

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56827; File No. SR-Phlx-2007-75]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change as Modified by Amendment Number 1 Thereto Relating to Market Data Distribution Network Fees

November 20, 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 September 27, 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 Phlx. On November 7, 2007, Phlx filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice, as modified by Amendment No. 1 thereto, 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 eliminate a fee assessed by the Exchange's wholly owned subsidiary, the Philadelphia Board of Trade ("PBOT"), on market data vendors for certain equity index values that subscribers receive over PBOT's Market Data Distribution Network ("MDDN"). The text of the proposed rule change is available at Phlx, the Commission's Public Reference Room, and <http://www.phlx.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 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 eliminate, effective January 1, 2008, one of the alternative fees charged by the PBOT for certain index market data disseminated over the MDDN.<sup>3</sup> Specifically, the Phlx has licensed the current and closing index values underlying most of the Phlx's proprietary indexes to PBOT for the purpose of selling, reproducing, and distributing the index values over PBOT's MDDN. Similarly, Hapoalim Securities USA, Inc. has licensed the current and closing Hapoalim American Israeli Index™ (HAI<sup>SM</sup>) values to PBOT for the purpose of selling, reproducing, and distributing those values over the MDDN. On each trading day, the Exchange or its third party designee calculates and makes available to PBOT a real-time index value every 15 seconds and a closing index value at the end of the day. In exchange for subscriber fees paid to PBOT, market data vendors ("Vendors" or "Market Data Vendors") are allowed to widely disseminate this market data for all the values of Phlx's proprietary indexes and of HAI to their subscribers.<sup>4</sup>

As approved by the Commission, the market data fees charged by PBOT currently include a monthly fee of \$1.00 per Device,<sup>5</sup> used by Vendors and their subscribers to receive and re-transmit

Market Data on a real-time basis ("device fee") and also a \$.0025 per request fee for "snapshot data," which is essentially market data that is refreshed no more frequently than once every 60 seconds, or \$1,500 per month for unlimited snapshot data requests.<sup>6</sup> Additionally, eligible Vendors may pay an Enterprise License Fee of \$10,000 per year or \$850 per month for unlimited real-time data as an alternative to the device fee.<sup>7</sup>

Of these alternatives, the Exchange is now proposing to eliminate the ability to access the market data on a "snapshot" basis and consequently will eliminate the snapshot data fee, effective January 1, 2008.<sup>8</sup> The purpose for the change is to reduce PBOT's operational and accounting expenses of administering the snapshot data fee, given the extremely limited number of Vendors making use of the snapshot data fee. Vendors of Market Data will continue to be able to access Market Data by paying the monthly fee of \$1.00 per Device. Additionally, eligible Vendors may pay the Enterprise License Fee of \$10,000 per year or \$850 per month for unlimited real-time data as an alternative to the device fee. The Exchange anticipates that firms that currently receive and re-transmit snapshot data will qualify for the Enterprise License Fee for unlimited real-time Market Data.

<sup>6</sup> See Securities Exchange Act Release Nos. 53790 (May 11, 2006), 71 FR 28738 (May 17, 2006) (SR-Phlx-2006-04) and 55111 (January 16, 2007), 72 FR 3188 (January 24, 2007) (SR-Phlx-2006-59). The subscriber fees are set out in agreements that PBOT executed with various market data vendors for the right to receive, store, and retransmit the current and closing index values transmitted over the MDDN. In its original proposal, the Exchange stated that, under these vendor agreements PBOT may change any of the fees enumerated in the agreement by giving the Vendor or subvendor advance written notice of such changes. The Commission conditioned any such fee change on the submission by Phlx of a proposed rule change under Section 19(b) of the Act, and approval of such proposal. See 71 FR at 28740.

<sup>7</sup> A Vendor is eligible for the Enterprise License Fee if it is a firm acting as a retail broker-dealer conducting a material portion of its business via one or more proprietary Internet Web sites by which the firm distributes Market Data to predominately non-professional Market Data users with whom the firm has a brokerage relationship ("Eligible Firm"). An Eligible Firm may also distribute Market Data to professional users with whom such firm has a brokerage relationship, provided such Market Data distribution is predominantly to non-professional users. The Eligible Firm's Market Data distribution to professional users cannot exceed 10%. See Securities Exchange Act Release No. 55424 (March 8, 2007), 72 FR 12242 (March 15, 2007) (SR-Phlx-2006-63).

