

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53115; File No. SR-Phlx-2005-82]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to its Dividend Spread Strategy Program License Fees

January 13, 2006.

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 December 14, 2005, 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. On January 11, 2006, the Exchange filed Amendment No. 1 to the proposal.³ 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 Act⁴ and Rule 19b-4(f)(2) thereunder,⁵ which renders the proposal effective upon filing with the Commission. 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

Phlx proposes to amend its dividend spread strategy program in order to: (i) Recapture license fees associated with certain equity option and index option contracts that carry a license fee and that are executed as part of a dividend spread strategy transaction, and (ii) make minor technical changes to its fee schedule. The license fee proposal is scheduled to become effective for dividend strategy transactions settling on or after December 15, 2005, and it will remain in effect as a pilot program that is scheduled to expire on March 1, 2006.

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.

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, as amended, 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 fee cap on equity option transaction and comparison charges for dividend spread strategy transactions⁶ executed the day immediately prior to the ex-date⁷ and occurring on the same trading day in the same options class. Specifically, Registered Options Traders’ (“ROTs”) and specialists’ equity option transaction and comparison charges are capped at \$1,750 for transactions effected pursuant to a dividend spread strategy when the declared dividend or distribution is \$0.25 or greater. However, for dividend spread transactions for a security with a declared dividend or distribution of less than \$0.25, the ROTs’ and specialists’ equity option transaction and comparison charges are capped at \$1,000 for transactions effected pursuant to a dividend spread strategy executed on the same trading day in the same options class. The fee caps are implemented after any applicable rebates are applied to ROT and specialist equity option transaction and comparison charges.⁸

⁶ A “dividend spread” is any trade done within a defined timeframe in which a dividend arbitrage can be achieved between any two (2) deep-in-the-money options.

⁷ The ex-date is the date on or after which a security is traded without a previously declared dividend or distribution. After the ex-date a stock is said to trade ex-dividend.

⁸ Currently, the Exchange provides a rebate for certain contracts executed in connection with transactions occurring as part of a dividend spread strategy. Specifically, for those options contracts executed pursuant to a dividend spread strategy, the Exchange rebates \$0.08 per contract side for ROT executions and \$0.07 per side for specialist executions on the business day before the underlying stock’s ex-date.

The Exchange is now proposing to assess a license fee associated with certain equity option and index option contracts executed as part of a dividend spread strategy transaction. Specifically, the Exchange is proposing to assess a license fee of \$0.05 per contract side for dividend spread strategy transactions in options on: Nasdaq-100 Index Tracking StockSM⁹ traded under the symbol QQQQ; Russell 1000 Growth iShares, traded under the symbol IWF; Russell 2000 iShares, traded under the symbol IWM; Russell 2000 Value iShares, traded under the symbol IWN; Russell 2000 Growth iShares, traded under the symbol IWO; Russell Midcap Growth iShares, traded under the symbol IWP; Russell Midcap Value iShares, traded under the symbol IWS; NYSE Composite Index, traded under the symbol NYC; NYSE U.S. 100 Index, traded under the symbol NY; Standard & Poor’s Depository Receipts,¹⁰ Trust Series 1, traded under the symbol SPY; iShares Lehman 1-3 Year Treasury Bond Fund, traded under the symbol SHY; iShares Lehman 7-10 Year Treasury Bond Fund, traded under the symbol IEF; iShares Lehman 20+ Treasury Bond Fund, traded under the symbol TLT; iShares Lehman Aggregate Bond Fund, traded under the symbol AGG; iShares Lehman TIPS Bond Fund, traded under the symbol TIP; KBW Capital Markets Index,¹¹ traded under the symbol KSX; KBW Insurance Index, traded under the symbol KIX; Phlx/KBW Bank Index, traded under the symbol BKX; iShares S&P 100 Index, traded under the symbol OEF; iShares

⁹ The Nasdaq-100[®], Nasdaq-100 Index[®], Nasdaq[®], The Nasdaq Stock Market[®], Nasdaq-100 SharesSM, Nasdaq-100 TrustSM, Nasdaq-100 Index Tracking StockSM, and QQQSM are trademarks or service marks of The Nasdaq Stock Market, Inc. (“Nasdaq”) and have been licensed for use for certain purposes by the Phlx pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index[®] (the “Index”) is determined, composed, and calculated by Nasdaq without regard to the licensee, the Nasdaq-100 TrustSM, or the beneficial owners of Nasdaq-100 SharesSM. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

¹⁰ Standard & Poor’s[®], “S&P[®],” “S&P 500[®],” “Standard & Poor’s 500[®],” “Standard & Poor’s Depository Receipts[®],” and “500” are trademarks of The McGraw-Hill Companies, Inc., and have been licensed for use by the Phlx in connection with the listing and trading of SPDRs on the Phlx. These products are not sponsored, sold or endorsed by S&P, a division of The McGraw-Hill Companies, Inc., and S&P makes no representation regarding the advisability of investing SPDRs.

