

Proposed Rule Change by Philadelphia Stock Exchange  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input checked="" type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action <input type="checkbox"/>			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
Date Expires <input type="text"/>			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
Provide a brief description of the proposed rule change (limit 250 characters).

**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	<input type="text" value="Richard"/>	Last Name	<input type="text" value="Rudolph"/>
Title	<input type="text" value="Vice President and Counsel"/>		
E-mail	<input type="text" value="Richard.Rudolph@phlx.com"/>		
Telephone	<input type="text" value="(215) 496-5074"/>	Fax	<input type="text" value="(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	<input type="text" value="11/13/2006"/>
By	<input type="text" value="Richard S. Rudolph"/>
	(Name)
	<input type="text" value="Vice President and Counsel"/>
	(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.

Richard Rudolph,

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information**

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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**

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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)

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

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Exhibit Sent As Paper Document

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 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

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 4 - Marked Copies**

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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**

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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**

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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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> proposes to amend various Exchange rules in order to establish a six-month pilot period beginning on January 26, 2007 (the “pilot”), during which certain options would be quoted and traded on the Exchange in minimum increments of \$0.01 for all series in such options with a price of less than \$3.00, and in minimum increments of \$0.05 for all series in such options with a price of \$3.00 or higher, except that options overlying the Nasdaq-100 Index Tracking Stock (“QQQ”)<sup>3</sup> would be quoted and traded in minimum increments of \$0.01 for all series regardless of the price. A list of all such options would be communicated to membership via Exchange circular.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1. The text of the proposed rule change is set forth below.

Brackets indicate deletions; bold underlining indicates new text

### **Minimum Increments**

**Rule 1034.** (a) Except as provided in sub-paragraph (i)(B) below, [A] all options on stocks, index options, and Exchange Traded Options quoting in decimals at \$3.00 or higher shall have a minimum increment of \$.10, and all options on stocks and index options quoting in decimals under \$3.00 shall have a minimum increment of \$.05.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares<sup>SM</sup>, Nasdaq-100 Trust<sup>SM</sup>, Nasdaq-100 Index Tracking Stock<sup>SM</sup>, and QQQ<sup>SM</sup> 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<sup>SM</sup>, or the beneficial owners of Nasdaq-100 Shares<sup>SM</sup>. 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.

(i) (A) However, the Board of Governors may establish different minimum trading increments. The Exchange will designate any such change as a stated policy, practice or interpretation with respect to the administration of Rule 1034, within the meaning of Section 19(b)(3)(A) of the Exchange Act and will file a proposed rule change with the Securities and Exchange Commission to be effective upon filing.

(B) For a six-month pilot period beginning on January 26, 2007 (the “pilot”), certain options shall be quoted and traded on the Exchange in minimum increments of \$0.01 for all series in such options with a price of less than \$3.00, and in minimum increments of \$0.05 for all series in such options with a price of \$3.00 or higher, except that options overlying the Nasdaq-100 Index Tracking Stock (“QQQQ”)® shall be quoted and traded in minimum increments of \$0.01 for all series regardless of the price. A list of such options shall be communicated to membership via Exchange circular.

(C) On or before the last day of the fourth month of the pilot, the Exchange shall prepare and submit an analytical report to the Securities and Exchange Commission (“Commission”) that addresses the impact of the first three months of the pilot on the quality of the Exchange’s markets and option quote traffic and capacity.

(ii) – (iii) No change.

**Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X)**

**Rule 1080.** (a) - (b) No change.

(c)\*\*\*\*\*

(i) - (iii) No change

(iv) Except as otherwise provided in this Rule, in the following circumstances, an order otherwise eligible for automatic execution will instead be manually handled by the specialist:

(A) RESERVED [when the Exchange’s disseminated market is crossed by more than one minimum trading increment (as defined in Exchange Rule 1034) (i.e., 2.10 bid, 2 offer), or crosses the disseminated market of another options exchange by more than one minimum trading increment];

(B) - (F) No change.

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(v) – (vi) No change.

(d) – (h) No change.

(i) Zero-bid option series. The AUTOM System will convert market orders to sell a particular option series to limit orders to sell with a limit price of [\$.05] the minimum trading increment applicable to such series that are received when:

(A) – (B) No change.

(j) – (l) No change.

Commentary: No change.

### **Firm Quotations**

**Rule 1082.** (a) Definitions.

(i) No change.

(ii) The term “disseminated size” shall mean with respect to the disseminated price for any quoted options series:

(A) Except as provided in sub-paragraph (a)(ii)(C)(3) below, [A] at least the sum of the size associated with limit orders, specialists’ quotations, SQTs’ quotations, and RSQTs’ (as defined in Rule 1014(b)(ii)(B)) quotations.

(B) (1) If an SQT or RSQT’s (other than a Directed SQT or RSQT) quotation size in a particular series in a Streaming Quote Option is exhausted or removed by the Risk Monitor Mechanism, such SQT or RSQT’s quotation shall be deleted from the Exchange’s disseminated quotation until the time the SQT or RSQT revises his/her quotation.

(2) If the Exchange’s disseminated size in a particular series in a Streaming Quote option is exhausted at that particular price level, and no specialist, SQT or RSQT has revised their quotation immediately following the exhaustion of the Exchange's disseminated size at such price level, the Exchange shall automatically provide two-sided quotes that comply with the Exchange’s rules concerning quote spread parameters on behalf of the specialist until such time as the specialist revises the quotation, with a size of one contract.

