

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57090; File No. SR-Phlx-2007-94)

January 3, 2008

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending the Examinations Fee

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 28, 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 Exchange. The Exchange 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

Phlx proposes to expand its current Examinations Fee in order to assess this fee on: (1) member organizations and participant organizations,⁵ for whom the Exchange is the Designated Examining Authority (“DEA”), that do not employ any off-floor traders; and (2) “inactive

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).

⁵ For purposes of this proposed rule change, the term “participant organization” means Foreign Currency Options Participant Organization, as that term is defined in Section 1-1(l) of Phlx’s By-Laws. See telephone conversation between Cynthia Hoekstra, Vice President, Phlx, and Christopher Chow, Special Counsel, Division of Trading and Markets, Commission, on December 31, 2007.

organizations.” While changes to the Exchange’s fee schedule pursuant to this proposal are effective upon filing, the Exchange has designated that the proposed changes become operative beginning January 1, 2008. The text of the proposed rule change is available at the Exchange, on its Web site at http://phlx.com/exchange/phlx_rule_fil.html, and at 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 implements a tiered Examinations Fee based on the number of off-floor traders in the same member/participant organization for whom the Exchange is the DEA.⁶ Specifically, a member/participant organization is assessed \$2,100 per month for one to ten off-floor traders; \$2,600 per month for 11 to 50 off-floor traders; \$5,000 per month for 51 to 200 off-floor traders; and \$12,500 per month for over 200 off-floor traders. However, the following member organizations are currently exempt from the assessment of the Examinations

⁶ In connection with charges assessed in connection with the trading of equity securities on XLE (the Exchange’s equity trading system), Sponsored Participants are not included in the calculation of the number of off-floor traders in a Sponsoring Member Organization. See Securities Exchange Act Release No. 54941 (December 14, 2006), 71 FR 77079 (December 22, 2006) (SR-Phlx-2006-70).

Fee: (1) inactive organizations;⁷ and (2) organizations operating through one or more Phlx markets that demonstrated that 25% or more of its revenue as reflected on the most recently submitted FOCUS report or transactions as reflected on its purchase and sales blotter are derived from securities transactions on the Phlx.

The Exchange proposes to assess the Examinations Fee on those member/participant organizations who do not have any off-floor traders because the Exchange must examine those member/participant organizations for whom the Exchange is the DEA.⁸ Member/participant organizations with no off-floor traders in the same member/participant organization would be assessed a monthly fee of \$2,100, which is the same fee that is currently assessed on member/participant organizations with one to ten off-floor traders.

Additionally, the Exchange proposes to assess the Examinations Fee on inactive organizations, thereby eliminating the current inactive member/participant organization exemption.⁹ As a result, inactive member/participant organizations for whom the Exchange is the DEA will be assessed the Examinations Fee based on the number of off-floor traders in that inactive member/participant organization.¹⁰

⁷ An inactive organization is defined as one that has no securities transaction revenue, as determined by Financial and Operational Combined Uniform Single Report (“FOCUS reports”) or other financial filings, as long as the member/participant organization continues to have no such revenue each month.

⁸ Member/participant organizations that have operated without an off-floor trader generally rely on persons registered with affiliated broker-dealers or operate utilizing a “black box” trading technology.

⁹ The Exchange represents that it will continue to conduct examinations of member/participant organizations that have chosen to elect an “inactive status.” See telephone conversation between Cynthia Hoekstra, Vice President, Phlx, and Christopher Chow, Special Counsel, Division of Trading and Markets, Commission, on January 2, 2008.

¹⁰ Member organizations operating through one or more Phlx markets that demonstrated that 25% or more of its revenue as reflected on the most recently submitted FOCUS

The Exchange intends to implement the Examinations Fee as set forth in this proposal beginning January 1, 2008.

The Exchange states that the purpose of revising the Examinations Fee is to more efficiently and effectively assess member/participant organizations for costs in connection with conducting examinations of member/participant organizations that do not have any off-floor traders for whom the Exchange is the DEA and for those that choose to elect an “inactive status.”

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act¹¹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹² in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. According to the Exchange, assessing member/participant organizations an Examinations Fee as set forth in this proposal should more efficiently and effectively charge those member/participant organizations for costs associated with conducting examinations of these organizations.

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.

report or transactions as reflected on its purchase and sales blotter are derived from securities transactions on Phlx will continue to be exempt from the assessment of the Examinations Fee.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

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 has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act¹³ and Rule 19b-4(f)(2)¹⁴ thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal took 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-2007-94 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.

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 240.19b-4(f)(2).

All submissions should refer to File Number SR-Phlx-2007-94. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. 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-2007-94 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.¹⁵

Florence E. Harmon
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).