

2. Telecommunications Operations costs of supporting the external market data vendor network;

3. Data Products account management and auditing function with the market data vendors;

4. Market Operations costs to support symbol maintenance, and other data integrity issues;

5. Overhead costs, including management support of the Processor, Human Resources, Finance, Legal, and Administrative Services.

e. Processor costs excluded from the calculation of net distributable operating income include trade execution costs for transactions executed using a Nasdaq service and trade report collection costs reported through a Nasdaq service, as such services are market functions for which Participants electing to use such services pay market rate.

f. For the purposes of this provision, the following definitions shall apply:

1. "Quote engine" shall mean the Nasdaq's NT or Tandem system that is operated by Nasdaq to collect quotation information for Eligible Securities;

2. "Trade engine" shall mean the Nasdaq Tandem system that is operated by Nasdaq for the purpose of collecting last sale information in Eligible Securities.

3. At the time a Participant implements a Processor-approved electronic interface with the Processor, the Participant will become eligible to receive revenue.

4. Processor shall endeavor to provide Participants with written estimates of each Participant's quarterly net distributable operating income within 45 calendar days of the end of the quarter, and estimated quarterly payments or billings shall be made on the basis of such estimates. All quarterly payments or billings shall be made to each eligible Participant within 45 days following the end of each calendar quarter in which the Participant is eligible to receive revenue, provided that each quarterly payment or billing shall be reconciled against a Participant's cumulative year-to-date payment or billing received to date and adjusted accordingly, and further provided that the total of such estimated payments or billings shall be reconciled at the end of each calendar year and, if necessary, adjusted by March 31st of the following year. Interest shall be included in quarterly payments and in adjusted payments made on March 31st of the following year. Such interest shall accrue monthly during the period in which revenue was earned and not yet paid and will be based on the 90-day Treasury bill rate in effect at the end of

the quarter in which the payment is made. Monthly interest shall start accruing 45 days following the month in which it is earned and accrue until the date on which the payment is made.

In conjunction with calculating estimated quarterly and reconciled annual payments under this Exhibit 1, the Processor shall submit to the Participants a quarterly itemized statement setting forth the basis upon which net operating income was calculated, including a quarterly itemized statement of the Processor costs set forth in Paragraph 3 of this Exhibit. Such Processor costs and Plan revenues shall be adjusted annually based solely on the Processor's quarterly itemized statement audited pursuant to Processor's annual audit. Processor shall pay or bill Participants for the audit adjustments within thirty days of completion of the annual audit. By majority vote of the Operating Committee, the Processor shall engage an independent auditor to audit the Processor's costs or other calculation(s), the cost of which audit shall be shared equally by all Participants. The Processor agrees to cooperate fully in providing the information necessary to complete such audit.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54427; File No. SR-NYSE-2006-58]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Definition of Crowd and To Clarify the Requirements of Exchange Rule 70.20(f)

September 12, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 1, 2006, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> 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 Exchange proposes to amend Exchange Rule 70.30, which sets forth the definition of Crowd, and to clarify the requirements of Exchange Rule 70.20(f). The text of the proposed rule change is available on the NYSE's Web site at <http://www.nyse.com>, at the NYSE's Office of the Secretary, 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 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

The Exchange's Hybrid Market<sup>SM</sup> integrates the auction market with automated trading. Essential to the auction market is the interaction among members on the Floor and between Floor brokers and orders in the Display Book<sup>®</sup> System, that creates opportunities for price improvement, provides information about changing market conditions, and serves as a catalyst to trading.<sup>5</sup> Exchange Rule 70.30 defines a Crowd as " \* \* \* five contiguous panels at any one post where securities are traded."<sup>6</sup> Exchange Rule 70.30 further requires that Floor brokers be in the Crowd in order to represent orders that the Floor broker has in his

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006).

<sup>6</sup> Telephone conversation between Deanna Logan, Director, Office of the General Counsel, NYSE, and Cyndi Rodriguez, Special Counsel, Division of Market Regulation, Commission, on September 7, 2006.

or her agency interest files (*i.e.*, in order to “e-Quote”). Pursuant to Exchange Rule 70.30, a Floor broker may only have agency interest files or e-Quote in one Crowd at a time.

As the Exchange continues its implementation of the Hybrid Market<sup>SM</sup> it has gained experience operating in the Hybrid Market<sup>SM</sup> environment. Based on this experience, the Exchange seeks to amend the definition of Crowd in order to better facilitate the critical interaction among members on the Floor.

In practice, the five contiguous panel definition has proven too rigid a concept. The Exchange Floor is made up of five trading rooms. Trading rooms have large, in some instances rounded, posts that each contain distinct panels at which designated securities are traded. The post configuration on the Floor is such that, in certain instances, individuals standing at two separate posts are closer to each other than individuals standing at the first and fifth contiguous panels of the same post. For example, a Floor broker standing in the Crowd at Post 1 Panel B is easily able to see and hear the members located at Post 2 Panel L because they are located directly across from each other. In contrast, a Floor broker at Post 1 Panel B cannot easily see or hear the members located at Post 1 Panel G, which is exactly five contiguous panels away. Specifically, Panel B is on the opposite side of Post 1 from Panel G and thus the Floor broker must walk partly around Post 1 in order to effectively interact with the members at Post 1 Panel G. Nevertheless, under the current rule, the Floor broker standing at Post 1 Panel B is considered part of the Crowd that includes Post 1 Panel G. Further, pursuant to the current rule, in order for the Floor broker at Post 1 Panel B to represent an order in a security traded at Post 2 Panel L, the Floor broker would first have to withdraw his or her agency interest or e-Quote from the Post 1 Panels B–G Crowd.

