Proposed Rule Change by Philadelphia Stock Exchange

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

<table>
<thead>
<tr>
<th>Initial</th>
<th>Amendment</th>
<th>Withdrawal</th>
<th>Section 19(b)(2)</th>
<th>Section 19(b)(3)(A)</th>
<th>Section 19(b)(3)(B)</th>
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Pilot
Extension of Time Period for Commission Action

Date Expires

- 19b-4(f)(1)
- 19b-4(f)(4)
- 19b-4(f)(2)
- 19b-4(f)(5)
- 19b-4(f)(3)
- 19b-4(f)(6)

**Contact Information**

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

- **First Name**: Cynthia
- **Last Name**: Hoekstra
- **Title**: Director
- **E-mail**: cynthia.hoekstra@phlx.com
- **Telephone**: (215) 496-5066
- **Fax**: (215) 496-6729

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

- **Date**: 12/29/2005
- **By**: Cynthia Hoekstra
  
  (Name)
  
  (Title)

**NOTE**: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.
The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

### Exhibit 1 - Notice of Proposed Rule Change

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3).

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

### Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

### Exhibit 3 - Form, Report, or Questionnaire

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

### Exhibit 4 - Marked Copies

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

### Exhibit 5 - Proposed Rule Text

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

### Partial Amendment

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission’s permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e., partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.
1. **Text of the Proposed Rule Change**

The Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")\(^1\) and Rule 19b-4\(^2\) thereunder, proposes to adopt a cancellation fee of $1.10 per order to be assessed on member organizations for each cancelled AUTOM-delivered\(^3\) order in excess of the number of orders executed on the Exchange by that member organization in a given month. The proposed cancellation fee will not be assessed for the month if fewer than 500 cancellation orders delivered through AUTOM are cancelled in that month. Cancel-replacement messages will be counted when calculating the number of AUTOM-delivered orders.\(^4\)

This proposal is scheduled to become effective for transactions settling on or after January 2, 2006.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and a copy of applicable section of the Exchange’s Summary of Equity Option Charges and the Exchange’s Summary of Index Option and FXI Options Charges is attached hereto as Exhibit 5.

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3. 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).
4. A cancel-replacement order is a contingency order consisting of two or more parts which require the immediate cancellation of a previously received order prior to the replacement of a new order with new terms and conditions. If the previously placed order is already filled partially or in its entirety the replacement order is automatically canceled or reduced by such member. See Exchange Rule 1066(c)(7).
2. Procedures of the Self-Regulatory Organization

The Phlx Board of Governors approved the proposal for filing with the Securities and Exchange Commission ("SEC" or "Commission") on December 14, 2005.

Questions and comments on the proposed rule change may be directed to Cynthia K. Hoekstra, Director, at (215) 496-5066 or Edith Hallahan, Deputy General Counsel, at (215) 496-5179.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

The purpose of assessing $1.10 per order for each cancelled AUTOM-delivered order in excess of the number of orders that the executing member organization executes on the Exchange in a given month is to discourage excessive use of cancellations. The Exchange believes this proposed fee is necessary given the often disproportionate number of order cancellations received relative to order executions and the increased costs associated with the practice of canceling orders immediately after they are routed electronically to the Exchange. The Exchange believes that a cancellation fee should help to deal with the various operational problems and costs resulting from this practice. In addition, the Exchange believes that this proposal may result in increased order flow sent to the Phlx.

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This proposal excludes cancel messages delivered through the Floor Broker Management System. See Exchange Rule 1063.
b. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act\(^6\) in general, and furthers the objectives of Section 6(b)(4) of the Act\(^7\) in particular, in that it is an equitable allocation of reasonable fees among Exchange members.

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

The Phlx does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

5. 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

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act\(^8\) and Rule 19b-4(f)(2)\(^9\) thereunder. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of

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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.

8. **Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

The proposed rule change is similar to the cancellation fees in effect at the International Stock Exchange, Inc., Pacific Exchange, Inc., Chicago Board Options Exchange, Incorporated, and American Stock Exchange LLC.¹⁰

9. **Exhibits**

1. Notice of proposed rule for publication in the Federal Register.

5. Applicable section of the Exchange’s Summary of Equity Option Charges and the Exchange’s Summary of Index Option and FXI Options Charges.

SECURITIES AND EXCHANGE COMMISSION
(Release No.               ; File No. SR-Phlx-2005-92)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of
Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Cancellation
Fees

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 ______________________ 2005,
the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities
and Exchange Commission ("SEC" or "Commission") the proposed rule change as
described in Items I, II, and III, below, which Items have been prepared by the Phlx. 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, pursuant to Section 19(b)(1) and Rule 19b-4 thereunder,³ proposes to
adopt a cancellation fee of $1.10 per order to be assessed on member organizations for
each cancelled AUTOM-delivered⁴ order in excess of the number of orders executed on
the Exchange by that member organization in a given month. The proposed cancellation
fee will not be assessed for the month if fewer than 500 cancellation orders delivered

⁴ 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).
through AUTOM are cancelled in that month. Cancel-replacement messages will be counted when calculating the number of AUTOM-delivered orders.\(^5\)

This proposal is scheduled to become effective for transactions settling on or after January 2, 2006.