(C) The Exchange shall disseminate an updated bid and offer price, together with the size associated with such bid and offer, when:

(1) the Exchange’s disseminated bid or offer price increases or decreases;

(2) the size associated with the Exchange's disseminated bid or offer decreases; or

(3) the size associated with the Exchange's bid (offer) increases by an amount greater than or equal to a percentage (never to exceed 20%) of the size associated with previously disseminated bid (offer). Such percentage, which shall never exceed 20%, shall be determined on an issue-by-issue basis by the Exchange and announced to membership via Exchange circular.

(iii) – (iv) No change.

(b) – (d) No change.

Commentary: No change.

### **Order Protection**

**Rule 1085.** (a) No change.

(b) Exceptions to Trade-Through Liability. The provisions of paragraph (a) pertaining to the satisfaction of Trade-Throughs shall not apply under the following circumstances:

(1) – (9) No change.

(10) the Trade-Through was the result of an automatic execution when the Exchange's disseminated market is the NBBO and is crossed [by not more than one minimum trading increment (as defined in Exchange Rule 1034)], or crosses the disseminated market of another options exchange [by not more than one minimum trading increment].

(c) – (d) No change.

### **Locked and Crossed Markets**

**Rule 1086.** (a) Eligible Market Maker Locking or Crossing a Market. An Eligible Market Maker that creates a Locked Market or a Crossed Market shall unlock (uncross) that market or shall direct a Principal Order through the Linkage to trade against the bid or offer that the Eligible Market Maker locked (crossed).

(b) Members Other than an Eligible Market Maker Locking or Crossing a Market. A Member other than an Eligible Market Maker that creates a Locked Market or a Crossed Market shall unlock (uncross) the market.

(c) The provisions of this Rule 1086 do not apply to situations where an Eligible Market Maker or a member other than an Eligible Market Maker books an order that would lock

a market and contemporaneously sends through the Linkage a P/A Order or Principal Order for the full size of the bid or offer that was locked.

(d) Notwithstanding the provisions in Rules 1083(d) and (l), for purposes of this rule respecting options quoted in minimum increments of \$0.01, the term “Crossed Market” means a market that is crossed by \$0.05 or greater for series trading under \$3.00, and by \$0.10 or greater for series trading at \$3.00 or higher. The Exchange may reduce such amount and announce such reduction to membership via Exchange circular.

### **F-7 Size of Exchange's Disseminated Bid or Offer**

The size of any disseminated bid or offer by the Exchange shall be, with respect to the disseminated price for any quoted options series, equal to:

Except as provided below, [A] at least the sum of the size associated with limit orders, specialists' quotations, SQTs' quotations, and RSQTs' quotations.

The Exchange shall disseminate an updated bid and offer price, together with the size associated with such bid and offer, when:

(i) the Exchange's disseminated bid or offer price increases or decreases;

(ii) The size associated with the Exchange's disseminated bid or offer decreases;  
or

(iii) the size associated with the Exchange's bid (offer) increases by an amount greater than or equal to a percentage (never to exceed 20%) of the size associated with previously disseminated bid (offer). Such percentage, which shall never exceed 20%, shall be determined on an issue-by-issue basis by the Exchange and announced to membership via Exchange circular.

FINE SCHEDULE

Fine not applicable

## 2. Procedures of the Self-Regulatory Organization

The Exchange's Executive Committee, pursuant to delegated authority, approved the proposal for filing with the Securities and Exchange Commission (“SEC” or “Commission”) on November 13, 2006.

Questions and comments on the proposed rule change may be directed to Richard S. Rudolph, Vice President and Counsel, at (215) 496-5074, 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 establish a six-month pilot program during which certain options would be quoted and traded in increments of \$.01.

Scope of the Pilot

Proposed Rule 1034(a)(i)(B) would state that the pilot would begin on January 26, 2007, and would extend for a six-month period. There would be 13 options included in the pilot as determined by the Commission, subject to a rollout schedule to be determined. The rollout would begin January 26, 2007. The options included in the pilot are:

<u>Symbol</u>	<u>Underlying Security</u>
IWM	Ishares Russell 2000
QQQQ	QQQQ
SMH	SemiConductor Holders
GE	General Electric
AMD	Advanced Micro Devices
MSFT	Microsoft
INTC	Intel
CAT	Caterpillar
WFMI	Whole Foods



TXN	Texas Instruments
GLG	Glamis Gold
FLEX	Flextronics International
SUNW	Sun Micro

### Changes to Minimum Increments

The Exchange proposes to adopt Rule 1034(a)(i)(B), which would provide that the option included in the pilot would be quoted in minimum increments of \$0.01 for all series in such options with a price of less than \$3.00, and in minimum increments of \$0.05 for all series in such options with a price of \$3.00 or higher, except that options overlying QQQQ would be quoted and traded in minimum increments of \$0.01 for all series regardless of the price. A list of all such options would be communicated to membership via Exchange circular.

