

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54743; File No. SR-NYSE-2006-91]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 116 (“Stop” Constitutes Guarantee)

November 13, 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 New York Stock Exchange LLC (“Exchange” or “NYSE”) 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 has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change 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 116.40 to clarify that market-at-the-close procedures include marketable limit-at-the-close orders.

#### 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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 affords its customers the ability to execute two order types specific to the close. These orders are the market-at-the-close order (“MOC”) and the limit-at-the-close order (“LOC”). A MOC order is a market order, which is to be executed in its entirety at the closing price on the Exchange of the stock named in the order, and if not so executed, is to be treated as cancelled. A LOC order is a limit order, which may or may not receive execution on the close depending on the closing price and depth of contra-side interest.

Rule 116.40 provides the procedures for handling MOC orders. These procedures describe the manner in which MOC orders should be paired off and executed. It also explains how any order imbalance should be handled.

The Exchange interprets Rule 116.40 to apply to LOC orders; however, this is not specifically stated in the Rule’s text. Through this filing, the Exchange proposes to add the phrase “and marketable limit-at-the-close” to Rule 116.40, to remove any ambiguity.

In this context, “marketable” refers to the LOC’s limit price within the context of the Exchange closing price.

The proposed amendments are contained in Exhibit 5 attached to the Exchange’s filing. Rule 116.40 is also the subject of an open filing<sup>5</sup> pending before the Commission. Text being added pursuant to SR-NYSE-2006-65 is denoted by double underscoring in Exhibit 5.

##### 2. Statutory Basis

The basis under the Act<sup>6</sup> for this proposed rule change is the requirement under Section 6(b)(5)<sup>7</sup> that an exchange have rules that are 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

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>9</sup> Because the foregoing proposed rule change (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.<sup>10</sup>

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 No. SR-NYSE-2006-91 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission,

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> The Exchange provided written notice to the Commission of its intent to file the proposed rule change at least five business days prior to filing, as required by Rule 19b-4(f)(6)(iii).

<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)(iii).

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

<sup>5</sup> SR-NYSE-2006-65 (filed on August 23, 2006).

<sup>6</sup> 15 U.S.C. 78a.

<sup>7</sup> 15 U.S.C. 78f(b)(5).

100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2006-91. 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 Commissions 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-NYSE-2006-91 and should be submitted on or before December 11, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54746; File No. SR-Phlx-2006-71]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Clarifying Its Payment for Order Flow Program as It Relates to Order Flow Providers

November 14, 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 November 7, 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 changing a fee imposed by the Phlx under 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

The Phlx proposes to clarify, in connection with the Exchange's payment for order flow program,<sup>5</sup> who may receive payment for order flow funds that are assessed by the Exchange on members and member organizations<sup>6</sup> and are disbursed, as described in detail below, based on the instructions of the specialist units<sup>7</sup> and Directed ROTs.<sup>8</sup>

<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> The Exchange's payment for order flow program is currently in effect until May 27, 2007. See Securities Exchange Act Release No. 53841 (May 19, 2006), 71 FR 30461 (May 26, 2006) (SR-Phlx-2006-33).

<sup>6</sup> The Exchange states that, specifically, the payment for order flow fee is assessed on specialists/specialist units and Directed Registered Options Traders ("Directed ROTs") who participate in the Exchange's payment for order flow program, and Registered Options Traders ("ROTs").

<sup>7</sup> The Exchange states that it uses the terms "specialist" and "specialist unit" interchangeably herein.

<sup>8</sup> The Exchange states that Directed ROTs are either Streaming Quote Traders ("SQTs") or Remote Streaming Quote Traders ("RSQTs") that receive Directed Orders. An SQT is an Exchange ROT who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. AUTOM is the Exchange's electronic order delivery, routing, execution, and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. See Exchange Rules 1014(b)(ii) and 1080. An RSQT is an Exchange ROT that is a member or member organization of the Exchange with no physical trading floor presence who has received permission from the 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. An RSQT may only trade in a market making capacity in classes of options in which he is assigned. See Exchange Rule 1014(b)(ii)(B). See Securities Exchange Act Release Nos. 51126 (February 2, 2005), 70 FR 6915 (February 9, 2005) (SR-Phlx-2004-90) and 51428 (March 24, 2005), 70 FR 16325 (March 30, 2005) (SR-Phlx-2005-12).

The Exchange states that under its current payment for order flow program, any available payment for order flow funds are disbursed by the Exchange according to the instructions of the specialist units and Directed ROTs. A specialist unit or Directed ROT must certify to the Exchange that payment for order flow funds directed by either of them to be paid to Order Flow Providers reflect payment arrangements entered into by the specialist unit or Directed ROT and the Order Flow Provider. The term "Order Flow Provider" is defined as any member or member organization that submits, as agent, customer orders to the Exchange.<sup>9</sup>

The Exchange states that in addition to the Order Flow Providers defined above, there are additional order flow providers who are not members or member organizations of the Exchange who also route orders to the Exchange, but do so through a member or member organization. In these situations, the Exchange proposes to clarify that the specialist unit or Directed ROT may instruct the Exchange to direct payment to these order flow providers, in the same way that is done for Order Flow Providers, if they have entered into payment arrangements with a specialist unit or Directed ROT to send order flow to the Exchange. Thus, specialist units and Directed ROTs may instruct the Exchange to direct payment for order flow funds to order flow providers who are members, non-members, member organizations, or non-member organizations, provided, the requirements relating to certification, as described above, have been met. The Exchange notes that such order flow providers may arrange for the member organizations through which they route orders (referred to as "Order Flow Providers" in this proposal) to receive their payment for order flow payments and forward those funds to such non-member order flow provider. Although order flow providers may do this, many have chosen to receive payments directly, such that this proposal seeks to codify that practice.

It is the Exchange's understanding that the arrangement to disburse payment for order flow funds to non-member payment for order flow providers, in the same way that it is

The Exchange states that the term "Directed Order" means any customer order to buy or sell, which has been directed to a particular specialist, RSQT, or "SQT" by an Order Flow Provider (defined below). The provisions of Phlx Rule 1080(l) are in effect for a one-year pilot period to expire on May 27, 2007. See Securities Exchange Act Release No. 53870 (May 25, 2006), 71 FR 31251 (June 1, 2006) (SR-Phlx-2006-27).

<sup>9</sup> See Exchange Rule 1080(l).

<sup>11</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.