Proposed Rule Change by Philadelphia Stock Exchange

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

Initial Amendment Withdrawal Section 19(b)(2) Section 19(b)(3)(A) Section 19(b)(3)(B)

☑ ☐ ☐ ☑ ☐ ☐

Pilot Extension of Time Period for Commission Action Date Expires

☑ ☐ ☐ ☒ ☐ ☐

Rule

☑ 19b-4(f)(1) ☑ 19b-4(f)(4)

☑ 19b-4(f)(2) ☐ 19b-4(f)(5)

☑ 19b-4(f)(3) ☐ 19b-4(f)(6)

Description

Provide a brief description of the proposed rule change (limit 250 characters).

The proposed rule change regards NMS Linkage and the Exchange's Covered Sale Fee.

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 John Last Name Dayton

Title Director and Counsel

E-mail john.dayton@phlx.com

Telephone (215) 496-5162 Fax

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 09/25/2006

By John Dayton Director and Counsel (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.

John DAyton, john.dayton@phlx.com
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.

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.

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.

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.

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.

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") and Rule 19b-4 thereunder, proposes to amend Phlx Rule 607 and the Exchange’s Summary of Equity Charges and the Nasdaq-100 Index Tracking Stock Fee Schedule to allow the Exchange to charge the Covered Sale Fee to members and member organizations engaged in executing sale transactions on another exchange or on a Participant in the National Association of Securities Dealers, Inc. ("NASD") Alternative Display Facility ("ADF Participant") that were routed over the NMS Linkage Plan or the Intermarket Trading System ("ITS"). Phlx Rule 607 is also proposed to be amended to allow the Exchange to enter into arrangements with ADF Participants to pass the Covered Sale Fee among the ADF Participants where the Exchange has collected the Covered Sale Fee

---


3. 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, LLC (Nasdaq) and have been licensed for use for certain purposes by the Philadelphia Stock Exchange 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.

from its members and member organizations for sale transactions executed on ADF Participant through ITS and when ADF Participants have collected the Covered Sale Fee from their members for sale transactions executed on the Exchange through ITS. In addition, Phlx Rule 607 is also proposed to be amended to allow the Exchange to enter into arrangements with other exchanges to pass the Covered Sale Fee among the applicable exchanges where the Exchange has collected the Covered Sale Fee from its members and member organizations for sale transactions executed on another exchange through the NMS Linkage Plan and when other exchanges have collected the Covered Sale Fee from their members for sale transactions executed on the Exchange through the NMS Linkage Plan.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and the text of the amended Exchange Rule and of the applicable portion of the Fee Schedule is attached hereto as Exhibit 5.

2. Procedures of the Self-Regulatory Organization

The Executive Committee, pursuant to delegated authority, approved the proposal for filing with the Commission on August 30, 2006.

Questions and comments on the proposed rule change may be directed to John Dayton, Director and Counsel, at (215) 496-5162 or Edith Hallahan, Senior Vice President and 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 the proposed rule change is to allow Phlx to accommodate the billing and collection of its Covered Sale Fee\(^5\) for executions that originated as orders sent to and received from the NMS Linkage Plan, which is proposed to commence on October 1, 2006. Currently, Phlx Rule 607 authorizes Phlx to charge Phlx members and member organizations the Covered Sale Fee for sale executions on Phlx. Phlx Rule 607 also allows Phlx to enter into arrangements to charge other exchanges when their members send orders to Phlx through ITS that result in sale executions on Phlx. Phlx also charges its members and member organizations a Covered Sale Fee when their orders, sent over ITS, result in a sale execution at another exchange. Phlx then uses that fee to cover the charge received from that other exchange. The NMS Linkage Plan is the successor linkage plan to ITS for the equity markets.\(^6\) The proposed changes to Phlx Rule 607 and the Phlx Fee Schedule are intended to carry the Covered Sale Fee charges and arrangements that currently exist for ITS into the NMS Linkage Plan and to ADF Participants.\(^7\)

\(^5\) The Covered Sale Fee is currently imposed on member and member organization engaged in executing sale transactions on the Exchange or executing transactions, which were routed over the ITS, on another exchange during any computational period. The Covered Sale Fee is equal to (i) the Section 31 fee rate multiplied by (ii) the member's aggregate dollar amount of covered sales. See Securities Exchange Act Release No. 53088 (January 6, 2006), 71 FR 2286 (January 13, 2006) (SR-Phlx-2005-87).

\(^6\) The NASD has not joined the NMS Linkage Plan and will maintain linkage for its ADF Participants through ITS.

\(^7\) Phlx, along with other exchanges, intends to file a separate proposed rule change that will allow it to charge and be charged fees, including Phlx’s Covered Sale Fee, for
b. **Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act\(^8\) in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act\(^9\) in particular, in that it is an equitable allocation of reasonable fees among Exchange members and issuers and other persons using its facilities, 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, by creating a mechanism for charging the Covered Sale Fee for transactions over the NMS Linkage Plan.

