to the Exchange’s fee schedule, no

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

other changes to the Exchange's current payment for order flow program are being proposed at this time.

The text of the proposed rule change is available at the principal office of the Exchange, the Commission's Public Reference Room, and www.phlx.com.

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. 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 Exchange states that the purpose of extending the Exchange's payment for order flow program for an additional year is to remain competitive with other options exchanges that administer payment for order flow programs.⁵

Currently, the following payment for order flow fees are in effect at the Exchange:⁶

⁵ See, e.g., Securities Exchange Act Release Nos. 57094 (January 3, 2008), 73 FR 1653 (January 9, 2008) (SR-CBOE-2007-154); 55895 (June 11, 2007), 72 FR 33549 (June 18, 2007) (SR-ISE-2007-38); 55328 (February 21, 2007), 72 FR 9050 (February 28, 2007) (SR-Amex-2007-16); and 53341 (February 21, 2006), 71 FR 10085 (February 28, 2006) (SR-Amex-2006-15).

⁶ See, e.g., Securities Exchange Act Release Nos. 53841 (May 19, 2006), 71 FR 30461 (May 26, 2006) (SR-Phlx-2006-33); 54297 (August 9, 2006), 71 FR 47280 (August 16, 2006) (SR-Phlx-2006-47); 54485 (September 22, 2006), 71 FR 57017 (September 28, 2006) (SR-Phlx-2006-56); 55290 (February 13, 2007), 72 FR 8051 (February 22, 2007) (SR-Phlx-2007-05); 55473 (March 13, 2007), 72 FR 13338 (March 21, 2007) (SR-Phlx-2007-12); and 55891 (June 11, 2007), 72 FR 33271 (June 15, 2007) (SR-Phlx-2007-39).

(1) equity options (other than those equity options that trade as part of the Exchange's Penny Pilot Program),⁷ options on the Russell 2000® Index⁸ traded under the symbol RUT, and options on the one-tenth value Russell 2000® Index traded under the symbol RMN, are all assessed \$0.70 per contract; and (2) equity options that trade as part of the Exchange's Penny Pilot Program are assessed \$0.25 per contract. Trades resulting from either Directed⁹ or non-Directed Orders that are delivered electronically and executed on the Exchange are assessed a payment for order flow fee,¹⁰ while non-electronically-delivered orders (i.e., represented by a floor broker) are not assessed a payment for order flow fee.¹¹ Additionally, payment for order flow fees are not assessed on transactions executed on the Exchange that correspond with an outbound

⁷ The current Penny Pilot Program, in effect through March 27, 2009, permits certain options series to be quoted and traded in increments of \$0.01. See Securities Exchange Act Release No. 56563 (September 27, 2007), 72 FR 56429 (October 3, 2007) (SR-Phlx-2007-62).

⁸ The Exchange states that Russell 2000® is a trademark and service mark of the Frank Russell Company, used under license. Neither Frank Russell Company's publication of the Russell Indexes nor its licensing of its trademarks for use in connection with securities or other financial products derived from a Russell Index in any way suggests or implies a representation or opinion by Frank Russell Company as to the attractiveness of investment in any securities or other financial products based upon or derived from any Russell Index. Frank Russell Company is not the issuer of any such securities or other financial products and makes no express or implied warranties of merchantability or fitness for any particular purpose with respect to any Russell Index or any data included or reflected therein, nor as to results to be obtained by any person or any entity from the use of the Russell Index or any data included or reflected therein.

⁹ See Securities Exchange Act Release No. 57094 (May 21, 2008) (SR-Phlx-2008-38) (approving the Exchange's Directed Order Program on a permanent basis).

¹⁰ Specialists and Directed ROTs who participate in the Exchange's payment for order flow program are assessed a payment for order flow fee, in addition to ROTs. Therefore, the payment for order flow fee is assessed, in effect, on equity option transactions between a customer and an ROT, a customer and a Directed ROT, or a customer and a specialist.

¹¹ Electronically-delivered orders do not include orders delivered through the Floor Broker Management System pursuant to Exchange Rule 1063.

Linkage Principal Acting as Agent (“P/A”) order.¹²

The Exchange states that the purpose of making the minor technical amendment to the payment for order flow section of the Exchange’s fee schedule is to clarify that options on QQQQ are part of the Penny Pilot Program.¹³

This proposal is scheduled to remain in effect as a pilot program until May 27, 2009.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act¹⁴ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁵ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. In particular, the Exchange believes that continuing the payment for order flow program should allow the Exchange to remain competitive, which should in turn, benefit the Exchange members who are assessed the payment for order flow fee.

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 solicited or received with respect to the proposed rule change.

¹² See Securities Exchange Act Release No. 57313 (February 12, 2008), 73 FR 9398 (February 20, 2008) (SR-Phlx-2008-10).

¹³ See Securities Exchange Act Release No. 56563 (September 27, 2007), 72 FR 56429 (October 3, 2007) (SR-Phlx-2007-62).

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4).

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

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁶ and Rule 19b-4(f)(2)¹⁷ thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. 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 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-2008-38 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-2008-38. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁷ 17 CFR 240.19b-4(f)(2).

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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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-2008-38 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Florence E. Harmon
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).