

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47424; File No. SR-Phlx-2003-04]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Payment for Order Flow Fees for the Top 120 Options

February 28, 2003.

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 January 28, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission the proposed rule change as described in items I, II, and III below, which the Phlx has prepared. 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 establish its options payment for order flow fees imposed on the transactions of Phlx Registered Options Traders ("ROT's") for the period from February through April 2003, for the top 120 options based on volume statistics from October, November, and December 2002,<sup>3</sup> as set forth on the ROT Equity Option Payment for Order Flow Charges Schedule. The Phlx intends to implement the fees for trades settling on

February 1, 2003, through April 30, 2003. The rate levels have remained unchanged: the top-ranked option is charged a fee of \$1.00 per contract, the next 49 options are charged a fee of \$0.50 per contract, and the fee for the remaining options in the top 120 is set at \$0.00.

The Phlx's ROT Equity Option Payment for Order Flow Charges Schedule is available at the Phlx and at 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 had 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

The Phlx recently filed with the Commission to reinstate its payment for order flow program.<sup>4</sup> Pursuant to the Phlx's current program, Phlx ROTs are assessed a payment for order flow fee on the top 120 most actively traded equity options, on a per-contract, per-options issue basis, as set forth on Phlx's ROT Equity Option Payment for Order Flow Charges Schedule, subject to certain exceptions.<sup>5</sup>

##### 1. Purpose

The purpose of the proposed rule change is to establish the payment for order flow fees for trades settling on or after February 1, 2003, through April 30, 2003, for the applicable top 120 options. The Phlx will file with the Commission a proposed rule change to address changes to the Phlx's fee schedule for subsequent time periods. No other changes to the Phlx's payment for order

flow program are being made at this time.

##### 2. Statutory Basis

The Phlx believes that its proposal to amend its schedule of dues, fees and charges is consistent with section 6(b) of the Act<sup>6</sup> and in particular furthers the objectives of section 6(b)(4) of the Act<sup>7</sup> in that it is an equitable allocation of reasonable fees among Phlx members.

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

The Phlx 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

The Phlx neither solicited or received written comments with respect to the proposed rule change.

#### 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>8</sup> and rule 19b-4(f)(2) thereunder.<sup>9</sup> Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the 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, 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

<sup>15</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.

<sup>3</sup> The Phlx's payment for order flow fee is assessed on ROTs on the top 120 most actively traded equity options in terms of the total number of contracts that are traded nationally, based on volume statistics provided by the Options Clearing Corporation. The measuring periods for the top 120 options are calculated every three months. For example, for the period from February through April 2003, the measuring period for the top 120 options is based on volume statistics from October, November and December 2002. For the period from May through July 2003, the measuring period for the top 120 options will be based on volume statistics from January, February and March 2003. This cycle is scheduled to continue every three months, with a separate proposed rule change filed for each three-month period.

<sup>4</sup> See Securities Exchange Act Release No. 47090 (December 23, 2002), 68 FR 141 (January 2, 2003) (SR-Phlx-2002-75).

<sup>5</sup> The payment for order flow fee does not apply to transactions between: (1) A ROT and a specialist; (2) a ROT and a ROT; (3) a ROT and a firm; and (4) a ROT and a broker-dealer. Indeed, because the primary focus of the program is to attract order flow from customers, the payment for order flow fee is not imposed on the above-specified transactions. Also, the payment for order flow fee does not apply to index or foreign currency options.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

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 will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-2003-04 and should be submitted by March 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## UNITED STATES SENTENCING COMMISSION

### Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of public hearing.

**SUMMARY:** The Commission has scheduled a public hearing on its proposed amendments for the amendment cycle ending May 1, 2003. Witnesses will be invited to testify by the Commission on issues specified by the Commission prior to the hearing. Tentative topics include implementation of the Sarbanes-Oxley Act of 2002, Pub. L. 107-204, and changes to § 2A1.4 (Involuntary Manslaughter). Further information regarding the public hearing will be provided by the Commission on its Web site at <http://www.ussc.gov>.

