

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56622; File No. SR-Phlx-2007-77]

### Self-Regulatory Organizations; The Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Web CRD Fingerprinting Fees

October 5, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 1, 2007, 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 substantially prepared by the Phlx. The Phlx has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member 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 amend its fingerprinting fees, which appear on Appendix A of its fee schedule, so that the charge for the first and third submission of a fingerprint card will be lowered from \$35.00 to \$30.25. The Exchange also proposes to replace references to "NASD" on the Exchange's fee schedules with references to "FINRA."

The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and at <http://www.phlx.com>.

#### 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

Currently, the Exchange's fee schedule includes fees that are imposed in connection with participation in the National Association of Securities Dealers, Inc. ("NASD," n/k/a/ the Financial Industry Regulatory Authority, Inc., "FINRA") Web Central Registration Depository ("Web CRD"). The fingerprinting fees are paid directly to FINRA and vary depending on the submission: for a first card submission, the fee is \$35.00; for a second card submission, the fee is \$13.00; and for a third card submission, the fee is \$35.00. For processing fingerprint results for a member who had prints processed through a self-regulatory organization and not FINRA, the fee is \$13.00.

FINRA intends to amend the fingerprinting fees effective for fingerprints processed on or after October 1, 2007, so that the charge for the first and third submission of a fingerprint card will be lowered from \$35.00 to \$30.25.<sup>5</sup> The fees for processing a second fingerprint card submission and for processing fingerprint cards where the member had prints processed through a self-regulatory organization and not FINRA will remain at \$13.00.

Therefore, the Exchange proposes to amend its fee schedule to reflect the lower Web CRD fingerprinting fees charged by FINRA. The Exchange also proposes to update its fee schedule to replace references to the NASD with references to FINRA.

###### 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>6</sup> in general, and furthers the objectives of section 6(b)(4) of the Act<sup>7</sup> in particular. The Exchange believes that it is an equitable allocation of reasonable fees and other charges among Exchange members because it will reflect FINRA's reduction for the first

and third submission of a fingerprint card from \$35.00 to \$30.25.

##### 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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(2)<sup>9</sup> thereunder because it establishes or changes a due, fee, or other charge applicable only to a member. At any time within 60 days of the filing of such 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-Phlx-2007-77 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-2007-77. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

<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> See FINRA Information Notice titled "Fingerprint Processing Fees" dated September 20, 2007.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

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

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

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 such 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-2007-77 and should be submitted on or before November 6, 2007.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-20329 Filed 10-15-07; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56626; File No. SR-Phlx-2007-60]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to Structured Equity Products

October 5, 2007.

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 August 14, 2007, 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 substantially prepared by the Exchange. 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 update its rules regarding the listing of equity securities. Specifically, the Exchange proposes to modify Phlx Rule 802, Rule 806 (Initial Public Offerings), Rule 807 (Registration Under the Exchange Act), and Rule 837 (Annual Reports). The Phlx Fee Schedule will also be amended to add initial and continued listing fees for certain structured equity securities on the Exchange ("Structured Equity Products").<sup>3</sup> The text of the proposed rule change is available at the Commission's Public Reference Room, at the Exchange, and at <http://www.Phlx.com>.

#### 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 proposed rule change. 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

The purpose of the proposed rule change is to permit the Exchange to update certain of its listing rules and fees in order to attract the listing of Structured Equity Products. Currently, the vast majority of equity securities that trade on the Phlx are listed on other exchanges and traded on the Phlx pursuant to unlisted trading privileges ("UTP"). This allows the Exchange to compete for the trading volume of a security. However, the Phlx now intends to actively pursue serving as the

listing market for certain Structured Equity Products.

The Phlx has long had a series of rules (the "800 Series") that create standards regarding both the security to be listed and traded on Phlx, as well as regarding the issuer of the security. In order to attract the listing of the Structured Equity Products, Phlx proposes modifications to the 800 Series to accommodate the specific attributes of many structured equity securities.

*Phlx Rule 802.* Phlx Rule 802 identifies factors to be evaluated by the Exchange when reviewing and preparing its confidential listing opinion as to the eligibility of an applicant's securities. Among other things, Phlx Rule 802 currently states that the applicant company must be a "going concern."<sup>4</sup> The proposed rule change would delete the "going concern" requirement in order to remove uncertainty as to whether a Structured Equity Product qualifies as a "going concern." The Exchange believes that the existing listing standards in Phlx Rule 803(a)(2) for traditional operating companies should sufficiently satisfy the "going concern" requirement for such other equity products that may become listed on the Exchange.

*Phlx Rule 806.* Phlx Rule 806 permits new issues of securities to be listed on the Exchange on the day that the registration statement is effective with the SEC, or upon effectiveness of the registration statement or equivalent document if registration with the SEC is not required. However, the issuer must meet certain initial listing criteria.

The proposed rule change would classify the two paragraphs of Phlx Rule 806 as (a) and (b). In addition, the proposed rule change would provide an exclusion for Structured Equity Products from Phlx Rule 806(b), which includes certain requirements relating to the distribution of new issues. This amendment would reflect the fact that distributors of Structured Equity Products generally make informal arrangements with dealers prior to going effective to provide assurance that sufficient creation units will be purchased from the issuer to meet the minimum listing requirements.

*Phlx Rule 807.* Phlx Rule 807 requires that securities approved for listing by the Exchange must be registered under

<sup>4</sup> "Going concern" refers to the ability of the applicant to meet its current obligations with cash or other assets that can be quickly converted into cash. If the applicant is not able to meet its current obligations, the ability of that applicant being able to continue to operate is in doubt. See email from John Dayton, Director and Counsel, Phlx, to Ronesha Butler, Special Counsel, Division of Market Regulation, Commission, dated September 14, 2007.

<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> For purposes of this proposed rule change, Structured Equity Products are securities listed pursuant to the categories in Phlx Rule 803 entitled Other Securities, Equity Linked Notes, Basket Linked Notes, Index Linked Exchangeable Notes and Index Linked Securities. See Phlx Rule 803(f), (h), (k), (m) and (n).