

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

1. Purpose

On September 30, 1999, the Commission approved a one-year pilot program for the evaluation of the Exchange's AOR program.³ The filing was intended to establish a new procedure to facilitate the execution of options contracts orders at the opening by providing an electronic means of establishing a single price opening. In its order the Commission stated that it expected the Exchange to study the issues related to the Commission's concerns during the pilot period and to report back to the Commission at least sixty days prior to seeking permanent approval of AOR.

The Exchange is requesting a one-year extension of the pilot program so that it will have an opportunity to continue reviewing and evaluating the program in order to properly address the Commission's concerns before seeking permanent approval. The Exchange believes that this program is operating successfully and without any problems, and on that basis, the Exchange believes that a one-year extension of the program is warranted. At this time, the Exchange is not seeking to modify the pilot program.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)⁴ of the Act, in general, and furthers the objectives of section 6(b)(5),⁵ in particular, in that it is designed to promote just and equitable principles of trade.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act⁶ and Rule 19b-4(f)(6)⁷ thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change as required by Rule 19b-4(f)(6).⁸ At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-00-26 and should be submitted by September 19, 2000.

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19-4(f)(6).

⁸ 17 CFR 240.19b-4(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-21963 Filed 8-28-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Docket No. 34-43201; File No. SR-Phlx-00-7]

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

August 23, 2000.

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 July 24, 2000, 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. 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 Exchange proposes to adopt a new transaction fee—an options specialist "shortfall fee"—of \$.35 per contract, to be paid by the specialist trading any Top 120 Option if at least 10 percent of the total national monthly contract volume ("total volume") for such Top 120 Option is not effected on the Phlx in that month.

A Top 120 Option is defined by the proposal as one of the 120 most actively traded equity options in terms of the total number of contracts in that option that were traded nationally for a specified month—based on volume reflected by The Options Clearing Corporation ("OCC")—and which was listed on the Phlx after January 1, 1997.³

At the end of each trading month, the total number of contracts executed on

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Phlx intends to divide by two the total volume amount reported by OCC, which reflects both sides of an executed transaction, thus avoiding one trade being counted twice for purposes of determining overall volume.

³ See Securities Exchange act Release 41970 (September 30, 1999), 64 FR 54713 (October 7, 1999).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

the Phlx ("the Phlx volume") in a particular top 120 Option will be subtracted from the amount that represents 10 percent of the total volume for that option ("10% total volume") to determine the number of contracts that represent the "shortfall" for that Top 120 Option for purposes of calculating this fee.

Specifically, the following calculation would be made:

10% total volume – Phlx
volume = shortfall volume.

If the shortfall volume is a number of contracts greater than zero, the shortfall volume will be multiplied by \$.35 per contract to determine the options specialist shortfall fee for that month for that Top 120 Option.⁴

In sum, if the Phlx fails to garner 10 percent of the total volume for a particular month for a Top 120 Option, the specialist unit for that Top 120 Option would be required to pay the Exchange the options specialist shortfall fee for each contract that falls below 10 percent up to the amount that would represent 10 percent of the total volume for that option, excluding the amount of that unit's actual Phlx volume.

Recognizing that there may be a transition period necessary to build the requisite volume, the proposed fee will be applied to newly listed options⁵ and implemented in stages, such that a specialist unit would become subject to the options specialist shortfall fee using a volume threshold of 10 percent, as described above, in the third full calendar month of trading an option. However, the requisite volume threshold shall be three percent for the first full calendar month and six percent for the second full calendar month of trading.⁶

⁴ If the result of the first equation (10% total volume minus Phlx volume) was negative, meaning the Phlx volume exceeded 10% total volume for a Top 120 Option, then there would be no shortfall to which the options specialist shortfall fee would apply. Under the proposal, any excess volume (over the 10% total volume target) could not be carried over to another month, nor could any excess volume in one option be assigned to another option. Also, the proposed fee would not affect the Exchange's fee schedule applicable to volume actually transacted on the Phlx. Therefore, the Phlx fee schedule applicable to volume actually transacted on the Phlx. Therefore, the Phlx fee schedule would continue to apply to all equity options transactions not covered by this options specialist shortfall fee.

⁵ Any Top 120 option listed on the Phlx after June 2000 will be considered newly listed for the purposes of this proposal. Telephone conversation between Edith Hallahan, Deputy General Counsel, Phlx, and Nancy J. Sanow, Assistant Director, and Ira L. Brandriss, Attorney, Division of Market Regulation ("Division"), the Commission, on August 18, 2000.

⁶ For example, if a specialist unit begins trading an option on June 15, the options specialist shortfall

The total volume for purposes of the 10 percent threshold is based on the current month's volume.⁷ However, the determination of whether an equity option is considered a Top 120 Option for purposes of the fee is based on a different time period. The Top 120 Options for August will be based on May's volume. Thereafter, the Exchange will continue the three-month differentiation, so that September's Top 120 Options will be based on June's volume, October's Top 120 Options will be based on July's volume and so forth. The proposed fee will be effective August 1, 2000.

