

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-NYSEArca-2008-24. 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, 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 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 No. SR-NYSEArca-2008-24 and should be submitted on or before March 31, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57417; File No. SR-NYSEArca-2008-26]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Permanent Two Pilot Programs That Increase Position and Exercise Limits on Equity Options

March 3, 2008.

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 February 29, 2008, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ 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 seeks to make permanent two pilot programs that increase position and exercise limits for equity options. The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the Exchange's principal office, 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 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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

1. Purpose

The Exchange seeks to make permanent two pilot programs that increase position and exercise limits for equity options. The Exchange proposes to amend Rule 6.8, Position Limits, and Rule 6.9, Exercise Limits, to permanently establish the increased limits of the two pilot programs. Rule 6.8 subjects equity options to one of five different position limits depending on the trading volume and outstanding shares of the underlying security. Rule 6.9 establishes exercise limits for equity options at the same levels as the applicable position limits.

The first pilot program, the "Rule 6.8 Pilot Program," commenced on February 25, 2005, and provides for an increase to the standard (or "non-pilot") positions and exercise limits for equity option contracts and for options on the PowerShares QQQ Trust ("QQQQ").⁵

The second pilot program, the "iShares^{reg}; Russell 2000^{reg}; Index Fund ("IWM") Option Pilot Program," commenced on January 29, 2007, and increases the position and exercise limits for IWM options from 250,000 contracts to 500,000 contracts.⁶

The IWM Option Pilot Program doubles the position and exercise limits for IWM options under the Rule 6.8 Pilot Program. *See* NYSEArca Rule 6.8, Commentary .06(g). Absent both of these pilot programs, the standard position and exercise limit for IWM options is 75,000 option contracts.

The standard position limits were last increased nine years ago, on December

⁵ The Rule 6.8 Pilot Program was effective upon filing on February 25, 2005. *See* Securities Exchange Act Release No. 51286 (March 1, 2005), 70 FR 11297 (March 8, 2005) (SR-PCX-2003-55). The Pilot Program has been extended five times for six month periods by the Commission, and expires on March 1, 2008. *See* Securities Exchange Act Release Nos. 52263 (August 15, 2005), 70 FR 49003 (August 22, 2005) (SR-PCX-2005-95); 53350 (February 22, 2006), 71 FR 9406 (March 1, 2006) (SR-PCX-2006-08); 54385 (August 30, 2006), 71 FR 53150 (September 8, 2006) (SR-NYSEArca-2006-49); 55374 (February 26, 2007), 72 FR 9823 (March 5, 2007) (SR-NYSEArca-2007-19); and 56264 (August 15, 2007), 72 FR 47110 (August 22, 2007) (SR-NYSEArca-2007-84).

⁶ The proposal that established the IWM Pilot Program was effective upon filing. *See* Securities Exchange Act Release No. 55185 (January 29, 2007), 72 FR 5481 (February 6, 2007) (SR-NYSEArca-2007-10). The IWM Pilot Program was subsequently extended and is due to expire on March 1, 2008. *See* Securities Exchange Act Release Nos. 56021 (July 6, 2007), 72 FR 38115 (July 12, 2007) (SR-NYSEArca-2007-58); and 57174 (January 18, 2008), 73 FR 4655 (January 25, 2007) (SR-NYSEArca-2008-07).

¹⁷ 17 CFR 200.30-3(a)(12).

31, 1998.⁷ Since that time, there has been a steady increase in the number of accounts industry-wide that (a) approach the position limit; (b) exceed the position limits; and (c) are granted an exemption to the applicable position limit by either NYSE Arca, or another options exchange.

NYSE Arca has not encountered any problems or difficulties relating to either pilot program. In addition, the Exchange is unaware of any violations of the position and exercise limits under the pilot programs during the period in which both pilot programs were in effect.

Since the last position limit increase, there has been an exponential increase in the overall volume of exchange traded options. Part of this volume is attributable to a corresponding increase in the number of overall market participants. This growth in market participants has in turn brought about additional depth and increased liquidity in exchange traded options. Further, since the last position limit increase, and throughout the duration of the two pilot programs, the Exchange has not encountered any regulatory issues regarding the applicable position limits, and states that there is a lack of evidence of market manipulation schemes, which justifies making permanent the Rule 6.8 and IWM Option Pilot Programs.

As the anniversary of listed options trading approaches its 35th year, the Exchange believes that the existing surveillance procedures and option position reporting requirements at the Exchange, at other options exchanges, and at the several clearing firms are capable of properly identifying unusual and/or illegal trading activity. The Exchange's surveillance procedures include daily monitoring of firm and customer position reports via automated surveillance techniques to identify potential violations of position limits for options and their underlying securities.

