

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 a.m. and 3 p.m. 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-NYSEArca-2007-95 and should be submitted on or before October 24, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56541; File No. SR-Phlx-2007-63]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Short Interest Reporting

September 26, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on August 16, 2007, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), and on September 20, 2007 amended, the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Phlx. 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, pursuant to Section 19(b)(1) of the Act<sup>3</sup> and Rule 19b-4 thereunder,<sup>4</sup> proposes to make a technical amendment to the text of Phlx Rule 786, Supplementary Material .01, changing the reference to Rule 200 of Regulation SHO to Rule 200(a) of Regulation SHO. In addition, Phlx proposes to add a new Supplementary Material section to Rule 786 to amend the exceptions to the short interest reporting requirement for certain transactions.

The text of the amended Phlx Rule is set forth below. Underlining indicates additions; brackets indicate deletions.

\* \* \* \* \*

#### Rule 786.

##### *Periodic Reports*

Member organizations shall submit, as required by the Exchange, periodic reports with respect to short positions in securities.

Supplementary Material: \* \* \*

.01 Short Positions—Member organizations for which the Exchange is the designated examining authority ("DEA") are required to report short positions, including odd-lots, in each stock or warrant traded on the Exchange, and in each other stock or warrant not traded on the Exchange for which short positions are not otherwise reported to another United States securities exchange or association, using such automated format and methods as prescribed by the Exchange. Such reports must include customer and proprietary positions and must be made at such times and covering such time period as may be designated by the Exchange. Member organizations whose short positions have properly been reported to, and are carried by, a non-member clearing organization will be in compliance with this rule if adequate arrangements have been made providing for the clearing organization to properly report such positions to the Exchange or to another United States securities exchange or association.

- "Short" positions to be reported are those resulting from "short" sales as defined in Securities and Exchange Commission Rule 200(a) of Regulation SHO, but excluding sales that meet an exception in .02 below [marked "sell short exempt" pursuant to Rule 200(g) of Regulation SHO]. Also, to be excluded are "short" positions carried for other members and member organizations reporting for themselves.

Only one report should be made for each stock or warrant for which there is a short position, if more than one "account" has a short position in the same stock or warrant, the combined aggregate should be reported.

Member organizations for which the Exchange is not the DEA must report short positions to its DEA if such DEA has a requirement for such reports. If the DEA does not have such a reporting requirement, then such member organization must comply with the provisions of this rule.

##### *.02 Exceptions*

(a) Any sale by any person, for an account in which he has an interest, if such person owns the security sold and intends to deliver such security as soon as is possible without undue inconvenience or expense.

(b) Any sale of a security covered by a short sale rule on a national securities exchange (except a sale to a stabilizing bid complying with Rule 104 of Regulation M) effected with the approval of such exchange which is necessary to equalize the price of such security thereon with the current price of such security on another national securities exchange which is the principal exchange market for such security.

(c) Any sale of a security for a special arbitrage account by a person who then owns another security by virtue of which he is, or presently will be, entitled to acquire an equivalent number of securities of the same class as the securities sold; provided such sale, or the purchase which such sale offsets, is effected for the bona fide purpose of profiting from a current difference between the price of security sold and the security owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any such class of securities of the issuer.

(d) Any sale of a security registered on, or admitted to unlisted trading privileges on, a national securities exchange effected for a special international arbitrage account for the bona fide purpose of profiting from a current difference between the price of such security on a securities market not within or subject to the jurisdiction of the United States and on a securities market subject to the jurisdiction of the United States; provided the seller at the time of such sale knows or, by virtue of information currently received, has reasonable grounds to believe that an offer enabling him to cover such sale is then available to him such foreign securities market and intends to accept such offer immediately.

<sup>12</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)(1).

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

(e) Any sale by an underwriter, or any member of a syndicate or group participating in the distribution of a security, in connection with an over-allotment of securities, or any lay-off sale by such a person in connection with a distribution of securities through rights or a standby underwriting commitment.

\* \* \* \* \*

## 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.

### 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 is to conform Phlx Rule 786 to other proposed rule changes that other self-regulatory organizations ("SROs") have filed and will soon file that will implement uniform changes to the short interest reporting requirements across SROs. The purpose of this Amendment No. 1, which replaces the original proposed rule change in its entirety, is to make clarifying changes to the original proposed rule change.

