

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

Under the Exchange's existing rules, odd lot orders execute in the Matching System without regard to the protected quotations of other markets.<sup>5</sup> The Exchange states that this is because such orders are not subject to the Regulation NMS Order Protection Rule and can trade through better prices in other markets.<sup>6</sup> Through this filing, the Exchange proposes to amend its rules to provide that market odd lot orders would execute like round lot orders (*i.e.*, they would execute as if they were subject to the Regulation NMS Order Protection Rule), while odd lot limit orders and odd lot crosses would continue to execute through better prices on other markets.<sup>7</sup>

The Exchange believes that this proposal will provide appropriate protections to odd lot market orders, while allowing participants to choose to have odd lot limit orders and odd lot crosses executed at other prices.<sup>8</sup>

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange and, in particular, with the requirements of Section 6(b). The proposed rule change is consistent with Section 6(b)(5) of the Act<sup>9</sup> because it

<sup>5</sup> See CHX Rules, Article 20, Rule 5(b).

<sup>6</sup> The Exchange states that its handling of the execution of odd lot orders is consistent with the requirements of Regulation NMS. See Division of Market Regulation: Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS, FAQ 7.03 (confirming that Rule 611 does not apply to odd lot orders).

<sup>7</sup> The Exchange believes that a participant that submits an odd lot cross seeks to have that order executed at a particular price, without regard to prices in other markets. Similarly, if a participant submits an odd lot limit order, that participant likely only seeks the protection of the order's limit price and does not anticipate that the order would be protected against better prices in other markets.

<sup>8</sup> Odd lot market orders that would trade through the protected quotations of other markets would be rejected from the Exchange's Matching System and either routed to another appropriate market or, if designated as "do not route," automatically cancelled. See CHX Rules, Article 20, Rule 5(a).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

would promote just and equitable principles of trade, remove impediments to, and protect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest by allowing market odd lot orders to be executed like round lot orders in the Exchange's Matching System.

*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.

*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**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**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 Number SR-CHX-2007-22 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-CHX-2007-22. 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-CHX-2007-22 and should be submitted on or before November 21, 2007.

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

Nancy M. Morris,  
Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-56699; File No. SR-ISE-2007-100]

**Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes**

October 24, 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 17, 2007, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 5 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the ISE. The ISE 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 ISE proposes to amend its Schedule of Fees to reflect the expiration of fee waivers related to foreign currency options traded on the Exchange. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and at <http://www.ise.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 ISE 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 ISE 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 this proposed rule change is to amend the ISE Schedule of Fees to reflect the expiration of fee waivers related to foreign currency options traded on the Exchange, referred to in the Schedule of Fees as “FX options.” The Exchange adopted certain fee waivers related to FX options on April 17, 2007,<sup>5</sup> which is the day the Exchange began trading in FX options.<sup>6</sup>

In order to promote trading in FX options, for a three month period

beginning April 17, 2007, the Exchange waived (1) all transaction fees applicable to members that trade in FX options, (2) the monthly access fee applicable to ISE market makers, and (3) one API for each class of market maker in FX options. These fee waivers expired on October 17, 2007. The Exchange thus proposes to remove language related to these fee waivers from its Schedule of Fees.<sup>7</sup>

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>9</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

#### B. Self-Regulatory Organization’s Statement on Burden on Competition

The proposed rule change does 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

### 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>10</sup> and Rule 19b-4(f)(2)<sup>11</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

<sup>7</sup> The Exchange will, however, keep certain exemptions related to foreign currency options fees in place: (1) FXPMMs will continue to be exempt from the Minimum Fee applicable to Primary Market Makers, and (2) FXPMMs and FXCMMs will continue to be exempt from the Inactivity Fee applicable to Primary Market Makers and Competitive Market Makers. *See supra*, Note 5 (citing to Release No. 34-55704).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

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-ISE-2007-100 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-ISE-2007-100. 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 ISE. 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-ISE-2007-100 and should be submitted on or before November 21, 2007.

<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* Securities Exchange Act Release No. 55704 (May 3, 2007), 72 FR 26663 (May 10, 2007).

<sup>6</sup> *See* Securities Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (order approving the listing and trading of Foreign Currency Options).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Nancy M. Morris,

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56700; File No. SR-Phlx-2007-78]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Article FOURTH of its Restated Certificate of Incorporation

October 24, 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 October 5, 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 pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(3) thereunder.<sup>4</sup> The Exchange has designated this proposal as one concerned solely with the administration of the Exchange, 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

Phlx proposes to amend its Restated Certificate of Incorporation (“Certificate”) by modifying the definition of “Related Persons” in Article FOURTH. The text of the proposed rule change is available at the Exchange, on the Exchange’s Web site at [http://www.phlx.com/exchange/phlx\\_rule\\_fil.html](http://www.phlx.com/exchange/phlx_rule_fil.html), 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.