<sup>8</sup> This proposed rule change also would correct an incorrect reference to the Commodity Futures Trading Commission in the table of MDDN fees set forth as Exhibit 5.

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

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

<sup>3</sup> The MDDN is an internet protocol multicast network developed by PBOT and SAVVIS Communications.

<sup>4</sup> The PBOT has contracted with several major Market Data Vendors to receive real-time and closing index values over the MDDN and promptly redistribute such values. Approximately 96 Market Data Vendors, including for example Reuters Limited, Charles Schwab & Co., Bloomberg L.P., Telekurs Financial Information Ltd. and Thomson Financial, have entered into such market data agreements with PBOT. The fees described in this proposed rule change cover values of all the indexes disseminated over the MDDN.

<sup>5</sup> The agreements provide that "Device" shall mean, in case of each Subscriber and in such Subscriber's discretion, either any Terminal or any End User. A Subscriber's Device may be exclusively Terminals, exclusively End Users or a combination of Terminals or End Users and shall be reported in a manner that is consistent with the way the Vendor identifies such Subscriber's access to Vendor's data. An "End User" is defined as an individual authorized or allowed by a Vendor to access and display real-time market data that is distributed by PBOT over the MDDN; and a "Terminal" is any type of equipment (fixed or portable) that accesses and displays such market data. Market data vendors which provide market data to 200,000 or more Devices in any month qualify for a 15% Administrative Fee credit for that month, to be deducted from the monthly Subscriber Fees that they collect and are obligated to pay PBOT under the Vendor/Subvendor Agreement.

Finally, as noted above, Market data vendors which provide market data to 200,000 or more Devices in any month qualify for a 15% Administrative Fee credit for that month, to be deducted from the monthly Subscriber Fees that they collect and are obligated to pay PBOT under the Vendor/Subvendor Agreement. The Exchange proposes to eliminate the applicability of the 15% Administrative Fee credit to the Enterprise License Fee because Vendors electing to receive Market Data pursuant to the Enterprise License Fee, unlike Vendors electing to receive Market Data pursuant to the device fee, are not required to bear the ongoing administrative expense of reporting the number of Devices to PBOT.<sup>9</sup> Vendors paying the device fee must prepare and deliver to PBOT a detailed monthly accounting and report of devices. By contrast, a vendor paying the Enterprise License Fee is not required to submit any accounting to PBOT.<sup>10</sup> Instead, to be eligible for the Enterprise License Fee, a Vendor must certify to PBOT that it qualifies for the Enterprise License Fee, including that market distribution is predominantly to non-professional users, and must immediately notify PBOT if it can no longer certify its qualification. The administrative costs to a firm associated with monitoring its ongoing eligibility for the Enterprise License Fee should be substantially less than the administrative costs to a firm subject to the device fee.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>12</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, in that it will permit the MDDN to operate with greater efficiency while still permitting investors access to market data under the remaining alternative fee structures

<sup>9</sup> Phlx clarified that the elimination of the 15% Administrative Fee credit for the Enterprise License Fee will be effective immediately upon Commission approval. As stated above, the snapshot data fee would be effective on January 1, 2008, subject to Commission approval. Telephone conference between Carla Behnfeldt, Director, Phlx; Brian Trackman, Special Counsel, Division of Trading and Markets ("Division"), Commission; and Jan Woo, Special Counsel, Division, Commission, on November 20, 2007.

<sup>10</sup> The Exchange notes that several large vendors are currently paying the Enterprise License Fee.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

from which qualified Market Data Vendors will be permitted to choose. For the same reasons the Exchange also believes that the proposal is consistent with Section 6(b)(4) of the Act,<sup>13</sup> in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and issuers and other persons using its facilities. The Exchange believes that the proposed fee changes are also consistent with Rule 603 under the Act.<sup>14</sup>

### *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 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 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 Exchange 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 No. SR-Phlx-2007-75 on the subject line.

<sup>13</sup> 15 U.S.C. 78f(b)(4).

<sup>14</sup> 17 CFR 242.603.

### *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-Phlx-2007-75. 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 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-2007-75 and should be submitted on or before December 19, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Nancy M. Morris,  
Secretary.

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## DEPARTMENT OF STATE

[Public Notice 5997]

### Notice of Availability of the Draft Environmental Assessment for the Proposed Enbridge Southern Lights Pipeline Project

AGENCY: Department of State.

ACTION: Notice.

<sup>15</sup> 17 CFR 200.30-3(a)(12).