### Crossed Markets

The Exchange believes that it is likely that the occurrence of crossed markets will increase substantially respecting options that are quoted in increments of \$0.01. Accordingly, the Exchange proposes to amend the definition of a crossed market for purposes of compliance with the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the “Linkage Plan”), automatic executions during crossed markets, and Trade-Throughs.<sup>4</sup>

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<sup>4</sup> “Trade-Through” means a transaction in an options series at a price that is inferior to the National Best Bid or Offer (“NBBO”), but shall not include a transaction that occurs at a price that is one minimum quoting increment inferior to the NBBO provided a Linkage Order is contemporaneously sent to each Participant Exchange disseminating the NBBO for the full size of the Participant Exchange’s bid (offer) that represents the NBBO. See Exchange Rule 1083(t).

i. Definitions

Exchange rules and the Linkage Plan currently provide generally that a participant who creates a locked market or a crossed market must unlock (uncross) that market or direct a Principal Order through the Linkage to trade against the bid or offer that was locked (crossed).<sup>5</sup> The Exchange believes that the instance of crossed markets will increase in options that are quoted in \$0.01 increments, due to “flickering” of penny quotes that may repeatedly cross and uncross a market over a very brief interval of time. In order to account for and limit the number of unintentional violations of the Linkage Plan and Exchange Rules due to “flickering,” the Exchange proposes to adopt new Rule 1086(d), which would, respecting options quoted in \$0.01 increments, define “Crossed Market” as a market that is crossed by \$0.05 or greater for series trading under \$3.00, and by \$0.10 or greater for series trading at \$3.00 or higher.

ii. Automatic Executions

Currently, orders on the Exchange that are otherwise eligible for automatic execution are handled manually by the specialist when the Exchange’s disseminated market is crossed by more than one minimum trading increment (as defined in Exchange Rule 1034) (i.e., 2.10 bid, 2 offer), or crosses the disseminated market of another options exchange by more than one minimum trading increment.<sup>6</sup> The effect of this is that the Exchange currently provides automatic executions during crossed markets when the Exchange’s disseminated market is crossed by not more than one minimum trading increment, or crosses the disseminated market of another options exchange by not more

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<sup>5</sup> See, e.g., Exchange Rule 1086.

<sup>6</sup> See Exchange Rule 1080(c)(iv)(A).

than one minimum trading increment, and the Exchange's disseminated price on the opposite side of the market for the incoming order establishes, or is equal to, the NBBO.<sup>7</sup>

The Exchange proposes to delete Rule 1080(c)(iv)(A), which would thereby mean that the Exchange will provide automatic executions in options where the Exchange's disseminated market is the NBBO<sup>8</sup> and is crossed, or crosses the disseminated market of another options exchange, regardless of the amount by which such market is crossed.<sup>9</sup>

iii. Trade-Throughs

Currently, Exchange Rule 1085(b) affords Linkage participants several exemptions from Trade-Through liability and the requirements concerning satisfaction of Trade-Throughs. Among the exemptions from such liability and satisfaction responsibility is current Exchange Rule 1085(b)(10), which provides an exemption when the Trade-Through was the result of an automatic execution when the Exchange's disseminated market is the NBBO and is crossed by not more than one minimum trading increment (as defined in Exchange Rule 1034), or crosses the disseminated market of another options exchange by not more than one minimum trading increment.

In order to be consistent with the proposed rule change (described above) to provide automatic executions when the Exchange's disseminated market is the NBBO regardless of the amount by which the market is crossed, the Exchange proposes to amend the rule to state that there would be an exemption from such liability and

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<sup>7</sup> See Exchange Rule 1085(b)(10). See also, Securities Exchange Act Release No. 53449 (March 8, 2006), 71 FR 13441 (March 15, 2006) (SR-Phlx-2005-45).

<sup>8</sup> The Exchange provides automatic executions only when its disseminated market is the NBBO. See Exchange Rule 1080(c)(iv)(E).

<sup>9</sup> The Exchange notes that another options exchange currently provides automatic executions during crossed markets regardless of the amount by which the market is crossed. See Securities Exchange Act Release No. 54229 (July 27, 2006), 71 FR 44058 (August 3, 2006) (SR-CBOE-2005-90).

satisfaction responsibility when the Trade-Through was the result of an automatic execution when the Exchange's disseminated market is the NBBO and is crossed, or crosses the disseminated market of another options exchange. The proposed rule change would delete the current language contained in Rule 1085(b)(10) that limits the exemption from Trade-Through and satisfaction liability to automatic executions at the NBBO during markets that are crossed by one minimum trading increment. The Exchange believes that the proposed rule change would facilitate the prompt resolution of crossed markets by permitting automatic executions when the Exchange's disseminated market is crossed by not more than one minimum trading increment, or crosses the disseminated market of another options exchange.

#### Report to the Commission

Proposed Rule 1034(a)(i)(C) would require the Exchange to prepare and submit an analytical report ("report") to the Commission that addresses the impact of the first three months of the pilot on the quality of the Exchange's markets and option quote traffic and capacity on or before the last day of the fourth month of the pilot. The purpose of this provision is to comply with the Commission's mandate that the Exchange submit such a report within the time frame specified in the rule.

#### Zero-Bid Option Series

Currently, Exchange Rule 1080(i) states that the Exchange's AUTOM System will convert market orders to sell a particular option series to limit orders to sell with a limit price of \$.05 that are received when the bid price for such series is zero. The proposal would amend Rule 1080(i) to state that the system will convert such orders to limit orders to sell with a limit price of the minimum trading increment applicable to such

series. The effect of this respecting options quoted and traded in minimum increments of \$0.01 would be that such conversion would be to a limit order to sell at \$0.01, rather than \$0.05.

### Quote Mitigation

The Exchange recognizes that quoting and trading in \$.01 increments will most assuredly result in a greater number of quotations submitted in options that are included in the pilot. Therefore, in order to mitigate quote traffic, the Exchange proposes to amend Rule 1082, Firm Quotations, by adopting new Rule 1082(a)(ii)(C), which would modify the Exchange's definition of "disseminated size" such that the Exchange will disseminate fewer updated quotations.

