

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57253; File No. SR-Phlx-2008-08)

February 1, 2008

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to an Options Floor Broker Subsidy 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 January 29, 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: (1) adopt a tiered per contract floor broker options subsidy payable to member organizations with Exchange registered floor brokers for eligible contracts (as defined below) that are entered into the Exchange’s Floor Broker Management System

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).

(“FBMS”)⁵ and subsequently executed on the Exchange,⁶ subject to two threshold volume requirements; and (2) delete the current floor brokerage assessment that is set forth on the Exchange’s fee schedule in several places, specifically the Summary of Equity Option and RUT and RMN Charges, the Summary of Index Option Charges, the Summary of U.S. Dollar-Settled Foreign Currency Option Charges, and the Summary of Physical Delivery Currency Option Charges.

Although changes to the fee schedule pursuant to this proposal are effective upon filing, the Exchange intends to implement the subsidy and delete the floor brokerage assessment beginning with transactions settling on or after February 1, 2008.

The text of the proposed rule change is available at 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.

⁵ The Exchange states that FBMS is designed to enable floor brokers and/or their employees to enter, route, and report transactions stemming from options orders received on the Exchange. FBMS also is designed to establish an electronic audit trail for options orders represented and executed by floor brokers on the Exchange. See Exchange Rule 1080, commentary .06.

⁶ Thus, outbound Linkage transactions, which are therefore not executed on the Exchange, are excluded from threshold calculations and subsidy payments, as further described below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The details of the tiered per contract floor broker subsidy program are set forth below.

Threshold Calculations:

To qualify for the per contract subsidy, a member organization with Exchange registered floor brokers must have: (1) more than an average of 75,000 executed contracts per day in the applicable month; and (2) at least 40,000 executed contracts or more per day for at least eight trading days during that same month.⁷ Only the floor broker volume from orders entered into FBMS and subsequently executed would be counted. The 75,000 contract and 40,000 contract thresholds, as described above, would be calculated per member organization floor brokerage unit.

In the event that two or more member organizations with Exchange registered floor brokers each entered one side of a transaction into FBMS, then the executed contracts would be divided among each qualifying member organization that participates in that transaction.⁸

⁷ For purposes of calculating the 75,000 and 40,000 thresholds, customer-to-customer transactions, customer-to-non-customer transactions, and non-customer-to-non-customer transactions would be included. Currently, the Exchange states that it does not charge an options comparison or transaction charge for customer transactions as set forth on the Exchange's Summary of Equity Option and RUT and RMN Charges. The Exchange, however, does charge for certain customer transactions as set forth on the Exchange's Summary of Index Option Charges and the Summary of U.S. Dollar-Settled Foreign Currency Option Charges. The Exchange believes that allowing customer transactions to be included in the threshold calculations should help to encourage floor brokers to send more order flow to the Exchange.

⁸ Set forth below are several examples to illustrate the threshold volume calculations: (1) if one floor broker enters both sides of a transaction for 1,000 contracts, that floor broker would get 1,000 contracts credited towards its threshold volume; (2) in a 1,000 contract trade where each side was entered by a different member organization with Exchange registered floor brokers, each such member organization would receive 500 contracts credited towards their respective threshold volumes; (3) if one floor broker enters an

Eligible Contracts:

To be eligible for the per contract subsidy, an order must be entered through the Exchange's FBMS and subsequently executed on the Exchange.⁹

As previously stated, customer-to-customer transactions would count towards reaching the 75,000 contract and 40,000 contract thresholds, but a per contract subsidy would not be paid on any customer-to-customer transactions.¹⁰

Dividend, merger and short stock interest strategies would be excluded from all threshold volume calculations, and no per contract subsidy would be paid on these transactions.¹¹

order for 900 contracts to sell and three separate floor brokers enter the contra side to each buy 300 contracts, the floor broker that entered the 900 contracts to sell would receive 450 contracts towards its threshold calculation and each floor broker on the contra side would receive 150 contracts credited towards their respective threshold calculations; and (4) if a floor broker enters an order to sell 900 contracts and two separate floor brokers each enter orders to buy 300 contracts and a registered options trader ("ROT") bought the remaining 300 contracts, the floor broker that entered the 900 contracts would get 600 contracts towards its threshold (150 from each floor broker and 300 from the ROT (the entering floor broker that executed against the ROT receives credit for both sides of the transaction with the ROT (i.e., 300 contracts) because the subsidy is only available to floor brokers and, therefore, the ROT is not eligible to receive credit towards the subsidy)), and the two separate floor brokers would get 150 each to add up to the total 900 contracts.

⁹ Therefore, orders entered through FBMS, but executed away through Linkage would not count towards the 75,000 contract or the 40,000 contract thresholds. However, if an inbound Linkage order is received and is executed against an order that was entered through FBMS, the order that was entered through FBMS would count towards the threshold amount and per contract subsidy, if applicable, for the member organization that entered that order because that transaction was executed on the Exchange.

¹⁰ Customer transactions are identified by the letter "c" in the Exchange's trading systems. For purposes of this proposal, customer transactions would exclude those orders entered into FMBS that represent an order other than a customer order, such as "firm," "customer yield" (which are broker-dealer orders), "market maker" (which is an on-floor market maker), or "off-floor market maker."