Accordingly, the Exchange represents that its surveillance procedures (which have been significantly enhanced since the last position limit increase in 1999) and reporting procedures, in conjunction with the financial requirements and risk management review procedures already in place at the clearing firms and the Options Clearing Corporation, will serve to adequately address any concerns the Commission may have with respect to account(s) engaging in any manipulative

schemes or assuming too high a level of risk exposure.

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns that a member or its customer may try to maintain an inordinately large unhedged position in an equity option.

The Exchange expects continued options volume growth as opportunities for investors to participate in the option markets increase and evolve. The Exchange believes that the non-pilot position and exercise limits are restrictive, and returning to those limits will hamper fair and effective competition between the listed options markets and the over-the-counter markets.

Equity option position limits have been gradually expanded from 1,000 contracts in 1973 to the current level of 75,000 contracts for the largest and most actively traded equity options. To date, there have been no adverse affects on the markets as a result of these past increases in the limits for equity option contracts.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,⁸ in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms 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 believes that the proposed rule change will not 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 with respect to the proposed rule change.

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

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and

(3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁰ The Exchange notes that the proposed rule change is based on a similar proposal recently approved by the Commission.¹¹ The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing.

The Rule 6.8 Pilot Program and the IWM Option Pilot Program were scheduled to expire on March 1, 2008. The Commission believes that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because it will allow the position and exercise limits to remain at consistent levels during the transition from the pilot programs to permanent status.¹² Therefore, the Commission designates the proposal to be operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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:

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

¹¹ See Securities Exchange Act Release No. 57352 (February 19, 2008), 73 FR 10076 (February 25, 2008) (order granting accelerated approval to SR-CBOE-2008-07).

¹² For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷ See Securities Exchange Act Release No. 40875 (December 31, 1998) 64 FR 1842 (January 12, 1999) (SR-PCX-98-33).

⁸ 15 U.S.C. 78f(b)(5).

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 No. SR-NYSEArca-2008-26 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-NYSEArca-2008-26. 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, 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 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-NYSEArca-2008-26 and should be submitted on or before March 31, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57420; File No. SR-Phlx-2008-16]

**Self-Regulatory Organizations;
Philadelphia Stock Exchange, Inc.;
Notice of Filing and Immediate
Effectiveness of Proposed Rule
Change to Extend the Dividend,
Merger, and Short Stock Interest
Strategies Fee Cap Program**

March 3, 2008.

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 February 27, 2008, 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 Phlx has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A),³ and Rule 19b-4(f)(2) thereunder,⁴ 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 extend for a period of one year, until March 1, 2009, the pilot programs for: (1) The \$1,000 and \$25,000 fee caps on equity option transaction and comparison charges on dividend,⁵ merger,⁶ and short stock interest⁷ strategies; and (2) the license

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ For purposes of this proposal, the Exchange defines a "dividend strategy" as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed prior to the date on which the underlying stock goes ex-dividend. *See, e.g.,* Securities Exchange Act Release No. 54174 (July 19, 2006), 71 FR 42156 (July 25, 2006) (SR-Phlx-2006-40).

⁶ For purposes of this proposal, the Exchange defines a "merger strategy" as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.,* cash or stock. *See id.*

⁷ For purposes of this proposal, the Exchange defines a "short stock interest strategy" as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class. *See id.*

fee of \$0.05 per contract side imposed on dividend and short stock interest strategies, as described below. The current fee caps and \$0.05 per contract side license fee are in effect as a pilot program that is scheduled to expire on March 1, 2008.⁸ Other than extending the pilot program for an additional one-year period until March 1, 2009, no other changes to the Exchange's current dividend, merger and short stock interest strategy program, which includes the \$0.05 per contract side license fee, are being proposed at this time.

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

**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 proposal. 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 imposes a fee cap on equity option transaction and comparison charges on dividend, merger and short stock interest strategies executed on the same trading day in the same options class. Specifically, Registered Options Trader ("ROT") and specialist net equity option transaction and comparison charges are capped at \$1,000 for dividend, merger, and short stock interest strategies executed on the same trading day in the same options class.⁹ In addition, there is a \$25,000 per member organization fee cap on equity option transaction and comparison charges incurred in one month for dividend, merger and short stock interest strategies combined. The \$1,000 and \$25,000 fee caps are implemented after any applicable rebates are applied to ROT and specialist equity option transaction and

⁸ *See* Securities Exchange Act Release No. 55358 (February 27, 2007), 72 FR 9828 (March 5, 2007) (SR-Phlx-2007-14).

⁹ *See id.*

¹³ 17 CFR 200.30-3(a)(12).