A copy of applicable section of the Exchange’s Summary of Equity Option Charges and the Exchange’s Summary of Index Option and FXI Options Charges is attached hereto as Exhibit 5.

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 assessing $1.10 per order for each cancelled AUTOM-delivered order in excess of the number of orders that the executing member organization executes on the Exchange in a given month is to discourage excessive use of cancellations.\(^6\) The

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\(^5\) A cancel-replacement order is a contingency order consisting of two or more parts which require the immediate cancellation of a previously received order prior to the replacement of a new order with new terms and conditions. If the previously placed order is already filled partially or in its entirety the replacement order is automatically canceled or reduced by such member. See Exchange Rule 1066(c)(7).
Exchange believes this proposed fee is necessary given the often disproportionate number of order cancellations received relative to order executions and the increased costs associated with the practice of canceling orders immediately after they are routed electronically to the Exchange. The Exchange believes that a cancellation fee should help to deal with the various operational problems and costs resulting from this practice. In addition, the Exchange believes that this proposal may result in increased order flow sent to the Phlx.

2. **Statutory Basis**

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act\(^7\) in general, and furthers the objectives of Section 6(b)(4) of the Act\(^8\) in particular, in that it is an equitable allocation of reasonable fees 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 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.

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\(^6\) This proposal excludes cancel messages delivered through the Floor Broker Management System. See Exchange Rule 1063.

\(^7\) 15 U.S.C. 78f(b).

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

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act\(^9\) and Rule 19b-4(f)(2)\(^10\) thereunder. Accordingly, the proposal will take effect upon filing with the Commission. 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. Please include File Number SR-Phlx-2005-92 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

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All submissions should refer to File Number SR-Phlx-2005-92. 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 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-2005-92 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.11

Margaret H. Mcfarland
Deputy Secretary

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OPTION FLOOR BROKERAGE ASSESSMENT

<table>
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<tr>
<th>Monthly Net Floor Brokerage Income</th>
<th>Assessment</th>
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<tbody>
<tr>
<td>$0 to $300,000</td>
<td>5.5%</td>
</tr>
<tr>
<td>$300,001 - $500,000</td>
<td>6.5% (excess &gt; $300,000)</td>
</tr>
<tr>
<td>$500,001 and Over</td>
<td>7.5% (excess &gt; $500,000)</td>
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Monthly Cap: $100,000

CANCELLATION FEE

$1.10 per order for each cancelled AUTOM-delivered order in excess of the number of orders executed on the Exchange in a given month. The cancellation fee is not assessed in a month in which fewer than 500 AUTOM-delivered orders are cancelled.

No further changes to the Summary of Equity Option Charges are being made pursuant to this proposal
SUMMARY OF INDEX OPTION AND FXI OPTIONS CHARGES (p. 1/1)

OPTION COMPARISON CHARGE (applicable to all trades – except specialist trades)
- Registered Option Trader $0.03 per contract
- Firm (Proprietary and Customer Executions) $0.04 per contract

OPTION TRANSACTION CHARGE
- Customer Executions $0.40 per contract
- Firm/Proprietary $0.20 per contract
- Firm/Proprietary Facilitation $0.20 per contract
- Registered Option Trader $0.21 per contract
- Specialist $0.24 per contract

CANCELLATION FEE

$1.10 per order for each cancelled AUTOM-delivered order in excess of the number of orders executed on the Exchange in a given month. The cancellation fee is not assessed in a month in which fewer than 500 AUTOM-delivered orders are cancelled.

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<td>7.5% (excess &gt; $500,000)</td>
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Monthly Cap: $100,000

REAL-TIME RISK MANAGEMENT FEE

$0.0025 per contract for firms/members receiving information on a real-time basis

See Appendix A for additional fees.

+ Subject to a maximum fee of $60,000, except QCE, QCX and FXI – see $60,000 “Firm Related” Equity Option and Index Option Cap.

**Non-clearing firm members' proprietary transactions are eligible for the “firm” rate based upon submission of a PHLX rebate request form with supportive documentation within thirty (30) days of invoice date.

18 For the purpose of this Summary of Equity Option Charges, 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 and by submitting a copy of their annual report, which was prepared in accordance with Generally Accepted Accounting Principles (“GAAP”). In the event that a firm has not been in business for one year, the most recent quarterly reports, prepared in accordance with GAAP, will be accepted.

19 See footnote 18.