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 Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to amend Phlx's schedule of dues, fees and charges to impose a fee for any deficiency between what the Phlx actually traded and 10 percent of the total volume for each respective month. The proposed fee is intended to provide the Phlx with the approximate revenue it would have received had a Top 120 Option traded at least 10 percent of the total volume in a given month on the Phlx. The Phlx represents that the options specialist shortfall fee generally parallels the amount that the Exchange would have received if an equity option contract were traded on

fee would first apply in July. Specifically, the unit would be subject to the options specialist shortfall fee of \$.35 per contract for the month of July for any shortfall under three percent of the total volume for that option for the month of July. For the month of August, the specialist unit would be subject to the fee for any shortfall under six percent of the total volume for that option for the month of August. Thereafter, the specialist unit would be subject to the options specialist shortfall fee if Phlx did not reach 10 percent of the total volume for that option in a specified month.

⁷ For example, for the month of August, the option specialist shortfall fee would apply to 10 percent of total August volume minus the Phlx August volume.

the Phlx with a specialist/market maker.⁸

Pursuant to Phlx rules, options are allocated to applicant specialists based on certain factors. Eligible specialists submit written applications that include the specialist unit's experience and capitalization, a demonstration of the unit's ability to trade the particular option, and any other reasons why the unit believes it should be assigned or allocated the security.⁹ Once an option is allocated to a specialist unit, certain performance reviews may be conducted.¹⁰ A Top 120 Option is unique and may require specific qualifications (as determined by the Allocation, Evaluation and Securities Committee) and strategic efforts. The Phlx states that through its Executive Committee, it recently instructed the Allocation, Evaluation and Securities Committee, pursuant to Phlx Rule 511, to follow certain policies in connection with the allocation and reallocation of securities.¹¹

Moreover, the Phlx believes that the options traded by the specialist unit, and the transactions related thereto, may be especially valuable to that specialist unit and the Exchange due to their potential profitability. Therefore, the Exchange believes that the specialist should compete for order flow in the national market, because that specialist unit is the key party responsible for marketing and receiving order flow in that particular option. The Phlx believes that a specialist's willingness to apply to be or continue to be a specialist in a Top 120 option, in light of the shortfall fee, is an important tangible demonstration of commitment to making the efforts required to achieve at least a 10 percent national volume level at the Phlx.

⁸ The \$.35 is intended to represent the following amounts that may be generated by a trade on the Phlx with a specialist/market maker: a \$.19 specialist/market maker transaction fee, \$.06 from Options Price Reporting Authority, \$.04 options comparison fee, \$.04 from floor brokerage fees and \$.02 from firm/customer/broker-dealer fees, all of which could have been collected by the Exchange per contract traded by the crowd. Transactions not involving a specialist/market maker would generate less revenue. The above listing of fees commonly charged in a specialist/market maker transaction does not represent the fees generated by every such transaction, but has been utilized by the Phlx on a general basis to calculate what it believes to be an appropriate shortfall fee. Telephone conversation between Edith Hallahan, Deputy General Counsel, the Phlx, and Ira L. Brandriss, Attorney, the Division, the Commission, on August 4, 2000.

⁹ See Phlx Rules 505 and 506.

¹⁰ See Phlx Rules 511 and 515.

¹¹ Some of the relevant factors considered in the allocation and reallocation of securities include reviewing the specialist unit's marketing plan, capital, staffing, prior performance in Top 120 Options, quality of executions, history of engaging fast market conditions, and available space and equipment.

The Exchange believes that it is necessary to continue to attract order flow to the Exchange in order to remain competitive. The proposed fee should encourage specialists to vigorously compete for order flow, which not only enhances the specialist's role, but also provides additional revenue to the Exchange. Moreover, the Exchange expects that specialists' efforts to maintain at least 10 percent of the total volume should contribute to deeper, more liquid markets and tighter spreads. Thus, competition should be enhanced, and important auction market principles preserved.

2. Statutory Basis

For the above reasons, the Exchange believes that its proposal is consistent with section 6(b) of the Act,¹² in general, and furthers the objectives of sections 6(b)(4)¹³ and 6(b)(5)¹⁴ in particular. The Exchange believes that the proposed fee is equitable because the amount charged is generally the same amount that would have been charged had a contract been traded. The fee is intended by the Phlx to promote just and equitable principles of trade and protect investors and the public interest by attracting more order flow to the Exchange, which the Exchange believes should result in increased liquidity and tighter markets.

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 solicited or received.

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

The foregoing rule change, which establishes or changes a due, fee, or other charge applicable to members of the Exchange, has become effective pursuant to section 19(b)(3)(A)¹⁵ of the Act and subparagraph (f)(2) of Rule 19b-

4 thereunder. At any time within 60 days of the filing of the 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.

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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-00-71 and should be submitted by September 19, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-22014 Filed 8-28-00; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

¹⁶ 17 CFR 200.30-3(a)(12).

DATES: Submit comments on or before September 28, 2000. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83-1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, D.C. 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205-7044.

SUPPLEMENTARY INFORMATION:

Title: CDC Annual Report Guide.

No: 1253 & 1253A.

Frequency: On Occasion.

Description of Respondents: Certified Development Companies.

Annual Responses: 270.

Annual Burden: 7,560.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 00-21970 Filed 8-28-00; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

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Copies: Request for clearance (OMB 83-1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

¹² 15 U.S.C. 78f(b).

¹³ Section 6(b)(4) requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. 15 U.S.C. 78f(b)(4).

¹⁴ Section 6(b)(5) requires that the rules of an exchange, among other things, promote just and equitable principles of trade and protect investors and the public interest. 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78s(b)(3)(A).