¹¹ The Exchange notes that each strategy is coded in such a way so that the Exchange's trading system is able to discern these different types of trading strategies. For a definition of these strategies, see Securities Exchange Act Release No. 55358 (February 27, 2007), 72 FR 9828 (March 5, 2007) (SR-Phlx-2007-14).

Per Contract Average Daily Volume Subsidy Payment:

Tier I	Tier II	Tier III	Tier IV	Tier V
75,001 to 100,000	100,001 to 200,000	200,001 to 300,000	300,001 to 400,000	400,001 and greater
\$0.01 per contract	\$0.04 per contract	\$0.05 per contract	\$0.06 per contract	\$0.07 per contract

The per contract subsidy would be paid based on the average daily contract volume for that month, which are customer-to-non-customer transactions¹² and are in excess of 75,000 contracts.¹³ Payments would be made at the stated rate for each tier for those contracts that fall within that tier. These contracts may include customer-to-customer transactions for the purposes of reaching a tier, but as stated above, a per contract subsidy would not be paid on these executions. Therefore, if a member organization has 1,444,000 eligible contracts in a month with 19 trading days, that member organization would receive a per contract subsidy because it met the 75,000 contract threshold (1,444,000 eligible contracts/19 days = 76,000, the average daily contract volume). Therefore, the member organization with Exchange registered floor brokers would receive \$0.01 per contract on 1,000 non-customer-to-customer contracts

¹² For purposes of this proposal, “customer-to-non-customer” transactions refers to customer-to- non-customer transactions, as well as non-customer-to-non-customer transactions.

¹³ Based on the amount of customer-to-customer contracts, a member organization could enter Tier II or a higher tier due to the amount of customer-to-customer contract volume. For example, assuming the threshold requirements have been met and the average daily customer-to-customer transactions are 105,000 contracts, if a member organization has 2,200,000 eligible contracts in a month with 20 trading days (110,000 average daily contract volume, with 5,000 contracts representing customer-to-non-customer contracts), that member organization would receive no subsidy for Tier I (\$0.01 per contract), as there were no customer-to-non-customer contracts considered when calculating Tier 1. Of the remaining 10,000 contracts, the member organization would receive \$0.04 per contract multiplied by 20 trading days on the 5,000 customer-to-non-customer contracts. Thus, that member organization would receive a subsidy for that month totaling \$4,000.

multiplied by 19 trading days, resulting in a subsidy of \$190.¹⁴

When computing the threshold amounts, the Exchange intends to first count all customer-to-customer transactions and then all other customer-to-non-customer transactions.¹⁵

The Exchange also proposes to eliminate the floor brokerage assessment that is set forth on the Exchange's fee schedule in several places, specifically the Summary of Equity Option and RUT and RMN Charges, the Summary of Index Option Charges, the Summary of U.S. Dollar-Settled Foreign Currency Option Charges, and the Summary of Physical Delivery Currency Option Charges.

The Exchange states that purpose of providing for a subsidy and deleting the floor brokerage assessment is to attract additional floor brokerage business to the Exchange, which

¹⁴ This example assumes that the threshold requirements have been met and the average daily customer-to-customer transactions are less than 75,001 contracts, which means that the subsidy will be paid starting with contract 75,001. To illustrate a subsidy covering two tiers, (again assuming the threshold requirements have been met (2,200,000 eligible contracts/20 days = 110,000, the average daily contract volume) and the average daily customer-to-customer transactions are less than 75,001 contracts), if a member organization has 2,200,000 eligible contracts in a month with 20 trading days, that member organization would receive \$0.01 per contract on 25,000 customer-to-non-customer contracts multiplied by 20 trading days, with the remaining 10,000 contracts receiving \$0.04 per contract multiplied by 20 trading days. Thus, that member organization would receive a subsidy for that month totaling \$13,000. To further illustrate the impact of customer-to-customer volume, assuming the threshold requirements have been met and the average daily customer-to-customer transactions are 85,000 contracts, if a member organization has 2,200,000 eligible contracts in a month with 20 trading days, that member organization would receive \$0.01 per contract on 15,000 customer-to-non-customer contracts multiplied by 20 trading days, with the remaining 10,000 contracts receiving \$0.04 per contract multiplied by 20 trading days. Thus, that member organization would receive a subsidy for that month totaling \$11,000.

¹⁵ The exchange believes that this method of calculation should therefore help member organizations with Exchange registered floor brokers to maximize the subsidy that is paid to them because customer-to-customer transactions will help the member organization reach the threshold requirements and then qualifying transactions after the threshold requirements are met will be paid the applicable per contract subsidy. See footnotes 13 and 14 above for specific examples.

should, in turn, attract more consistent liquidity as the Exchange's market share increases. The purpose of deleting the floor brokerage assessment on the Summary of Physical Delivery Currency Option Charges is to delete a fee that is deemed no longer necessary by the Exchange at this time.¹⁶

The Exchange represents that this proposal should not adversely affect its commitment of resources to its regulatory oversight program.

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.

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 Act¹⁷ and Rule 19b-4(f)(2)¹⁸ 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.

¹⁶ To clarify, the floor broker subsidy set forth in this proposal does not apply to the physical delivery currency options, as those options are not entered into FBMS.

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁸ 17 CFR 240.19b-4(f)(2).

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-2008-08 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-2008-08. 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 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-2008-08 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.¹⁹

Florence E. Harmon
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).