

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51838; File No. SR-Phlx-2005-30]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto To Impose a New Licensing Fee in Connection With the Firm-Related Equity Option and Index Option Fee Cap

June 14, 2005.

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 April 28, 2005, 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 prepared by the Exchange. On April 29, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On June 6, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>4</sup> Phlx has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A) of the Act,<sup>5</sup> and Rule 19b-4(f)(2) thereunder,<sup>6</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, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of fees to adopt a license fee of \$0.10 for options traded on the following products: (1) iShares Lehman 1-3 Year Treasury Bond Fund, traded under the symbol SHY ("SHY"); (2) iShares Lehman 7-10 Year Treasury Bond Fund, traded under the symbol IEF ("IEF"); (3) iShares Lehman 20+ Treasury Bond Fund, traded under the symbol TLT ("TLT"); (4) iShares Lehman Aggregate Bond Fund, traded

under the symbol AGG ("AGG"); (5) iShares Lehman TIPS Bond Fund, traded under the symbol TIP ("TIP") (collectively "iShares Lehman products"); (6) KBW Capital Markets Index, traded under the symbol KXS ("KXS");<sup>7</sup> (7) KBW Insurance Index, traded under the symbol KIX ("KIX"); and (8) Phlx/KBW Bank Index, traded under the symbol ("BKX") (collectively "KBW products") to be assessed per contract side for equity option and index option "firm" transactions (comprised of equity option firm/proprietary comparison transactions, equity option firm/proprietary transactions, equity option firm/proprietary facilitation transactions, index option firm/proprietary comparison transactions, index option firm/proprietary transactions and index option firm/proprietary facilitation transactions). This license fee will be imposed only after the Exchange's \$60,000 "firm-related" equity option and index option comparison and transaction charge cap, described more fully below, is reached.

Currently, the Exchange imposes a cap of \$60,000 per member organization<sup>8</sup> on all "firm-related" equity option and index option comparison and transaction charges combined.<sup>9</sup> Specifically, "firm-related" charges include equity option firm/proprietary comparison charges, equity option firm/proprietary transaction charges, equity option firm/proprietary facilitation transaction charges, index option firm/proprietary comparison charges, index option firm/proprietary transaction charges, and index option firm/proprietary facilitation transaction charges (collectively "firm-related charges"). Thus, such firm-related

charges in the aggregate for one billing month may not exceed \$60,000 per month per member organization.

The Exchange also imposes a license fee of \$0.10 per contract side for equity option "firm" transactions on options on Nasdaq-100 Index Tracking Stock<sup>SM</sup><sup>10</sup> traded under the symbol QQQQ ("QQQ") and certain other licensed products (collectively "licensed products")<sup>11</sup> after the \$60,000 cap, as described above, is reached. Therefore, when a member organization exceeds the \$60,000 cap (comprised of combined firm-related charges), the member organization is charged \$60,000, plus license fees of \$0.10 per contract side for any contracts in licensed products (if any) over those that were included in reaching the \$60,000 cap. In other words, if the cap is reached, the \$0.10 license fee is imposed on all subsequent equity option and index option firm transactions; these license fees are charged in addition to the \$60,000 cap.

The Exchange proposes to adopt a \$0.10 license fee per contract side for the iShares Lehman products and the KBW products for equity option and index option firm transactions, which will be imposed after the \$60,000 cap is reached in the same way as the current licensed product fees are assessed. Thus, when a member organization exceeds the \$60,000 cap, the member organization will be charged \$60,000 plus any applicable license fees for trades of licensed products, including the iShares Lehman products and KBW products, over those trades that were counted in reaching the \$60,000 cap.<sup>12</sup>

<sup>10</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 Phlx 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.

<sup>11</sup> In addition to the QQQs, the following products are assessed a \$0.10 license fee per contract side after the \$60,000 cap is reached: Russell 1000 Growth iShares ("IWF"); Russell 2000 iShares ("IWM"); Russell 2000 Value iShares ("IWN"); Russell 2000 Growth iShares ("IWO"); Russell Midcap Growth iShares ("IWP"); Russell Midcap Value iShares ("IWS"); NYSE Composite Index ("NYC"); NYSE U.S. 100 Index ("NY"); and Standard & Poor's Depositary Receipts®, Trust Series 1 ("SPY").