¹¹ “KBW,” “Keefe, Bruyette & Woods Capital Markets Index,” and “KBW Capital Markets Index” are trademarks of Keefe, Bruyette & Woods, Inc. and have been licensed for use by the Phlx. Keefe, Bruyette & Woods, Inc. makes no recommendations concerning the advisability of investing in options based on the KBW Capital Markets Index.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, Phlx revised the proposed rule text and its discussion to clarify which products would be subject to the license fee, that the license fee is not subject to and does not count towards the fee cap, and that the proposed license fee is part of a pilot program due to expire on March 1, 2006.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

S&P Europe 350, traded under the symbol IEV; iShares S&P Global 100 Index, traded under the symbol IOO; iShares S&P Global Energy Sector Index, traded under the symbol IXC; iShares S&P Global Financial Sector Index, traded under the symbol IXG; iShares S&P Global Healthcare Sector Index, traded under the symbol IXJ; iShares S&P Global Information Technology Sector Index, traded under the symbol IXN; iShares S&P Global Telecom Sector Index, traded under the symbol IXP; iShares S&P Latin America 40, traded under the symbol ILF; iShares S&P MidCap 400, traded under the symbol IJH; iShares S&P SmallCap 600, traded under the symbol IJR; iShares S&P TOPIX 150, traded under the symbol ITF; iShares S&P 500, traded under the symbol IVV; S&P Industrial Select Sector SPDR, traded under the symbol XLI; S&P Technology Select Sector SPDR, traded under the symbol XLK; S&P Utilities Select Sector SPDR, traded under the symbol XLU; S&P Consumer Staples Select Sector SPDR, traded under the symbol XLP; S&P Energy Select Sector SPDR, traded under the symbol XLE; S&P Financial Select Sector SPDR, traded under the symbol XLF; S&P Health Care Select Sector SPDR, traded under the symbol XLV; S&P Materials Select Sector SPDR, traded under the symbol XLB; S&P Consumer Discretionary Select Sector SPDR, traded under the symbol XLY; MidCap SPDR, traded under the symbol MDY; Keefe, Bruyette & Woods Regional Banking Index or the KBW Regional Banking Index, traded under the symbol KRX; and Keefe, Bruyette & Woods Mortgage Finance Index or the KBW Mortgage Finance Index, traded under the symbol MFJ.

The license fee of \$0.05 per contract side will be assessed on every transaction and will not be subject to the \$1,750 or \$1,000 caps described above. Thus, this fee will be assessed in addition to any other transaction and comparison charges associated with dividend spread strategy transactions, and it will not count towards reaching the \$1,750 or \$1,000 caps. The license fee proposal is scheduled to become effective for dividend strategy transactions settling on or after December 15, 2005, and it will remain in effect as a pilot program that is scheduled to expire on March 1, 2006.

The purpose of this proposal is to recoup the license fees owed in connection with the trading of the products listed above. Even with the assessment of the \$0.05 license fee per contract side, Phlx believes that the fee caps and rebates should continue to encourage specialists and ROTs to

provide liquidity for dividend spread strategy transactions.

The Exchange is also proposing to add a "Q" to the trading symbol "QQQ" on its \$60,000 "Firm Related" Equity Option and Index Option Cap Fee Schedule to reflect the current trading symbol of the Nasdaq-100 Index Tracking Stocksm. In addition, the Exchange proposes to delete WellSpring Bio-Clinical Trials Index from the \$60,000 "Firm Related" Equity Option and Index Option Cap Fee Schedule, traded under the symbol WHC,¹² as that product is no longer listed or traded at the Exchange.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act¹³ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁴ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

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

The Exchange does not believe that the proposed rule change, as amended, 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 solicited or received on the proposed rule change, as amended.

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 Act¹⁵ and subparagraph (f)(2) of Rule 19b-4 thereunder¹⁶ 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.¹⁷

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2005-82 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 20549-9303.

All submissions should refer to File Number SR-Phlx-2005-82. 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

¹² WellSpring Bio-Clinical Trials Index ("WHC"), "ORCHIDS," and "WellSpring" are trademarks of WellSpring BioCapital Partners, LLC ("WellSpring LLC") and have been licensed for use by the Phlx. WellSpring LLC makes no recommendations concerning the advisability of investing in options based on the WellSpring Bio-Clinical Trials Index.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 240.19b-4(f)(2).

¹⁷ The effective date of the original proposed rule change is December 14, 2005, the date of the original filing, and the effective date of Amendment No. 1 is January 11, 2006, the filing date of the amendment. For purposes of calculating the 60-day abrogation period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on January 11, 2006, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2005-82 and should be submitted on or before February 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Nancy M. Morris,
Secretary.