Specifically, proposed Rule 1082(a)(ii)(C) would set forth the conditions under which the Exchange would disseminate updated quotations based on changes in the Exchange's disseminated price and/or size. The proposed rule would require the Exchange to disseminate an updated bid and offer price, together with the size associated with such bid and offer, when: (1) the Exchange's disseminated bid or offer price increases or decreases; (2) the size associated with the Exchange's disseminated bid or offer decreases; or (3) the size associated with the Exchange's bid (offer) increases by an amount greater than or equal to a percentage (never to exceed 20%) of the size associated with previously disseminated bid (offer). Such percentage, which would never exceed 20%, would be determined on an issue-by-issue basis by the Exchange and announced to membership via Exchange circular. The percentage size increase necessary to give rise to a refreshed quote may vary from issue to issue, depending, without limitation, on the liquidity, average volume, and average number of quotations submitted in the issue.

Proposed Rule 1080(b)(ii)(C) would not be limited to options included in the pilot, and would thus apply to all options traded on the Exchange.

The Exchange believes that the limitation on dissemination of quotations that increase in size by a nominal amount should significantly mitigate the amount of options quote traffic on the Exchange, and addresses issues of options quote capacity on the Exchange and in the National Market System.

In addition to the measures proposed above concerning mitigation of quote traffic on the Exchange, the Exchange has filed, or submitted to the Commission in draft, other proposed rule changes that the Exchange believes should reduce the number of quotations generated on the Exchange.

Specifically, the Commission recently approved a proposed rule change stating that Streaming Quote Traders (“SQTs”),<sup>10</sup> Remote Streaming Quote Traders (“RSQTs”),<sup>11</sup> and SQTs and RSQTs that receive Directed Orders<sup>12</sup> (“DSQTs” and “DRSQTs” respectively) are deemed not to be assigned in any option series until the time to expiration for such series is less than nine months.<sup>13</sup> Accordingly, the market making

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<sup>10</sup> An SQT is an Exchange Registered Options Trader (“ROT”) who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. See Exchange Rule 1014(b)(ii)(A).

<sup>11</sup> An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Exchange Rule 1014(b)(ii)(B).

<sup>12</sup> The term “Directed Order” means any customer order (other than a stop or stop-limit order as defined in Rule 1066) to buy or sell which has been directed to a particular specialist, RSQT, or SQT by an Order Flow Provider. See Exchange Rule 1080(l)(i)(A).

<sup>13</sup> See Securities Exchange Act Release No. 54648 (October 24, 2006), 71 FR 63375 (October 30, 2006) (SR-Phlx-2006-52).

obligations described in Exchange Rule 1014(b)(ii)(D) do not apply to SQTs, RSQTs, DSQTs and DRSQTs respecting series with an expiration of nine months or greater, and thus they would be required to submit fewer quotes.

Additionally, the Exchange filed a proposed rule change authorizing the Exchange's Options Allocation, Evaluation and Securities Committee ("OAESC"),<sup>14</sup> to assign trading privileges in options to SQTs and RSQTs, by "root symbol," such that an SQT or RSQT, on request, may be assigned in only certain series of an option.<sup>15</sup> The market making obligations applicable to SQTs and RSQTs thus would not apply to series in which an SQT or RSQT is not assigned, which should reduce the number of quotations required to be submitted.

The Exchange has also submitted a separate draft proposal to establish a maximum number of quoting participants that may be assigned to a particular equity option at any one time.<sup>16</sup> This would limit the number of participants quoting in a particular equity option and thus should limit the number of quotations submitted in such equity options.

In another separate draft submission, the Exchange has proposed to establish monthly Performance Evaluations by the Exchange of its member organizations that have SQTs and RSQTs, to determine whether they have fulfilled performance standards

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<sup>14</sup> The OAESC is a standing committee of the Exchange that has jurisdiction over the allocation, retention and transfer of the privileges to deal in all options to, by and among members on the options and foreign currency options trading floors. It is responsible for appointing specialists, alternate or assistant specialists or odd-lot dealers on the options and foreign currency options trading floors. It also establishes standards for the periodic review and evaluation of their performance and is empowered to suspend or revoke their appointments upon showing of reasonable cause therefor. See Exchange By-Law Article X, Section 10-7(a). See also, Exchange Rule 500.

<sup>15</sup> *See* SR-Phlx-2006-53.

<sup>16</sup> *See* SR-Phlx-2006-49.

relating to, among other things, quality of markets, efficient quote submission to the Exchange (including quotes submitted through a third party vendor), competition, observance of ethical standards, and administrative factors.<sup>17</sup> Under that proposal, failure to meet established minimum performance requirements could result in restriction by the OAESC of additional options assignments; suspension, termination, or restriction of an existing assignment on one or more options; or suspension, termination, or restriction of an SQT's or RSQT's status as such. The Exchange believes that such evaluations and possible consequences for failure to meet specific minimum standards should encourage efficient quoting and use of the Exchange's capacity and bandwidth by providing a disincentive for SQTs and RSQTs to submit quotations that do not improve the Exchange's disseminated price or materially increase the Exchange's disseminated size.

#### Fee Structure

The Exchange is also developing and pursuing a fee structure to encourage more efficient quoting as a method of mitigating inbound quotations. The Exchange anticipates that such a fee would apply in situations where a specific ratio of quotations submitted to trades executed and/or quotations submitted to number of contracts executed during a specific time period is not met.

#### b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>18</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>19</sup> in particular,

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<sup>17</sup> See SR-Phlx-2006-51.

<sup>18</sup> 15 U.S.C. 78f(b).



in that it is 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 establishing rules concerning the pilot while simultaneously mitigating quote traffic.