<sup>12</sup> Consistent with current practice, when calculating the \$60,000 cap, the Exchange first calculates all equity option and index option transaction and comparison charges for products

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

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

<sup>3</sup> In Amendment No. 1, the Exchange made non-substantive changes to the text of the proposed rule change.

<sup>4</sup> In Amendment No. 2, the Exchange modified the text of the proposed rule change and clarified the basis of the proposal.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

<sup>7</sup> "KBW," "Keefe, Bruyette & Woods Capital Markets Index," and "KBW Capital Markets Index" are trademarks of Keefe, Bruyette & Woods, Inc. and have been licensed for use by the Philadelphia Stock Exchange, Inc. Keefe, Bruyette & Woods, Inc. makes no recommendations concerning the advisability of investing in options based on the KBW Capital Markets Index.

<sup>8</sup> The firm/proprietary comparison or transaction charge applies to member organizations for orders for the proprietary account of any member or non-member broker-dealer that derives more than 35% of its annual, gross revenues from commissions and principal transactions with customers. Member organizations are required to verify this amount to the Exchange by certifying that they have reached this threshold by submitting a copy of their annual report, which was prepared in accordance with Generally Accepted Accounting Principles ("GAAP"). In the event that a member organization has not been in business for one year, the most recent quarterly reports, prepared in accordance with GAAP, are accepted. See Securities Exchange Act Release No. 43558 (November 14, 2000), 65 FR 69984 (November 21, 2000) (SR-Phlx-2000-85).

<sup>9</sup> See Securities Exchange Act Release No. 51024 (January 11, 2005), 70 FR 3088 (January 19, 2005) (SR-Phlx-2004-94).

The fees set forth in this proposal are scheduled to become effective for transactions settling on or after May 1, 2005.

The text of the proposed rule change is available on the Phlx's Web site, <http://www.phlx.com>, at the Phlx's Office of the Secretary, and at the Commission's Public Reference Section.

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

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The 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 the Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The purpose of assessing the iShares Lehman products and the KBW products license fee of \$0.10 per contract side after reaching the \$60,000 cap as described in this proposal is to help defray licensing costs associated with the trading of these products, while still capping member organizations' fees enough to attract volume from other exchanges. The cap operates this way in order to offer an incentive for additional volume without leaving the Exchange with significant out-of-pocket costs.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>13</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>14</sup> in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members.

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

The Phlx believes that the proposed rule change would impose no 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 did not solicit or receive any written comments with respect to the proposal.

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

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>15</sup> and Rule 19b-4(f)(2)<sup>16</sup> thereunder. Accordingly, the proposal is effective upon filing with the Commission. At any time within 60 days of the filing of the 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 in furtherance of the purposes of the Act.<sup>17</sup>

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2005-30 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-Phlx-2005-30. 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 Section. 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-Phlx-2005-30 and should be submitted on or before July 11, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

Margaret H. McFarland,  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51827; File No. SR-Phlx-2005-20]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change, and Amendment No. 1 Thereto, Relating to the Elimination of the Prohibition Against the Entry of Multiple Orders in an Option Within Any 15-Second Period for an Account or Accounts of the Same Beneficial Owner

June 13, 2005.

On March 24, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to

without license fees and then equity option and index option transaction and comparison charges for products with license fees (*i.e.*, QQQ license fees) that are assessed by the Exchange after the \$60,000 cap is reached. See Securities Exchange Act Release No. 50836 (December 10, 2004), 69 FR 75584 (December 17, 2004) (SR-Phlx-2004-70).

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

<sup>14</sup> 15 U.S.C. 78f(b)(4).

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

<sup>16</sup> 17 CFR 240.19b-4(f)(2).

<sup>17</sup> See 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on June 6, 2005, the date the Phlx filed Amendment No. 2. The effective date of the original proposed rule change is April 28, 2005, the effective date of Amendment No. 1 is April 29, 2005, and the effective date of Amendment No. 2 is June 6, 2005.

<sup>18</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.