

30, 2004, while the Exchange phases in its new trading platform for options. The Commission believes that it is appropriate to grant accelerated approval to the proposal in order to ensure continuous operation of this feature of PCX's current framework for the automatic execution of options orders.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹² that the proposed rule change (SR-PCX-2003-15) is hereby approved on an accelerated basis, as a pilot program scheduled to expire on June 30, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-15770 Filed 6-20-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48034; File No. SR-Phlx-2003-41]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to an Increase in the Technology Fee

June 16, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 30, 2003, 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 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 proposes to amend its schedule of dues, fees, and charges to increase its technology fee from \$150 per month to \$950 per month for Phlx members. The text of the proposed rule change is available at the Office of the

Secretary, the Phlx, and the Commission.

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 and is set forth in sections A, B, and C below.

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

1. Purpose

The Phlx proposes to amend its schedule of dues, fees, and charges to increase its technology fee from \$150 per month to \$950 per month for Phlx members. The technology fee is currently assessed on members as well as on foreign currency options participants who do not also hold legal title to a Phlx membership.³ The current proposal will assess the \$950 proposed technology fee on Phlx members. A foreign currency options participant who does not also hold legal title to a Phlx membership will continue to be assessed the current technology fee of \$150 per month, and not the increased fee of \$950 per month.

In addition, the Exchange intends to amend a footnote related to its technology fee, which appears on its schedule of dues, fees, and charges, to clarify that foreign currency options participants that hold legal title to an Exchange membership are assessed the technology fee in their capacity as a Phlx member and not additionally in their capacity as a foreign currency options participant.⁴ The Exchange

³ A foreign currency options participant who also holds legal title to a Phlx membership is only assessed the fee once—in his or her capacity as a Phlx member. For example, a foreign currency options participant who also holds legal title to a Phlx membership is currently assessed a total of \$150 per month for the technology fee. Under this proposal, a total of \$950 per month would be assessed for the technology fee. Equity Trading Permit holders/organizations are not assessed the technology fee. See Securities Exchange Act Release No. 45480 (February 26, 2002), 67 FR 10029 (March 5, 2002) (SR-Phlx-2002-10).

⁴ The Phlx revised the footnote in its schedule of dues, fees, and charges from what it had originally proposed in this rule filing. The footnote relating to the technology fee will now state the following: "Foreign currency options participants who also hold legal title to a Phlx membership are assessed the technology fee in their capacity as a Phlx member, for that membership, and not additionally

intends to implement this fee effective June 1, 2003."⁵

The Phlx states that the technology fee was originally instituted to reflect the costs of needed upgrades to the operating systems on the Exchange's trading floors, system software modifications, year 2000 modifications, and hardware upgrades. Also, system development costs for new risk management systems, order handling rule revisions, specialized quote feeds, and new products were captured by this fee.⁶ Now, in addition to its original purpose, the Exchange believes the revenue generated from the technology fee should provide for a source of general funds to be used, for example, in connection with other technology-related capital and expenses, such as the purchasing, leasing, and maintenance of equipment and software, programming costs, outside vendor charges, communications costs, and debt service for funds borrowed in relation to the foregoing.

The Exchange believes an increase in the technology fee is reasonable and necessary to support the ongoing efforts and deployment of technology to facilitate trading and remain competitive. In addition, the Exchange believes that assessing the \$950 per month technology fee on members and the \$150 per month technology fee on foreign currency options participants who do not hold legal title to a Phlx membership is equitable in that the additional revenue generated from the increased technology fee is intended to be mainly used to facilitate trading on the equity and options floors, and not the foreign currency options trading floor.

The purpose of amending the footnote that accompanies the technology fee entry on the fee schedule is to clarify that foreign currency options participants that hold legal title to a Phlx membership are assessed the

in their capacity as a foreign currency options participant. ETP holders/organizations are not assessed the technology fee." Telephone conversation between Cynthia Hoekstra, Counsel, Phlx, and Mia C. Zur, Attorney, Division of Market Regulation ("Division"), Commission, on June 12, 2003.

⁵ The technology fee had heretofore been eligible for a monthly credit of up to \$1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. See Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR-Phlx-2001-49). This credit program expired effective May 2003. The Exchange intends to file a separate proposed rule change to remove references to the member credit throughout the entire schedule of dues, fees and charges.

⁶ See Securities Exchange Act Release Nos. 45289 (January 16, 2002), 67 FR 3525 (January 24, 2002) (SR-Phlx-2001-117), and 38394 (March 12, 1997), 62 FR 13204 (March 19, 1997) (SR-Phlx-97-09).

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

technology fee in their capacity as a Phlx member and not additionally in their capacity as a foreign currency options participant. The Exchange believes this clarification should help to avoid member confusion relating to the application of the technology fee.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with section 6(b) of the Act⁷ in general, and furthers the objectives of section 6(b)(4) of the Act⁸ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members, as all members (except foreign currency options participants who do not hold legal title to a Phlx membership)⁹ will be subject to the increased fee.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

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

The foregoing proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act¹⁰ and Rule 19b-4(f)(2) thereunder.¹¹ Accordingly, the proposal will take effect 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.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ The Exchange does not believe that it is appropriate to apply the proposed fee increase to foreign currency options participants who do not also hold legal title to a Phlx membership because such participants are unlikely to benefit from the technology-related expenditures that the proposed fee increase is intended to address. The Exchange believes that the number of foreign currency option contracts currently traded on the Exchange is an insignificant part of the Exchange's overall options trading program.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609. 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 such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-2003-41 and should be submitted by July 14, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48040; File No. SR-Phlx-2003-28]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Retroactively Apply Its Broker-Dealer Transaction Fee for Equity Option Transactions for the Period From April 1, 2003 to April 10, 2003

June 17, 2003.

On April 28, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to retroactively apply its broker-dealer transaction fee for equity option transactions for the period from April 1, 2003 to April 10, 2003. The proposed

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

rule change was published for comment in the **Federal Register** on May 13, 2003.³ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of section 6 of the Act⁴ and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(4) of the Act,⁵ which requires that the Exchange's rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities. The Commission believes that the proposed application of the lower broker-dealer transaction fee for block equity option transactions implemented on April 11, 2003 to transactions settling from April 1, 2003 to April 10, 2003 should establish reasonable execution costs for market participants during that period.

For this reason, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁶ that the proposed rule change (SR-Phlx-2003-28) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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³ See Securities Exchange Act Release No. 47799 (May 6, 2003), 68 FR 25670.

⁴ 15 U.S.C. 78f. In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(4).

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).