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

###### 1. Purpose

As discussed further below, the Exchange represents that the purpose of the proposed rule change is to amend the definition of “Related Persons” as it appears in Article FOURTH of the Certificate to remove unnecessary burdens on the flexibility of the Exchange and its shareholders in effecting certain types of lawful fundamental transactions. The Exchange believes that this should facilitate appropriate deliberation, discussion, and activities by the shareholders of the Exchange in relation to fundamental transactions and other appropriate matters, without compromising the policies underlying the concentration limits on voting and ownership of Common Stock of the Exchange contained in Article FOURTH of the Certificate.

Article FOURTH of the Certificate imposes limitations on ownership and voting by holders of Phlx’s Common Stock.<sup>5</sup> For purposes of applying these limitations, the holdings of a Phlx shareholder are combined with those of the shareholder’s “Related Persons.” Clause (b)(iii)(B) of Article FOURTH provides, in pertinent part, that:

\* \* \* “Related Persons” shall mean (1) with respect to any Person,<sup>6</sup> all “affiliates” and “associates” of such Person (as such

<sup>5</sup> The concentration limits in the Certificate limit any person, either alone or together with its Related Person, to (i) owning 40% of the outstanding Common Stock of the Exchange (20% in the case of Exchange members), and (ii) exercising voting rights in respect of more than 20% of the Common Stock. A waiver by the Board of Governors, subject to Commission approval, is permitted in certain cases. See Article FOURTH (b)(iii) and (v).

<sup>6</sup> In Article FOURTH (a)(iv), “Person” is defined as an individual, partnership (general or limited), joint-stock company, corporation, limited liability company, trust or unincorporated organization, and a government or agency or political subdivision thereof.

terms are defined in Rule 12b-2 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”)), (2) with respect to any natural person constituting a “member” (as such term is defined in the Exchange Act) of the Corporation, any broker or dealer with which such member is associated and (3) any two or more Persons that have any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, holding, voting or disposing of shares of Common Stock. (Footnote added).

The Exchange notes that ownership and voting concentration limits are intended to ensure that the Exchange’s management is not beset with conflicts of interest for the benefit of a small number of individuals or entities such that the Exchange cannot meet the statutory standards for national securities exchanges set forth in Sections 6<sup>7</sup> and 19<sup>8</sup> of the Act.<sup>9</sup> The Exchange believes that the “Related Persons” definition is intended to keep members and other persons from evading the numerical limits of holding shares in multiple affiliates or by having secret agreements with other shareholders whereby their “true” level of ownership, control, or voting power indirectly exceeds the permitted percentage limits.

Phlx is of the view that the policy underlying these restrictions was not intended to inhibit the Exchange or shareholders from effecting certain kinds of fundamental, and otherwise lawful, transactions, such as effecting an initial public offering or a merger or from entering into agreements or arrangements that are necessary or directly related to the execution of such transactions.<sup>10</sup>

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78s.

<sup>9</sup> See Securities Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71126 (December 8, 2004) (proposed SRO governance rulemaking). The organizational documents of other national securities exchanges contain similar concentration limits. See Securities Exchange Act Release Nos. 45803 (April 23, 2002), 67 FR 21306 (April 30, 2002) (SR-ISE-2002-01) (approving the restructuring of International Securities Exchange, Inc. from a limited liability company to a corporation); and 49718 (May 17, 2004), 69 FR 29611 (May 24, 2004) (SR-PCX-2004-08) (approving the demutualization of the former Pacific Exchange, Inc.). See also Securities Exchange Act Release Nos. 49067 (January 13, 2004), 64 FR 2761 (January 21, 2004) (SR-BSE-2003-19) (approving the operating agreement of the Boston Options Exchange); and 54399 (September 1, 2006), 71 FR 53728 (September 12, 2006) (SR-ISE-2006-45) (granting accelerated approval of the establishment of ISE Stock Exchange, LLC as a facility of the International Securities Exchange, Inc.).

<sup>10</sup> Indeed, such fundamental transactions have been consummated, and are currently contemplated, by other national securities exchanges. In these cases, charter provisions of

Continued

<sup>12</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> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(3).