

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54174; File No. SR-Phlx-2006-40)

July 19, 2006

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Relating to its Short Stock Interest, Dividend, and Merger Strategy Programs

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 June 28, 2006, 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 the proposed rule change as one establishing or changing a due, fee, or other charge, pursuant to 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. On July 18, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.⁵ 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

Phlx proposes to amend its schedule of fees to provide for a rebate of \$0.08 per contract side for Registered Options Trader (“ROT”) executions and \$0.07 per contract side for specialist

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 In Amendment No. 1, Phlx incorporated the proposed definitions of the terms “short stock interest strategy,” “dividend strategy,” and “merger strategy” into its fee schedule

executions made pursuant to a short stock interest strategy. In addition, the Exchange proposes to impose a fee cap of \$1,000 on equity option transaction and comparison charges for short stock interest strategies executed on the same trading day in the same options class and to assess a \$0.05 per contract side license fee for short stock interest strategies in connection with certain products that carry license fees. The Exchange is also proposing to amend its current definitions of dividend spread transactions and merger spread transactions and to add the new definitions for dividend, merger, and short stock interest strategies to its fee schedule.

The text of the proposed rule change is available on Phlx's Web site at <http://www.phlx.com>, at the Office of the Secretary at 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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposal. 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

a. Background

and provided citations for the former definitions of "dividend spread" and "merger spread" in the purpose section of the proposal.

Currently, the Exchange provides a rebate for certain contracts executed in connection with transactions occurring as part of a dividend or merger strategy. Specifically, for those options contracts executed pursuant to a dividend or merger strategy, the Exchange rebates \$0.08 per contract side for ROT executions and \$0.07 per contract side for specialist executions on the business day before the underlying stock's ex-date. The ex-date is the date on or after which a security is traded without a previously declared dividend or distribution.

The net transaction and comparison charges after the rebate is applied are capped at \$1,750 for merger strategies executed on the same trading day in the same options class and for dividend strategies on the same day in the same options class, except for a security with a declared dividend or distribution less than \$0.25. In that instance, the net transaction and comparison charges after the rebate is applied are capped at \$1,000 for dividend strategies on the same day in the same options class.⁶

A \$0.05 per contract side license fee is imposed for dividend strategies in connection with certain products that carry license fees.⁷ The license fee is assessed on every transaction and is not subject to the \$1,750 or \$1,000 fee cap, nor does it count towards reaching the fee caps. The \$1,000 and \$1,750 fee caps and the \$0.05 per contract side license fee are subject to a pilot program scheduled to expire on September 1, 2006.⁸

⁶ These fee caps are implemented after any applicable rebates are applied to ROT and specialist equity option transaction and comparison charges. See Securities Exchange Act Release No. 53529 (March 21, 2006), 71 FR 15508 (March 28, 2006) (SR-Phlx-2006-16).

⁷ For a complete list of these product symbols, see the Exchange's \$60,000 Firm-Related Equity Option and Index Option Cap Fee Schedule.

⁸ These fee caps are implemented after any applicable rebates are applied to ROT and specialist equity option transaction and comparison charges. See Securities Exchange Act Release No. 53529 (March 21, 2006), 71 FR 15508 (March 28, 2006) (SR-Phlx-2006-16).

b. Proposal

Phlx proposes to amend its schedule of fees to provide 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 short stock interest strategy. The Exchange proposes to define a short stock interest strategy as “transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class.”

In addition, the Exchange proposes to impose a fee cap of \$1,000 on equity option transaction and comparison charges for short stock interest strategies executed on the same trading day in the same options class. Similar to the fee caps currently in effect in connection with dividend and merger spread transactions,⁹ the fee cap will be implemented after any applicable rebates are applied to ROT and specialist equity option transaction and comparison charges.

In addition, the Exchange is proposing to assess a \$0.05 per contract side license fee for short stock interest strategies in connection with certain products that carry license fees.¹⁰ The applicable license fee will be assessed on every transaction and will not be subject to the \$1,000 fee cap, nor will it count towards reaching the \$1,000 fee cap.

The short stock interest strategy rebate, \$1,000 fee cap and \$0.05 per contract side license fee would be effective beginning with trades settling on or after July 1, 2006. The short stock interest strategy \$1,000 fee cap and \$0.05 per contract side license fee would remain in effect as

⁹ See Id.

¹⁰ For a complete list of these product symbols, see the Exchange’s \$60,000 Firm-Related Equity Option and Index Option Cap Fee Schedule.

a pilot program that is scheduled to expire on September 1, 2006.¹¹ Consistent with the current rebate program for dividend and merger strategies,¹² any rebate request forms for short stock interest strategies would have to be submitted to the Exchange three business days following the end of the previous month.

The Exchange is also proposing to amend its current definitions of dividend spread transactions and merger spread transactions (hereinafter referred to as “dividend strategy,” “merger strategy,” or “dividend and merger strategies,” as applicable) and update its fee schedule accordingly.