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)

Not applicable.

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

The proposed rule change is based, in part, on Chicago Board Options Exchange, Inc. ("CBOE") Rule 6.13.<sup>20</sup>

9. Exhibits

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

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<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> See Securities Exchange Act Release No. 54229 (July 27, 2006), 71 FR 44058 (August 3, 2006) (SR-CBOE-2005-90).

Exhibit 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-Phlx-2006-74)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to a Pilot Program to Quote and Trade Options in Penny Increments

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4<sup>2</sup> 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<sup>3</sup> and Rule 19b-4 thereunder,<sup>4</sup> proposes to amend various Exchange rules in order to establish a six-month pilot period beginning on January 26, 2007 (the “pilot”), during which certain options would be quoted and traded on the Exchange in minimum increments of \$0.01 for all series in such options with a price of less than \$3.00, and in minimum increments of \$0.05 for all series in such options with a price of \$3.00 or higher, except that options overlying the Nasdaq-

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<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)(1).

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

100 Index Tracking Stock (“QQQ”)<sup>5</sup> would be quoted and traded in minimum increments of \$0.01 for all series regardless of the price. A list of all such options would be communicated to membership via Exchange circular.

The text of the proposed rule change is set forth below.

Brackets indicate deletions; bold underlining indicates new text

### **Minimum Increments**

**Rule 1034.** (a) Except as provided in sub-paragraph (i)(B) below, [A] all options on stocks, index options, and Exchange Traded Options quoting in decimals at \$3.00 or higher shall have a minimum increment of \$.10, and all options on stocks and index options quoting in decimals under \$3.00 shall have a minimum increment of \$.05.

(i) (A) However, the Board of Governors may establish different minimum trading increments. The Exchange will designate any such change as a stated policy, practice or interpretation with respect to the administration of Rule 1034, within the meaning of Section 19(b)(3)(A) of the Exchange Act and will file a proposed rule change with the Securities and Exchange Commission to be effective upon filing.

(B) For a six-month pilot period beginning on January 26, 2007 (the “pilot”), certain options shall be quoted and traded on the Exchange in minimum increments of \$0.01 for all series in such options with a price of less than \$3.00, and in minimum increments of \$0.05 for all series in such options with a price of \$3.00 or higher, except that options overlying the Nasdaq-100 Index Tracking Stock (“QQQ”)<sup>®</sup> shall be quoted and traded in minimum increments of \$0.01 for all series regardless of the price. A list of such options shall be communicated to membership via Exchange circular.

(C) On or before the last day of the fourth month of the pilot, the Exchange shall prepare and submit an analytical report to the Securities and Exchange Commission (“Commission”) that addresses the impact of the first three months of the pilot on the quality of the Exchange’s markets and option quote traffic and capacity.

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<sup>5</sup> The Nasdaq-100<sup>®</sup>, Nasdaq-100 Index<sup>®</sup>, Nasdaq<sup>®</sup>, The Nasdaq Stock Market<sup>®</sup>, Nasdaq-100 Shares<sup>SM</sup>, Nasdaq-100 Trust<sup>SM</sup>, Nasdaq-100 Index Tracking Stock<sup>SM</sup>, and QQQ<sup>SM</sup> 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<sup>®</sup> (the *Index*) is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust<sup>SM</sup>, or the beneficial owners of Nasdaq-100 Shares<sup>SM</sup>. 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) – (iii) No change.

**Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X)**

**Rule 1080.** (a) - (b) No change.

(c)\*\*\*\*\*

(i) - (iii) No change

(iv) Except as otherwise provided in this Rule, in the following circumstances, an order otherwise eligible for automatic execution will instead be manually handled by the specialist:

(A) RESERVED [when the Exchange’s disseminated market is crossed by more than one minimum trading increment (as defined in Exchange Rule 1034) (i.e., 2.10 bid, 2 offer), or crosses the disseminated market of another options exchange by more than one minimum trading increment];

(B) - (F) No change.

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(v) – (vi) No change.

(d) – (h) No change.

(i) Zero-bid option series. The AUTOM System will convert market orders to sell a particular option series to limit orders to sell with a limit price of [\$.05] the minimum trading increment applicable to such series that are received when:

(A) – (B) No change.

(j) – (l) No change.

Commentary: No change.

**Firm Quotations**

**Rule 1082.** (a) Definitions.

(i) No change.

(ii) The term “disseminated size” shall mean with respect to the disseminated price for any quoted options series:

(A) Except as provided in sub-paragraph (a)(ii)(C)(3) below, [A] at least the sum of the size associated with limit orders, specialists' quotations, SQTs' quotations, and RSQTs' (as defined in Rule 1014(b)(ii)(B)) quotations.

(B) (1) If an SQT or RSQT's (other than a Directed SQT or RSQT) quotation size in a particular series in a Streaming Quote Option is exhausted or removed by the Risk Monitor Mechanism, such SQT or RSQT's quotation shall be deleted from the Exchange's disseminated quotation until the time the SQT or RSQT revises his/her quotation.

(2) If the Exchange's disseminated size in a particular series in a Streaming Quote option is exhausted at that particular price level, and no specialist, SQT or RSQT has revised their quotation immediately following the exhaustion of the Exchange's disseminated size at such price level, the Exchange shall automatically provide two-sided quotes that comply with the Exchange's rules concerning quote spread parameters on behalf of the specialist until such time as the specialist revises the quotation, with a size of one contract.