**DATES:** The Commission has scheduled a public hearing for March 25, 2003, at 3:15 p.m., at the Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE., Washington, DC 20002-8002.

**FOR FURTHER INFORMATION CONTACT:** Michael Courlander, Public Affairs Officer, Telephone: (202) 502-4500.

**SUPPLEMENTARY INFORMATION:** The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day

of May each year pursuant to 28 U.S.C. 994(p). Additional information pertaining to the proposed amendments for the amendment cycle ending May 1, 2003, may be accessed through the Commission's Web site at <http://www.ussc.gov>.

**Authority:** 28 U.S.C. 994(x); USSC Rules of Practice and Procedure 3.4, 4.4, 4.5.

**Diana E. Murphy,**

*Chair.*

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

[Docket OST-02-12148]

### Electronic Transmission and Storage of Drug Testing Information Federal Advisory Committee; Meeting

**AGENCY:** Office of the Secretary, Department of Transportation.

**ACTION:** Notice of Federal Advisory Committee meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) notice is hereby given that the Department of Transportation (DOT) Electronic Transmission and Storage of Drug Testing Information Federal Advisory Committee will meet for the second time in a public session on April 7-8, 2003, at the Embassy Suites Hotel, Crystal City—National Airport, 1300 Jefferson Davis Highway, Arlington, VA 22202, (703) 979-9799, FAX: (703) 892-8121. The purpose of the Committee is to recommend to the Department the type and level of electronic security that should be used for the transmission and storage of drug testing information, to assess the type of format and methodology that would be appropriate, and to recommend the level and type of electronic signature technology that would support the procedures used in the DOT drug and alcohol program. The Committee held its first meeting on June 18-19, 2002 in Washington, DC. A list of the committee members and a copy of the first meeting's transcripts are available in the docket posted on the Internet at <http://dms.dot.gov/search/>; the docket number is 12148.

**FOR FURTHER INFORMATION CONTACT:** Don Shatinsky or Minnie McDonald, Office of Drug and Alcohol Policy and Compliance (ODAPC), Office of the Secretary, Department of Transportation at voice (202) 366-3784, fax (202) 366-3897.

**SUPPLEMENTARY INFORMATION:** Since the beginning of drug testing, the DOT has sought ways to reduce the significant amount of paper documentation generated for the forensic accountability of drug test results. We are now in an era of various electronic capabilities that can further reduce the paper work burden. The transportation industry is asking us to move more in that direction. We want to accommodate this request, but we want to make sure that the integrity and confidentiality requirements of the program are maintained.

The Department made modest changes when 49 CFR Part 40 was updated and republished on April 19, 2000. We permitted greater use of faxes and scanned computer images for reporting test results. Additionally, for negative test results we permitted laboratories to send electronic reports to MROs, provided the laboratory and MRO ensured that the information is accurate and can be transmitted in such a manner as to prevent unauthorized access or release while it is transmitted or stored.

The Department believes that the increased use of electronic reporting is both inevitable and beneficial. At the same time, we want to make sure that there are good, consistent minimum standards for the use of this technology, in order to protect the important integrity and confidentiality requirements of the program. For these reasons, DOT established the Electronic Transmission and Storage of Drug Testing Information Federal Advisory Committee. The purpose of the Committee is to recommend regulatory modifications it deems necessary if Part 40 is to accommodate newer electronic technology. The Committee will assess the current status of electronic security technology and will make recommendations about consistent minimum standards for its use in the transmission and storage of drug testing results. Additionally, the Committee will examine the formats and methodologies used in transmitting electronic information, as well as the concept, parameters, and procedures used in implementing electronic signature technology within the framework of the DOT drug and alcohol testing program. The Committee will advise DOT regarding these findings. The Department anticipates that, following the receipt of the Committee's final recommendations, DOT will propose changes to Part 40 through a notice of proposed rulemaking that will result in minimum standards for security in transmission and storage of drug testing information and would

<sup>10</sup> 17 CFR 200.30-3(a)(12).