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.

---


\(^9\) 15 U.S.C. 78f(b)(4) and (b)(5).
7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

The Exchange requests accelerated approval for this proposed rule change to allow the proposed rule change to become effective concurrently with the proposed effectiveness of the NMS Linkage Plan, which is proposed to be October 1, 2006.

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

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. **Exhibits**

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

5. Proposed Rule Text and the applicable portion of the Fee Schedule
Exhibit 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _______; File No. SR-Phlx-2006-60)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to NMS Linkage and Phlx’s Covered Sale Fee

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")\(^1\), and Rule 19b-4\(^2\) thereunder, notice is hereby given that on ______________________ 2006, 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) of the Act\(^3\) and Rule 19b-4 thereunder,\(^4\) proposes to amend Phlx Rule 607 and the Exchange’s Summary of Equity Charges and the Nasdaq-100 Index Tracking Stock\(^5\) SM Fee Schedule\(^5\) to allow the Exchange to charge


\(^5\) 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, LLC (Nasdaq) and have been licensed for use for certain purposes by the Philadelphia Stock Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (the Index) is
the Covered Sale Fee to members and member organizations engaged in executing sale transactions on another exchange or on a Participant in the National Association of Securities Dealers, Inc. (“NASD”) Alternative Display Facility (“ADF Participant”) that were routed over the NMS Linkage Plan or the Intermarket Trading System (“ITS”).

Phlx Rule 607 is also proposed to be amended to allow the Exchange to enter into arrangements with ADF Participants to pass the Covered Sale Fee among the ADF Participants where the Exchange has collected the Covered Sale Fee from its members and member organizations for sale transactions executed on ADF Participant through ITS and when ADF Participants have collected the Covered Sale Fee from their members for sale transactions executed on the Exchange through ITS. In addition, Phlx Rule 607 is also proposed to be amended to allow the Exchange to enter into arrangements with other exchanges to pass the Covered Sale Fee among the applicable exchanges where the Exchange has collected the Covered Sale Fee from its members and member organizations for sale transactions executed on another exchange through the NMS Linkage Plan and when other exchanges have collected the Covered Sale Fee from their members for sale transactions executed on the Exchange through the NMS Linkage Plan.

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.

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 allow Phlx to accommodate the billing and collection of its Covered Sale Fee\(^7\) for executions that originated as orders sent to and received from the NMS Linkage Plan, which is proposed to commence on October 1, 2006. Currently, Phlx Rule 607 authorizes Phlx to charge Phlx members and member organizations the Covered Sale Fee for sale executions on Phlx. Phlx Rule 607 also allows Phlx to enter into arrangements to charge other exchanges when their members send orders to Phlx through ITS that result in sale executions on Phlx. Phlx also charges its members and member organizations a Covered Sale Fee when their orders, sent over ITS, result in a sale execution at another exchange. Phlx then uses that fee to cover the charge received from that other exchange. The NMS Linkage Plan is the

---

\(^7\) The Covered Sale Fee is currently imposed on member and member organization engaged in executing sale transactions on the Exchange or executing transactions, which were routed over the ITS, on another exchange during any computational period. The Covered Sale Fee is equal to (i) the Section 31 fee rate multiplied by (ii) the member's aggregate dollar amount of covered sales. See Securities Exchange Act Release No. 53088 (January 6, 2006), 71 FR 2286 (January 13, 2006) (SR-Phlx-2005-87).
successor linkage plan to ITS for the equity markets.\(^8\) The proposed changes to Phlx Rule 607 and the Phlx Fee Schedule are intended to carry the Covered Sale Fee charges and arrangements that currently exist for ITS into the NMS Linkage Plan and to ADF Participants.\(^9\)

2. **Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act\(^10\) in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act\(^11\) in particular, in that it is an equitable allocation of reasonable fees among Exchange members and issuers and other persons using its facilities, 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, by creating a mechanism for charging the Covered Sale Fee for transactions over the NMS Linkage Plan.

---

\(^8\) The NASD has not joined the NMS Linkage Plan and will maintain linkage for its ADF Participants through ITS.

\(^9\) Phlx, along with other exchanges, intends to file a separate proposed rule change that will allow it to charge and be charged fees, including Phlx’s Covered Sale Fee, for transactions that result from orders sent over the NMS Linkage Plan. See SR-NYSE-2006-72 and SR-AMEX-2006-85. In addition, Phlx intends to make arrangements with ADF Participants to charge and be charged fees, including Phlx’s Covered Sale Fee, for transactions that result from orders sent over ITS because the NASD will not be joining the NMS Linkage Plan and will not be collecting or paying these fees on behalf of the ADF Participants.