(C) The Exchange shall disseminate an updated bid and offer price, together with the size associated with such bid and offer, when:

(1) the Exchange's disseminated bid or offer price increases or decreases;

(2) the size associated with the Exchange's disseminated bid or offer decreases; or

(3) the size associated with the Exchange's bid (offer) increases by an amount greater than or equal to a percentage (never to exceed 20%) of the size associated with previously disseminated bid (offer). Such percentage, which shall never exceed 20%, shall be determined on an issue-by-issue basis by the Exchange and announced to membership via Exchange circular.

(iii) – (iv) No change.

(b) – (d) No change.

Commentary: No change.

### **Order Protection**

**Rule 1085.** (a) No change.

(b) Exceptions to Trade-Through Liability. The provisions of paragraph (a) pertaining to the satisfaction of Trade-Throughs shall not apply under the following circumstances:

(1) – (9) No change.

(10) the Trade-Through was the result of an automatic execution when the Exchange's disseminated market is the NBBO and is crossed [by not more than one minimum trading increment (as defined in Exchange Rule 1034)], or crosses the disseminated market of another options exchange [by not more than one minimum trading increment].

(c) – (d) No change.

### **Locked and Crossed Markets**

**Rule 1086.** (a) Eligible Market Maker Locking or Crossing a Market. An Eligible Market Maker that creates a Locked Market or a Crossed Market shall unlock (uncross) that market or shall direct a Principal Order through the Linkage to trade against the bid or offer that the Eligible Market Maker locked (crossed).

(b) Members Other than an Eligible Market Maker Locking or Crossing a Market. A Member other than an Eligible Market Maker that creates a Locked Market or a Crossed Market shall unlock (uncross) the market.

(c) The provisions of this Rule 1086 do not apply to situations where an Eligible Market Maker or a member other than an Eligible Market Maker books an order that would lock a market and contemporaneously sends through the Linkage a P/A Order or Principal Order for the full size of the bid or offer that was locked.

(d) Notwithstanding the provisions in Rules 1083(d) and (l), for purposes of this rule respecting options quoted in minimum increments of \$0.01, the term "Crossed Market" means a market that is crossed by \$0.05 or greater for series trading under \$3.00, and by \$0.10 or greater for series trading at \$3.00 or higher. The Exchange may reduce such amount and announce such reduction to membership via Exchange circular.

### **F-7 Size of Exchange's Disseminated Bid or Offer**

The size of any disseminated bid or offer by the Exchange shall be, with respect to the disseminated price for any quoted options series, equal to:

Except as provided below, [A] at least the sum of the size associated with limit orders, specialists' quotations, SQTs' quotations, and RSQTs' quotations.

The Exchange shall disseminate an updated bid and offer price, together with the size associated with such bid and offer, when:

(i) the Exchange's disseminated bid or offer price increases or decreases;

(ii) The size associated with the Exchange's disseminated bid or offer decreases;  
or

(iii) the size associated with the Exchange's bid (offer) increases by an amount greater than or equal to a percentage (never to exceed 20%) of the size associated with previously disseminated bid (offer). Such percentage, which shall never exceed 20%, shall be determined on an issue-by-issue basis by the Exchange and announced to membership via Exchange circular.

#### FINE SCHEDULE

Fine not applicable

#### 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 establish a six-month pilot program during which certain options would be quoted and traded in increments of \$.01.

###### Scope of the Pilot

Proposed Rule 1034(a)(i)(B) would state that the pilot would begin on January 26, 2007, and would extend for a six-month period. There would be 13 options included in the pilot as determined by the Commission, subject to a rollout schedule to be

determined. The rollout would begin January 26, 2007. The options included in the pilot are:

<u>Symbol</u>	<u>Underlying Security</u>
IWM	Ishares Russell 2000
QQQQ	QQQQ
SMH	SemiConductor Holders
GE	General Electric
AMD	Advanced Micro Devices
MSFT	Microsoft
INTC	Intel
CAT	Caterpillar
WFMI	Whole Foods
TXN	Texas Instruments
GLG	Glamis Gold
FLEX	Flextronics International
SUNW	Sun Micro

#### Changes to Minimum Increments

The Exchange proposes to adopt Rule 1034(a)(i)(B), which would provide that the option included in the pilot would be quoted in minimum increments of \$0.01 for all series in such options with a price of less than \$3.00, and in minimum increments of \$0.05 for all series in such options with a price of \$3.00 or higher, except that options overlying QQQQ would be quoted and traded in minimum increments of \$0.01 for all



series regardless of the price. A list of all such options would be communicated to membership via Exchange circular.

### Crossed Markets

The Exchange believes that it is likely that the occurrence of crossed markets will increase substantially respecting options that are quoted in increments of \$0.01.

Accordingly, the Exchange proposes to amend the definition of a crossed market for purposes of compliance with the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the “Linkage Plan”), automatic executions during crossed markets, and Trade-Throughs.<sup>6</sup>

#### i. Definitions

Exchange rules and the Linkage Plan currently provide generally that a participant who creates a locked market or a crossed market must unlock (uncross) that market or direct a Principal Order through the Linkage to trade against the bid or offer that was locked (crossed).<sup>7</sup> The Exchange believes that the instance of crossed markets will increase in options that are quoted in \$0.01 increments, due to “flickering” of penny quotes that may repeatedly cross and uncross a market over a very brief interval of time. In order to account for and limit the number of unintentional violations of the Linkage Plan and Exchange Rules due to “flickering,” the Exchange proposes to adopt new Rule 1086(d), which would, respecting options quoted in \$0.01 increments, define “Crossed

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<sup>6</sup> “Trade-Through” means a transaction in an options series at a price that is inferior to the National Best Bid or Offer (“NBBO”), but shall not include a transaction that occurs at a price that is one minimum quoting increment inferior to the NBBO provided a Linkage Order is contemporaneously sent to each Participant Exchange disseminating the NBBO for the full size of the Participant Exchange’s bid (offer) that represents the NBBO. See Exchange Rule 1083(t).

