

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54981; File No. SR-Phlx-2006-86]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Imposing a License Fee in Connection with the Firm-Related Equity Option and Index Option Fee Cap

December 20, 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 December 12, 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 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 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

Phlx proposes to amend its schedule of fees to adopt a license fee of \$0.10 for the Hapoalim American Israeli Index™ (traded under the symbol HAI ("HAI"))<sup>5</sup> to be assessed per contract side for index option "firm" transactions (comprised of index option firm (proprietary and customer executions) comparison transactions, index option firm/proprietary transactions and index option firm/proprietary facilitation transactions). This license fee will be imposed only after the Exchange's \$60,000 "firm-related" equity option and index option comparison and transaction charge cap, described more fully below, is reached.

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.

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

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

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

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

<sup>5</sup> "Hapoalim American Israeli Index" is a trademark of Hapoalim Securities USA, Inc. and has been licensed for use by the Exchange.

#### 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 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

Currently, the Exchange imposes a cap of \$60,000 per member organization<sup>6</sup> on all "firm-related" equity option and index option comparison and transaction charges combined.<sup>7</sup> Specifically, "firm-related" charges include equity option firm/proprietary comparison charges, equity option firm/proprietary transaction charges, equity option firm/proprietary facilitation transaction charges, index option firm (proprietary and customer executions) comparison charges, index option firm/proprietary transaction charges, and index option firm/proprietary facilitation transaction charges (collectively the "firm-related charges"). Thus, such firm-related charges in the aggregate for one billing month may not exceed \$60,000 per month per member organization.

The Exchange also imposes a license fee of \$0.10 per contract side for equity option and index option "firm" transactions on certain licensed products (collectively "licensed products") after the \$60,000 cap, as

<sup>6</sup> The firm/proprietary comparison or transaction charge applies to member organizations for orders for the proprietary account of any member or non-member broker-dealer that derives more than 35% of its annual, gross revenues from commissions and principal transactions with customers. Member organizations will be required to verify this amount to the Exchange by certifying that they have reached this threshold by submitting a copy of their annual report, which was prepared in accordance with Generally Accepted Accounting Principles ("GAAP"). In the event that a member organization has not been in business for one year, the most recent quarterly reports, prepared in accordance with GAAP, will be accepted. See Securities Exchange Act Release No. 43558 (November 14, 2000), 65 FR 69984 (November 21, 2000) (SR-Phlx-00-85).

<sup>7</sup> See Securities Exchange Act Release No. 51024 (January 11, 2005), 70 FR 3088 (January 19, 2005) (SR-Phlx-2004-94).

described above, is reached.<sup>8</sup> Therefore, when a member organization exceeds the \$60,000 cap (comprised of combined firm-related charges), the member organization is charged \$60,000, plus license fees of \$0.10 per contract side for any contracts in licensed products (if any) over those that were included in reaching the \$60,000 cap. In other words, if the cap is reached, the \$0.10 license fee is imposed on all subsequent equity option and index option firm transactions; these license fees are charged in addition to the \$60,000 cap.

The Exchange proposes to adopt a \$0.10 license fee per contract side for HAI for index option firm transactions, which will be imposed after the \$60,000 cap is reached in the same way as the current licensed product fees are assessed. Thus, when a member organization exceeds the \$60,000 cap, the member organization will be charged \$60,000 plus any applicable license fees for trades of licensed products, including HAI, over those trades that were counted in reaching the \$60,000 cap.<sup>9</sup>

This proposal is scheduled to become effective for transactions settling on or after December 14, 2006.

###### 2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>11</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 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.

<sup>8</sup> For a complete list of the licensed products that are assessed a \$0.10 license fee per contract side after the \$60,000 cap is reached, see \$60,000 "Firm Related" Equity Option and Index Option Cap on the Exchange's fee schedule.

<sup>9</sup> Consistent with current practice, when calculating the \$60,000 cap, the Exchange first calculates all equity option and index option transaction and comparison charges for products without license fees and then equity option and index option transaction and comparison charges for products with license fees (*i.e.*, IWF license fees) that are assessed by the Exchange after the \$60,000 cap is reached. See Securities Exchange Act Release No. 50836 (December 10, 2004), 69 FR 75584 (December 17, 2004) (SR-Phlx-2004-70).

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

<sup>11</sup> 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 rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>12</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>13</sup> 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 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-2006-86 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-2006-86. 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 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-2006-86 and should be submitted on or before January 18, 2007.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-54973; File No. SR-Phlx-2006-82]

**Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Addition of the Hapoalim Israeli American Index to Rule 1101A**

December 20, 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 December 13, 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 and II below, which Items have been prepared by the Phlx. The Phlx filed the proposed rule change as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the 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

<sup>14</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.

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

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

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 add the Hapoalim American Israeli Index ("Hapoalim Index" or "Index") to Phlx Rule 1101A, which would enable the Exchange to list and trade options on the Hapoalim Index at \$2.50 or greater strike price intervals if the strike price is less than \$200.<sup>5</sup>

The text of the proposed Exchange rule is set forth immediately below, with deletions [bracketed] and additions in italics.

**Rule 1101A.**

**Terms of Option Contracts**

(a) The Exchange shall determine fixed point intervals of exercise prices for index options (options on indexes). Generally, the exercise (strike) price intervals will be no less than \$5; provided, that the Exchange may determine to list strike prices at no less than \$2.50 intervals for options on the following indexes (which may also be known as sector indexes):

(i)—(xxviii)—No Change.

(xxix) Wellspring Bioclinical Trials Index™, if the strike price is less than \$200[.],

(xxx) *Hapoalim American Israeli Index or Hapoalim Index, if the strike price is less than \$200.*

Remainder of (a)—No Change.

(b)—(c)—No Change.

Commentary—No Change.

\* \* \* \* \*

**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 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.

<sup>5</sup> The Exchange has recently entered into a license with Hapoalim Securities USA, Inc. that would, among other things, allow it to list and trade options on the Index.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).