First, Phlx proposes to make a technical change to the text of Phlx Rule 786, Supplementary Material .01. Phlx Rule 786, Supplementary Material .01 provides that, subject to certain limited exceptions, short positions required to be reported under the rule are those resulting from short sales as the term is defined in Rule 200 of Regulation SHO. The term "short sale" is actually defined in Rule 200(a) of Regulation SHO.<sup>5</sup> Therefore, Phlx is proposing to amend the text of Phlx Rule 786, Supplementary Material .01 to reference Rule 200(a) of Regulation SHO, not Rule 200 of Regulation SHO to eliminate any confusion.

Second, Phlx proposes to add Supplementary Material .02, and conforming language in Supplementary Material .01, which adopts exceptions to the short interest reporting requirement.

Currently, any transaction that is marked "sell short exempt" is exempt from the reporting requirement. Beginning on July 6, 2007, the "short exempt" marking requirement was eliminated by the Commission.<sup>6</sup> Therefore, beginning on July 6, 2007, all transactions marked short will be covered by Phlx's reporting requirement. However, other SROs are modifying their short interest reporting rules to exclude five specific transactions, which were previously contained in the now eliminated Rule 10a-1 under the Act.<sup>7</sup> The proposed change should conform Phlx's reporting requirement to those of other SROs and increase uniformity for broker-dealers as they comply with various rules across SROs, which should reduce costs and increase efficiency for those broker-dealers.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>9</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

#### 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

No written comments were either solicited or received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Phlx consents, the

<sup>6</sup> See Securities Exchange Act Release No. 55970 (June 28, 2007), 72 FR 36348 (July 3, 2007).

<sup>7</sup> See, e.g., Securities Exchange Act Release No. 56300 (August 22, 2007) (NYSEArca-2007-63), 72 FR 49342 (August 28, 2007).

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

Commission shall: (a) By order approve such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

## 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-2007-63 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-2007-63. 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the 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-2007-63 and should be submitted on or before October 24, 2007.

<sup>5</sup> 17 CFR 242.200(a).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56563; File No. SR-Phlx-2007-62]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to a Proposed Rule Change Relating to the Extension and Expansion of a Pilot Program To Quote Certain Option Series in Increments of \$0.01

September 27, 2007.

#### I. Introduction

On August 17, 2007, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to extend and expand a pilot program to quote certain options in smaller increments ("Pilot Program" or "Pilot"). The proposed rule change was published for comment in the **Federal Register** on August 24, 2007.<sup>3</sup> The Commission received one comment letter on the proposed rule change.<sup>4</sup> This order approves the proposed rule change.

#### II. Description of the Proposal

Currently, the six options exchanges, including the Phlx, participate in the thirteen class Pilot Program,<sup>5</sup> which is scheduled to expire on September 27, 2007.<sup>6</sup> The Exchange proposes to extend

and expand the Pilot Program to include fifty additional classes, in two phases.

Phase One will begin on September 28, 2007 and will continue for six months, until March 27, 2008. Phase One will add the following twenty-two options classes to the Pilot: SPDRs (SPY); Apple, Inc. (AAPL); Altria Group Inc. (MO); Dendreon Corp. (DNDN); Amgen Inc. (AMGN); Yahoo! Inc. (YHOO); QUALCOMM Inc. (QCOM); General Motors Corporation (GM); Energy Select Sector (XLE); DIAMONDS Trust, Series 1 (DIA); Oil Services HOLDERS (OIH); NYSE Euronext, Inc. (NYSE); Cisco Systems, Inc. (CSCO); Financial Select Sector SPDR (XLF); AT&T Inc. (T); Citigroup Inc. (C); Amazon.com Inc. (AMZN); Motorola Inc. (MOT); Research in Motion Ltd. (RIMM); Freeport-McMoRan Copper & Gold Inc. (FCX); ConocoPhillips (COP); and Bristol-Myers Squibb Co. (BMY). These twenty-two options classes are among the most actively-traded, multiply-listed options classes, and account, together with the current thirteen Pilot classes, for approximately 35% of total industry trading volume.<sup>7</sup>