<sup>7</sup> See, e.g., Exchange Rule 1086.

Market” as a market that is crossed by \$0.05 or greater for series trading under \$3.00, and by \$0.10 or greater for series trading at \$3.00 or higher.

ii. Automatic Executions

Currently, orders on the Exchange that are otherwise eligible for automatic execution are handled manually by the specialist when the Exchange’s disseminated market is crossed by more than one minimum trading increment (as defined in Exchange Rule 1034) (i.e., 2.10 bid, 2 offer), or crosses the disseminated market of another options exchange by more than one minimum trading increment.<sup>8</sup> The effect of this is that the Exchange currently provides automatic executions during crossed markets when the Exchange’s disseminated market is crossed by not more than one minimum trading increment, or crosses the disseminated market of another options exchange by not more than one minimum trading increment, and the Exchange’s disseminated price on the opposite side of the market for the incoming order establishes, or is equal to, the NBBO.<sup>9</sup>

The Exchange proposes to delete Rule 1080(c)(iv)(A), which would thereby mean that the Exchange will provide automatic executions in options where the Exchange’s disseminated market is the NBBO<sup>10</sup> and is crossed, or crosses the disseminated market of another options exchange, regardless of the amount by which such market is crossed.<sup>11</sup>

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<sup>8</sup> See Exchange Rule 1080(c)(iv)(A).

<sup>9</sup> See Exchange Rule 1085(b)(10). See also, Securities Exchange Act Release No. 53449 (March 8, 2006), 71 FR 13441 (March 15, 2006) (SR-Phlx-2005-45).

<sup>10</sup> The Exchange provides automatic executions only when its disseminated market is the NBBO. See Exchange Rule 1080(c)(iv)(E).

<sup>11</sup> The Exchange notes that another options exchange currently provides automatic executions during crossed markets regardless of the amount by which the market is crossed. See Securities Exchange Act Release No. 54229 (July 27, 2006), 71 FR 44058 (August 3, 2006) (SR-CBOE-2005-90).

iii. Trade-Throughs

Currently, Exchange Rule 1085(b) affords Linkage participants several exemptions from Trade-Through liability and the requirements concerning satisfaction of Trade-Throughs. Among the exemptions from such liability and satisfaction responsibility is current Exchange Rule 1085(b)(10), which provides an exemption when the Trade-Through was the result of an automatic execution when the Exchange's disseminated market is the NBBO and is crossed by not more than one minimum trading increment (as defined in Exchange Rule 1034), or crosses the disseminated market of another options exchange by not more than one minimum trading increment.

In order to be consistent with the proposed rule change (described above) to provide automatic executions when the Exchange's disseminated market is the NBBO regardless of the amount by which the market is crossed, the Exchange proposes to amend the rule to state that there would be an exemption from such liability and satisfaction responsibility when the Trade-Through was the result of an automatic execution when the Exchange's disseminated market is the NBBO and is crossed, or crosses the disseminated market of another options exchange. The proposed rule change would delete the current language contained in Rule 1085(b)(10) that limits the exemption from Trade-Through and satisfaction liability to automatic executions at the NBBO during markets that are crossed by one minimum trading increment. The Exchange believes that the proposed rule change would facilitate the prompt resolution of crossed markets by permitting automatic executions when the Exchange's disseminated market is crossed by not more than one minimum trading increment, or crosses the disseminated market of another options exchange.

### Report to the Commission

Proposed Rule 1034(a)(i)(C) would require the Exchange to prepare and submit an analytical report (“report”) to the Commission that addresses the impact of the first three months of the pilot on the quality of the Exchange’s markets and option quote traffic and capacity on or before the last day of the fourth month of the pilot. The purpose of this provision is to comply with the Commission’s mandate that the Exchange submit such a report within the time frame specified in the rule.

### Zero-Bid Option Series

Currently, Exchange Rule 1080(i) states that the Exchange’s AUTOM System will convert market orders to sell a particular option series to limit orders to sell with a limit price of \$.05 that are received when the bid price for such series is zero. The proposal would amend Rule 1080(i) to state that the system will convert such orders to limit orders to sell with a limit price of the minimum trading increment applicable to such series. The effect of this respecting options quoted and traded in minimum increments of \$0.01 would be that such conversion would be to a limit order to sell at \$0.01, rather than \$0.05.

### Quote Mitigation

The Exchange recognizes that quoting and trading in \$.01 increments will most assuredly result in a greater number of quotations submitted in options that are included in the pilot. Therefore, in order to mitigate quote traffic, the Exchange proposes to amend Rule 1082, Firm Quotations, by adopting new Rule 1082(a)(ii)(C), which would modify the Exchange’s definition of “disseminated size” such that the Exchange will disseminate fewer updated quotations.