First, the Exchange proposes to amend the definitions of dividend and merger strategies in order to clarify that transactions done to achieve a dividend or merger arbitrage do not necessarily need to be “spreads” in order to qualify for the fee cap and rebate program currently in effect. It is the Exchange’s understanding that each of these strategies can be achieved either by purchasing and selling the same option series or different options series. Accordingly, as explained in further detail below, the Exchange proposes to revise each definition to refer to each strategy as a “strategy” instead of as a “spread” and to change each definition in certain respects to make clear that transactions done to achieve a dividend or merger arbitrage that involve only one options series may also qualify for the above-referenced fee cap and rebate.

Second, the Exchange is proposing changes to the definition of each strategy to better reflect the similarities between the strategies. Dividend and merger strategies are strategies that

¹¹ The proposed pilot program will be in effect for the same time period as the \$1,000 and \$1,750 fee caps and the \$0.05 per contract side license fee that is scheduled to expire on September 1, 2006. See Securities Exchange Act Release No. 53529 (March 21, 2006), 71 FR 15508 (March 28, 2006) (SR-Phlx-2006-16).

¹² See Securities Exchange Act Release No. 53094 (January 10, 2006), 71 FR 2975 (January 18, 2006) (SR-Phlx-2005-75).

have similar economic risks and are executed in similar ways. Each definition would be clarified to reflect that each strategy involves the “purchase, sale and exercise” of options. Each definition would also be clarified to reflect that the options involved must be of the “same class.”

The Exchange currently defines a dividend strategy for purposes of the rebate and fee cap as “any trade done within a defined time frame pursuant to a strategy in which a dividend arbitrage can be achieved between any two deep-in-the-money options.”¹³ The Exchange proposes to change “dividend spread” to “dividend strategy,” and proposes to define 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.” The word “two” is not included in the new definition so that transactions involving only a single options series that are done to achieve a dividend arbitrage may also qualify for the fee cap and rebate. The word “deep” is also not included in the new definition because the options used do not necessarily need to be deep-in-the-money options and also because of the difficulty in defining what constitutes “deep” in-the-money. The definition is clarified by making explicit two requirements: the options must be of the same class and the transactions must be effected on the day prior to the date on which the underlying stock goes ex-dividend.

The Exchange currently defines a merger strategy for purposes of the fee cap and rebate as a “transaction executed pursuant to a merger spread strategy involving the simultaneous purchase and sale of options of the same class and expiration date, but with different strike prices, followed by the exercise of the resulting long options position, each executed prior to the

¹³ See Securities Exchange Act Release Nos. 53094 (January 10, 2006), 71 FR 2975 (January 18, 2006) (SR-Phlx-2005-75) and 51596 (April 21, 2005), 70 FR 22381 (April 29, 2005) (SR-Phlx-2005-19).

date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock.”¹⁴ The Exchange proposes to change “merger spread” to “merger strategy,” and proposes to define 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.” The proposed definition does not include the words “but with different strike prices” so that transactions involving only a single options series that are done to achieve a merger arbitrage may also qualify for the fee cap and rebate. The word “simultaneous” is also not included in the new definition because the purchase and sale transactions do not necessarily need to be executed simultaneously.

The Exchange represents that the purpose of the proposed rule change is to attract additional order flow to the Exchange. The Exchange believes that implementing a rebate and fee cap for short stock interest spread strategies, similar to the rebates and fee caps currently in place for dividend and merger strategy strategies, should increase the Exchange’s ability to compete with other options exchanges for order flow in connection with this options strategy.¹⁵

The Exchange also represents that the purpose of amending the definitions of dividend strategies and merger strategies is to add clarity and to make the definitions more consistent with

¹⁴ Id.

¹⁵ Other options exchanges currently allow for reduced and/or capped fees for short interest spread transactions. See Securities Exchange Act Release Nos. 53172 (January 24, 2006), 71 FR 5093 (January 31, 2006) (SR-CBOE-2006-07); 53412 (March 3, 2006), 71 FR 12752 (March 13, 2006) (SR-CBOE-2006-20); 53413 (March 3, 2006), 71 FR 13202 (March 14, 2006) (SR-PCX-2006-06); and 53415 (March 3, 2006), 71 FR 12745 (March 13, 2006) (SR-Amex-2006-10).

each other and with the proposed definition of short stock interest strategies, which should in turn, reflect the similarities among the strategies.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,¹⁶ in general, and Section 6(b)(4),¹⁷ in particular, in that it is an equitable allocation of reasonable fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that proposed rule change, as amended, 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

No written comments were either solicited or received.

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

The foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁸ and subparagraph (f)(2) of Rule 19b-4 thereunder¹⁹ because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of the 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

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4).

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁹ 17 CFR 240.19b-4(f)(2).

protection of investors, or otherwise in furtherance of the purposes of the Act.²⁰

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 an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2006-40 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-2006-40. 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

²⁰ The effective date of the original proposed rule change is June 28, 2006, the date of the original filing, and the effective date of Amendment No.1 is July 18, 2006, the filing date of the amendment. For purposes of calculating the 60-day abrogation period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on July 18, 2006, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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 such filing also will be available for inspection and copying at the principal office of 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-2006-40 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Nancy M. Morris
Secretary

²¹ 17 CFR 200.30-3(a)(12).