

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 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-2006-34 and should be submitted on or before November 24, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>48</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54659; File No. SR-Phlx-2006-67]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Cap Registered Options Trader and Specialist Equity Option Comparison and Transaction Charges When Certain Requirements Are Met

October 27, 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 October 19, 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 Exchange. The Phlx has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to

Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(2) 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 Phlx proposes to adopt a cap on Registered Options Trader ("ROT") comparison charges and ROT and specialist transaction charges<sup>5</sup> in connection with non-AUTOM delivered equity option contracts<sup>6</sup> when an ROT or specialist executes over 14,000 contracts calculated on a daily basis in all equity options overlying the same underlying security per day ("Qualifying Option"). This proposal will apply only to transactions when an ROT or specialist is the contra-party to a customer order. Therefore, after the 14,000 non-AUTOM delivered contract level is reached in a Qualifying Option, additional comparison and transaction charges will not be assessed on subsequent option contracts in excess of 14,000 that are executed on that day in that specific Qualifying Option when the ROT or specialist is the contra-party to a customer order.<sup>7</sup> In addition, even when the 14,000 cap is reached, the Exchange will continue to impose a license fee of \$0.10 per contract side on applicable ROTs and specialists for equity option transactions on those licensed products that carry a license fee.<sup>8</sup> This proposal was designated to

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

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

<sup>5</sup> The Exchange does not currently assess a comparison charge on specialist transactions. Therefore, the proposed cap will apply to ROT comparison and transaction charges combined and separately to specialist transaction charges.

<sup>6</sup> For purposes of this fee, orders delivered via the Floor Broker Management System shall be deemed to be non-AUTOM delivered orders. See Phlx Rule 1063.

<sup>7</sup> For example, if an ROT executes a total of 35,000 non-AUTOM delivered customer SPY equity option contracts (puts and calls) in a given day, the transaction and comparison charges assessed for these transactions will be capped for that day at \$3,080 (14,000 contracts \* (\$0.19 (transaction charge) + \$0.03 (comparison charge)). In this example, additional transaction and comparison charges will continue to be assessed on all other option contracts executed by that ROT, except for those executed option contracts in other options that also meet the above requirements. For orders delivered electronically and transactions that are executed with a contra party other than a customer (i.e., another ROT), comparison and transaction charges will continue to be assessed even when the contracts are in the same option (i.e., SPY) that qualified for the cap described above.

<sup>8</sup> For a complete list of the licensed products that will be assessed a \$0.10 license fee per contract side after the 14,000 equity option contract cap is reached, see \$60,000 "Firm Related" Equity Option

become effective for trades settling on or after October 20, 2006.

The text of the proposed rule change is available on the Phlx's Web site, <http://www.phlx.com>, at 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 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of this proposal is to create an incentive for ROTs and specialists to attract additional order flow to the Exchange and also, in connection with sizeable customer transactions, to create an incentive for ROTs and specialists to execute additional contracts knowing comparison and transaction fees are capped once the 14,000 threshold is met. This proposal should also provide additional incentives for member organizations to increase liquidity and allow the Exchange to remain competitive.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>10</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

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

The Phlx believes that the proposed rule change would impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

and Index Option Cap on the Exchange's fee schedule.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>48</sup> 17 CFR 200.30-3(a)(12).

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

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

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

The Exchange did not solicit or receive any written comments with respect to the proposal.

**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 Act<sup>11</sup> and Rule 19b-4(f)(2)<sup>12</sup> thereunder. Accordingly, the proposal is effective upon filing with the Commission. 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 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-Phlx-2006-67 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-Phlx-2006-67. 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 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-2006-67 and should be submitted on or before November 24, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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**TENNESSEE VALLEY AUTHORITY**

**No FEAR Act Notice**

*Summary:* 5 CFR part 724.202 requires that each Federal agency provide notice to its employees, former employees, and applicants for employment about the rights and remedies available under the Antidiscrimination Laws and Whistleblower Protection Laws applicable to them within 60 calendar days after September 18, 2006. Each agency must publish the initial notice in the **Federal Register**.

**No FEAR Act Notice**

On May 15, 2002, Congress enacted the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, which is now known as the No FEAR Act. One purpose of the Act is to require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws. Public Law 107-174, Summary. In support of this purpose, Congress found that "agencies cannot be run effectively if those agencies practice or tolerate discrimination." Pub. L. 107-174, Title I, General Provisions, section 101(1).

The Act also requires this agency to provide this notice to Federal employees, former Federal employees and applicants for Federal employment

to inform you of the rights and protections available to you under federal antidiscrimination and whistleblower protection laws.

**Antidiscrimination Laws**

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, or disability. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e-16.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with your agency. *See, e.g.* 29 CFR part 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action.

**Whistleblower Protection Laws**

A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of a disclosure of information by that individual that is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC-11) with the U.S. Office of Special Counsel at 1730 M Street NW., Suite 218, Washington, DC

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).