\(^11\) 15 U.S.C. 78f(b)(4) and (b)(5).
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.

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

The Exchange requests accelerated approval for this proposed rule change to allow the proposed rule change to become effective concurrently with the proposed effectiveness of the NMS Linkage Plan, which is proposed to be October 1, 2006.

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](http://www.sec.gov/rules/sro.shtml)); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2006-60 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-2006-60. 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-2006-60 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.\(^{12}\)

Nancy M. Morris
Secretary

\(^{12}\) 17 CFR 200.30-3(a)(12).
Exhibit 5

Underlining indicates additions; brackets indicate deletions

**Rule 607. Covered Sale Fee**

Under Section 31 of the Securities Exchange Act of 1934, the Exchange must pay certain fees to the Securities and Exchange Commission ("Commission"). To help fund the Exchange's obligations to the Commission under Section 31, a Covered Sale Fee is assessed by the Exchange to members and member organizations. To the extent there may be any excess monies collected under this Rule, the Exchange may retain those monies to help fund its general operating expenses.

Each member and member organization engaged in executing sale transactions on the Exchange or executing transactions, which were routed over the Intermarket Trading System or the NMS Linkage Plan, on another exchange or on a Participant in NASD’s Alternative Display Facility ("ADF Participant") during any computational period shall pay a Covered Sale Fee equal to (i) the Section 31 fee rate multiplied by (ii) the member's aggregate dollar amount of covered sales.

The Exchange may enter into arrangements with other exchanges or ADF Participants to pass the Covered Sale Fee among the applicable exchanges or ADF Participants where the Exchange has collected the Covered Sale Fee from its members and member organizations for sale transactions executed on another exchange or ADF Participant through the Intermarket Trading System or the NMS Linkage Plan and when other exchanges or ADF Participants have collected the Covered Sale Fee from [its] their members for sale transactions executed on the Exchange through the Intermarket Trading System or the NMS Linkage Plan.
SUMMARY OF EQUITY CHARGES (p 2/3)*

Covered Sale Fee

Each member and member organization engaged in executing sale transactions on the Exchange or executing transactions, which were routed over the Intermarket Trading System or the NMS Linkage Plan, on another exchange or ADF Participant during any computational period shall pay a Covered Sale Fee equal to (i) the Section 31 fee rate multiplied by (ii) the member's aggregate dollar amount of covered sales.

OFF-EXCHANGE TRADE INFORMATION FEE

$.10 per DOT trade

REMOTE INFORMATION ACCESS FEE

$300.00 per month

ELECTRONIC COMMUNICATIONS NETWORK[^] (“ECN”) FEE

$2,500.00 per month (in lieu of equity transaction charges)

See Appendix A for additional fees.

* not applicable to transactions in Nasdaq-100 Index Tracking Stock[^SM] (see page 4 for fees).
NASDAQ-100 INDEX TRACKING STOCK℠ FEE SCHEDULE

PHLX FEE SCHEDULE

Customer
PACE
Non-PACE
Transaction Fee $0.0035 per share

$50 maximum fee per trade side.

EQUITY FLOOR BROKERAGE ASSESSMENT
$250 monthly charge

REMOTE INFORMATION ACCESS FEE
$300.00 per month

Covered Sale Fee

Each member and member organization engaged in executing sale transactions on the Exchange or executing transactions, which were routed over the Intermarket Trading System or the NMS Linkage Plan, on another exchange or ADF Participant during any computational period shall pay a Covered Sale Fee equal to (i) the Section 31 fee rate multiplied by (ii) the member's aggregate dollar amount of covered sales.

SCCP FEE SCHEDULE

Customer
$0.30 per trade (Non-PACE customers)

Specialist
$0.50 per trade – for the first 1,000 trades
$0.25 per trade – for all subsequent trades (no further volume discounts)

The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares℠, Nasdaq-100 Trust℠, Nasdaq-100 Index Tracking Stock℠ and QQQ℠ are trademarks or service marks of The Nasdaq Stock Market, Inc. (Nasdaq) and have been licensed for use for certain purposes by the Philadelphia Stock Exchange 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 Trust℠, or the beneficial owners of Nasdaq-100 Shares℠. 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.

5 However, this charge applies where an order, after being delivered to the Exchange by the PACE system is executed by the specialist by way of an outbound ITS commitment, when such outbound ITS commitment reflects the PACE order’s clearing information, but does not apply where a PACE trade was executed against an inbound ITS commitment.

6 Applies to each member who derives at least 80% of gross income generated from Phlx floor based activities from his/her brokerage business conducted on the equity floor of the Exchange. Floor brokerage business conducted on the Exchange includes orders that are received on the equity floor of the Phlx, even if those orders are executed on an exchange other than the Phlx.