Specifically, proposed Rule 1082(a)(ii)(C) would set forth the conditions under which the Exchange would disseminate updated quotations based on changes in the Exchange's disseminated price and/or size. The proposed rule would require the Exchange to disseminate an updated bid and offer price, together with the size associated with such bid and offer, when: (1) the Exchange's disseminated bid or offer price increases or decreases; (2) the size associated with the Exchange's disseminated bid or offer decreases; or (3) the size associated with the Exchange's bid (offer) increases by an amount greater than or equal to a percentage (never to exceed 20%) of the size associated with previously disseminated bid (offer). Such percentage, which would never exceed 20%, would be determined on an issue-by-issue basis by the Exchange and announced to membership via Exchange circular. The percentage size increase necessary to give rise to a refreshed quote may vary from issue to issue, depending, without limitation, on the liquidity, average volume, and average number of quotations submitted in the issue. Proposed Rule 1080(b)(ii)(C) would not be limited to options included in the pilot, and would thus apply to all options traded on the Exchange.

The Exchange believes that the limitation on dissemination of quotations that increase in size by a nominal amount should significantly mitigate the amount of options quote traffic on the Exchange, and addresses issues of options quote capacity on the Exchange and in the National Market System.

In addition to the measures proposed above concerning mitigation of quote traffic on the Exchange, the Exchange has filed, or submitted to the Commission in draft, other proposed rule changes that the Exchange believes should reduce the number of quotations generated on the Exchange.

Specifically, the Commission recently approved a proposed rule change stating that Streaming Quote Traders (“SQTs”),<sup>12</sup> Remote Streaming Quote Traders (“RSQTs”),<sup>13</sup> and SQTs and RSQTs that receive Directed Orders<sup>14</sup> (“DSQTs” and “DRSQTs” respectively) are deemed not to be assigned in any option series until the time to expiration for such series is less than nine months.<sup>15</sup> Accordingly, the market making obligations described in Exchange Rule 1014(b)(ii)(D) do not apply to SQTs, RSQTs, DSQTs and DRSQTs respecting series with an expiration of nine months or greater, and thus they would be required to submit fewer quotes.

Additionally, the Exchange filed a proposed rule change authorizing the Exchange’s Options Allocation, Evaluation and Securities Committee (“OAESC”),<sup>16</sup> to assign trading privileges in options to SQTs and RSQTs, by “root symbol,” such that an

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<sup>12</sup> An SQT is an Exchange Registered Options Trader (“ROT”) who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. See Exchange Rule 1014(b)(ii)(A).

<sup>13</sup> An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Exchange Rule 1014(b)(ii)(B).

<sup>14</sup> The term “Directed Order” means any customer order (other than a stop or stop-limit order as defined in Rule 1066) to buy or sell which has been directed to a particular specialist, RSQT, or SQT by an Order Flow Provider. See Exchange Rule 1080(l)(i)(A).

<sup>15</sup> See Securities Exchange Act Release No. 54648 (October 24, 2006), 71 FR 63375 (October 30, 2006) (SR-Phlx-2006-52).

<sup>16</sup> The OAESC is a standing committee of the Exchange that has jurisdiction over the allocation, retention and transfer of the privileges to deal in all options to, by and among members on the options and foreign currency options trading floors. It is responsible for appointing specialists, alternate or assistant specialists or odd-lot dealers on the options and foreign currency options trading floors. It also establishes standards for the periodic review and evaluation of their performance and is empowered to suspend or revoke their appointments upon showing of reasonable cause therefor. See Exchange By-Law Article X, Section 10-7(a). See also, Exchange Rule 500.

SQT or RSQT, on request, may be assigned in only certain series of an option.<sup>17</sup> The market making obligations applicable to SQTs and RSQTs thus would not apply to series in which an SQT or RSQT is not assigned, which should reduce the number of quotations required to be submitted.

The Exchange has also submitted a separate draft proposal to establish a maximum number of quoting participants that may be assigned to a particular equity option at any one time.<sup>18</sup> This would limit the number of participants quoting in a particular equity option and thus should limit the number of quotations submitted in such equity options.

In another separate draft submission, the Exchange has proposed to establish monthly Performance Evaluations by the Exchange of its member organizations that have SQTs and RSQTs, to determine whether they have fulfilled performance standards relating to, among other things, quality of markets, efficient quote submission to the Exchange (including quotes submitted through a third party vendor), competition, observance of ethical standards, and administrative factors.<sup>19</sup> Under that proposal, failure to meet established minimum performance requirements could result in restriction by the OAESC of additional options assignments; suspension, termination, or restriction of an existing assignment on one or more options; or suspension, termination, or restriction of an SQT's or RSQT's status as such. The Exchange believes that such evaluations and possible consequences for failure to meet specific minimum standards

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<sup>17</sup> See SR-Phlx-2006-53.

<sup>18</sup> See SR-Phlx-2006-49.

<sup>19</sup> See SR-Phlx-2006-51.

should encourage efficient quoting and use of the Exchange's capacity and bandwidth by providing a disincentive for SQTs and RSQTs to submit quotations that do not improve the Exchange's disseminated price or materially increase the Exchange's disseminated size.

### Fee Structure

The Exchange is also developing and pursuing a fee structure to encourage more efficient quoting as a method of mitigating inbound quotations. The Exchange anticipates that such a fee would apply in situations where a specific ratio of quotations submitted to trades executed and/or quotations submitted to number of contracts executed during a specific time period is not met.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>20</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>21</sup> in particular, in that it is 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 establishing rules concerning the pilot while simultaneously mitigating quote traffic.

#### 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.

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<sup>20</sup> 15 U.S.C. 78f(b).

<sup>21</sup> 15 U.S.C. 78f(b)(5).



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 Phlx consents, the Commission shall: (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-Phlx-2006-74 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-2006-74](#). 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-2006-74](#) 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.<sup>22</sup>

Nancy M. Morris  
Secretary

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<sup>22</sup> 17 CFR 200.30-3(a)(12).