Phase Two will begin on March 28, 2008, and will continue for one year, until March 27, 2009. During the second phase, the number of options classes trading in pennies will again increase. The Exchange proposes to add twenty-eight more classes from among the most actively-traded, multiply-listed options classes.<sup>8</sup>

The minimum price variation for all classes to be included in the Pilot Program, except for the QQQQs, will continue to be \$0.01 for all quotations in option series that are quoted at less than \$3 per contract and \$0.05 for all quotations in option series that are quoted at \$3 per contract or greater. The QQQQs will continue to be quoted in \$0.01 increments for all options series.

During the extended and expanded Pilot Program, the Phlx commits to deliver four reports to the Commission. Each report will analyze the impact of penny pricing on market quality and options system capacity. The first report

will analyze the penny pilot results from May 1, 2007 through September 27, 2007; the second will analyze the results from September 28, 2007 through January 31, 2008; the third will analyze the results from February 1, 2008 through July 31, 2008; and the fourth and final report will examine the results from August 1, 2008 through January 31, 2009. These reports will be provided to the Commission within thirty days of the conclusion of the reporting period.

#### III. Discussion

After careful review of the proposal and the comment letter, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>9</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>10</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

On June 28, 2005, the Pacific Exchange (now known as NYSE Arca) announced its intention to begin quoting and trading all listed options in penny increments.<sup>11</sup> In June 2006, to facilitate the orderly transition to quoting a limited number of options in penny increments, Chairman Cox sent a letter to the six options exchanges urging the exchanges that chose to begin quoting in smaller increments to plan for the implementation of a limited penny pilot program to commence in January 2007.<sup>12</sup> All six of the options exchanges submitted proposals to permit quoting a limited number of classes in smaller increments, and, in January 2007, the Commission approved those proposals to implement the current Pilot Program.<sup>13</sup> The exchanges

<sup>9</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> PCX News Release, "Pacific Exchange to Trade Options in Pennies," June 28, 2005.

<sup>12</sup> Commission Press Release 2006-91, "SEC Chairman Cox Urges Options Exchanges to Start Limited Penny Quoting," June 7, 2006.

<sup>13</sup> See Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR-Phlx-2006-74); 55162 (January 24, 2007), 72 FR 4738 (February 1, 2007) (Amex-2006-106); 55155 (January 23, 2007), 72 FR 4741 (February 1, 2007) (SR-BSE-2006-49); 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007)

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<sup>10</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> See Securities Exchange Act Release No. 56284 (August 17, 2007), 72 FR 48722.

<sup>4</sup> See letter to Nancy Morris, Secretary, Commission, from John C. Nagel, Director & Associate General Counsel, Citadel, dated September 12, 2007 ("Citadel Letter").

<sup>5</sup> The thirteen option classes currently in the Pilot are: Ishares Russell 2000 (IWM); NASDAQ-100 Index Tracking Stock (QQQQ); Semiconductor Holders Trust (SMH); General Electric Company (GE); Advanced Micro Devices, Inc. (AMD); Microsoft Corporation (MSFT); Intel Corporation (INTC); Caterpillar, Inc. (CAT); Whole Foods Market, Inc. (WFMI); Texas Instruments, Inc. (TXN); Flextronics International Ltd. (FLEX); Sun Microsystems, Inc. (JAVA); and Agilent Technologies, Inc. (A).

<sup>6</sup> The Pilot Program began on January 26, 2007 and is currently set to expire on September 27,

2007. See Securities Exchange Act Release No. 56141 (July 24, 2007), 72 FR 42216 (August 1, 2007) (SR-Phlx-2007-53). See also Securities Exchange Act Release No. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR-Phlx-2006-74) ("Original Pilot Program Approval Order"). In its filing, the Phlx proposed to extend the effective date of conforming amendments to various Exchange rules in order to be consistent with the Pilot through March 27, 2009.

<sup>7</sup> This volume is based on the Options Clearing Corporation ("OCC") year-to-date trading volume data through July 16, 2007.

<sup>8</sup> The Exchange has committed to file a proposed rule change under Section 19(b)(3)(A) of the Act to identify the options classes to be included in the second expansion.