In this filing, the Exchange proposes to amend the definition of the Crowd in order to reflect more accurately the areas which most efficiently facilitate the beneficial interaction among the members on the Floor. The Exchange believes that the best way to facilitate this interaction is to re-define the concept of Crowd from strictly contiguous panels to encompass an area that enables members to more efficiently conduct business. Essentially, this is the area in which members can see and hear the business conducted at a group of panels. These panels may be at one or more posts. To accomplish this, the Exchange proposes to divide each

trading room of the Floor into specific areas, which will be identified on the Floor in a recognizable way. Each area will serve to delineate the boundaries of the Crowd. The Crowds will be created in such a way that when a Floor broker is standing in a Crowd, the Floor broker generally will be able to see and hear the business conducted at each post/panel within that Crowd. Similarly, the specialists in panels included in a Crowd will be able to see and hear the Floor brokers who are representing agency interests or e-Quotes in that Crowd. In addition to physically identifying each Crowd on the Floor in a unique manner, the Exchange will disseminate to its members a notice identifying the specific post(s) and panels comprising each Crowd.

As is the case today, once in a Crowd, a Floor broker is able to e-Quote in all securities located in that Crowd. If the Floor broker leaves one Crowd in order to work in another, the Floor broker is required to withdraw his or her agency interest from the Crowd he or she is leaving. However, a Floor broker may obtain “market looks” in a securities located in other Crowds without canceling his or her e-Quotes. In this filing, the Exchange further seeks to amend Rule 70.20(f) to reflect this concept.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,<sup>7</sup> and furthers the objectives of Section 6(b)(5) of the Act in particular,<sup>8</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

### *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.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b–4(f)(6) thereunder.<sup>10</sup>

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>11</sup> However, Rule 19b–4(f)(6)(iii)<sup>12</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing of the proposed rule change. In addition, the Exchange has requested that the Commission waive the 30-day operative delay to allow the Exchange to implement the proposed rule change and avoid any undue confusion. The Exchange believes that the proposed rule change merely seeks to reflect more accurately the areas which most efficiently facilitate the beneficial interaction among the trading professionals on the Floor of the Exchange. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to immediately implement the revised definition of Crowd without undue delay and clarify in Exchange Rule 70.20(f) a Floor broker's ability to obtain “market look” information while in a Crowd. For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>13</sup>

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b–4(f)(6).

<sup>11</sup> *Id.*

<sup>12</sup> 17 CFR 240.19b–4(f)(6)(iii).

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2006-58 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-NYSE-2006-58. 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. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. 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-NYSE-2006-58 and should

be submitted on or before October 10, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Nancy M. Morris,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54429; File No. SR-Phlx-2006-52]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, Relating to Quoting Obligations

September 12, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 15, 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 prepared by the Phlx. On September 8, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> 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

The Phlx proposes to amend Phlx Rule 1014, "Obligations and Restrictions Applicable to Specialists and Registered Options Traders," by adopting Phlx Rule 1014(b)(ii)(D)(4), which would state that Streaming Quote Traders ("SQTs"),<sup>4</sup> Remote Streaming Quote Traders ("RSQTs"),<sup>5</sup> and SQTs

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 made a clarifying change to the proposed rule text, as well as two minor technical changes to the purpose section.

<sup>4</sup> An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. See Phlx Rule 1014(b)(ii)(A).

<sup>5</sup> An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the

and RSQTs that receive Directed Orders<sup>6</sup> ("DSQTs" and "DRSQTs," respectively) would be deemed not to be assigned in any option series until the time to expiration for such series is less than nine months. Therefore, according to the Exchange, the market making obligations described in Phlx Rule 1014(b)(ii)(D) would not apply to SQTs, RSQTs, DSQTs and DRSQTs respecting series with an expiration of nine months or greater. The Exchange proposes to adopt the rule on a six-month pilot basis, beginning on the date of approval of the proposed rule change. The text of the proposed rule change, as amended, is available on the Phlx's Web site at <http://www.phlx.com>, the Phlx's Office of the Secretary, 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 Phlx included statements concerning the purpose of and basis for the proposed rule change, as amended, 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, as amended, is to mitigate the Exchange's quote traffic and capacity by relaxing the quoting obligations applicable to SQTs, RSQTs, DSQTs, and DRSQTs, thereby reducing the number of quotations required to be submitted on the Exchange.

###### *Current Quoting Obligations.*

Currently, SQTs and RSQTs that do not receive Directed Orders in a Streaming Quote Option<sup>7</sup> are responsible to quote

Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Phlx Rule 1014(b)(ii)(B).

<sup>6</sup> The term "Directed Order" means any customer order (other than a stop or stop-limit order as defined in Phlx Rule 1066) to buy or sell which has been directed to a particular specialist, RSQT, or SQT by an Order Flow Provider. See Phlx Rule 1080(l)(i)(A).

<sup>7</sup> A Streaming Quote Option is an option in which SQTs may generate and submit option quotations if such SQT is physically present on the Exchange