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DEPARTMENT OF STATE

[Public Notice 5279]

Request for Nominations for the General Advisory Committee and the Scientific Advisory Subcommittee to the United States Section to the Inter-American Tropical Tuna Commission

SUMMARY: The Department of State is seeking applications and nominations for the renewal of the General Advisory Committee to the Inter-American Tropical Tuna Commission (IATTC) as well as to a Scientific Advisory Subcommittee of the General Advisory Committee. The purpose of the General Advisory Committee and the Scientific Advisory Subcommittee is to provide public input and advice to the United States Section to the IATTC in the formulation of U.S. policy and positions at meetings of the IATTC and its subsidiary bodies. The Scientific Advisory Subcommittee shall also function as the National Scientific Advisory Committee (NATSAC) provided for in the Agreement on the International Dolphin Conservation Program (AIDCP). The United States Section to the IATTC is composed of the Commissioners to the IATTC, appointed by the President, and the Deputy Assistant Secretary of State for Oceans and Fisheries or his or her designated representative. Authority to establish the General Advisory Committee and Scientific Advisory Subcommittee is provided under the Tuna Conventions Act of 1950, as amended by the International Dolphin Conservation Program Act (IDCPA) of 1997.

DATES: Nominations must be submitted on or before March 31, 2006.

ADDRESSES: Nominations should be submitted to David Balton, Deputy Assistant Secretary for Oceans and Fisheries, Bureau of Oceans and International Environmental and Scientific Affairs, Room 7831,

Department of State, Washington, DC 20520-7818; or by fax to 202-736-7350.

FOR FURTHER INFORMATION CONTACT: David Hogan, Office of Marine Conservation, Department of State: 202-647-2335.

SUPPLEMENTARY INFORMATION:

General Advisory Committee

The Tuna Conventions Act (16 U.S.C. 951 et seq.), as amended by the IDCPA (Pub. L. 105-42), provides that the Secretary of State, in consultation with the U.S. Commissioners to the IATTC, shall appoint a General Advisory Committee (the Committee) to the U.S. Section to the IATTC (U.S. Section). The Committee shall be composed of not less than 5 nor more than 15 persons, with balanced representation from the various groups participating in the fisheries included under the IATTC Convention, and from non-governmental conservation organizations. Members of the Committee shall be invited to have representatives attend all non-executive meetings of the U.S. Section, and shall be given full opportunity to examine and to be heard on all proposed programs of investigations, reports, recommendations, and regulations adopted by the Commission. Members of the Committee may attend meetings of the IATTC and the AIDCP as members of the U.S. delegation or otherwise in accordance with the rules of those bodies governing such participation. Participation as a member of the U.S. delegation shall be subject to such conditions as may be placed on the size or composition of the delegation.

Scientific Advisory Subcommittee

The Act, as amended, also provides that the Secretary of State, in consultation with the U.S. Commissioners to the IATTC, shall appoint a Scientific Advisory Subcommittee (the Subcommittee) of the General Advisory Committee. The Subcommittee shall be composed of not less than 5 and not more than 15 qualified scientists with balanced representation from the public and private sectors, including non-governmental conservation organizations. The Subcommittee shall advise the Committee and the U.S. Section on matters including: The conservation of ecosystems; the sustainable uses of living marine resources related to the tuna fishery in the eastern Pacific Ocean; and the long-term conservation and management of stocks of living marine resources in the eastern tropical Pacific Ocean.

In addition, at the request of the Committee, the U.S. Commissioners or

the Secretary of State, the Subcommittee shall perform such functions and provide such assistance as may be required by formal agreements entered into by the United States for the eastern Pacific tuna fishery, including the AIDCP. The functions may include: The review of data from the International Dolphin Conservation Program (IDCP), including data received from the IATTC staff; recommendations on research needs and the coordination and facilitation of such research; recommendations on scientific reviews and assessments required under the IDCP; recommendations with respect to measures to assure the regular and timely full exchange of data among the Parties to the AIDCP and each nation's NATSAC (or its equivalent); and consulting with other experts as needed.

The Subcommittee shall be invited to have representatives attend all non-executive meetings of the U.S. Section and the General Advisory Committee and shall be given full opportunity to examine and to be heard on all proposed programs of scientific investigation, scientific reports, and scientific recommendations of the Commission. Representatives of the Subcommittee may attend meetings of the IATTC and the AIDCP as members of the U.S. delegation or otherwise in accordance with the rules of those bodies governing such participation. Participation as a member of the U.S. delegation shall be subject to such limits as may be placed on the size of the delegation.

National Scientific Advisory Committee

The Scientific Advisory Subcommittee shall also function as the NATSAC established pursuant to Article IX of the AIDCP. In this regard, the Subcommittee shall perform the functions of the NATSAC as specified in Annex VI of the AIDCP including, but not limited to: Receiving and reviewing relevant data, including data provided to the National Marine Fisheries Service (NMFS) by the IATTC Staff; advising and recommending to the U.S. Government measures and actions that should be undertaken to conserve and manage stocks of living marine resources in the AIDCP Area; making recommendations to the U.S. Government regarding research needs related to the eastern Pacific Ocean tuna purse seine fishery; promoting the regular and timely full exchange of data among the Parties on a variety of matters related to the implementation of the AIDCP; and consulting with other experts as necessary in order to achieve the objectives of the Agreement.

¹⁸ 17 CFR 200.30-3(a)(12).