

19(b)(3)(A)(ii) of the Act⁶ and Rule 19b-4(f)(2)⁷ thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. 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. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-PCX-2003-68. 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, comments should be sent in hardcopy or by e-mail but not by both methods. 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 PCX. All submissions should refer to File No. SR-PCX-2003-68 and should be submitted by January 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48983; File No. SR-Phlx-2003-80]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Revise Its Schedule of Dues, Fees and Charges To Provide a Rebate for Certain Trades Executed Pursuant to a Dividend Spread Strategy

December 23, 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 December 15, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to 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.

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 provide a rebate for certain trades executed pursuant to a dividend spread strategy.³ The proposed rebate would be effective for trades clearing on and after December 17, 2003.

The schedule of dues, fees and charges is available at the Office of the Secretary, 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 Exchange 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 parts of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A "dividend spread" is any trade done within a defined time frame in which a dividend arbitrage can be achieved between any two (2) deep-in-the-money options.

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

1. Purpose

The Exchange states that the purpose of the proposed rule change is to amend the Exchange's schedule of dues, fees and charges to adopt a rebate for certain contracts executed in trades occurring as part of a dividend spread strategy. Specifically, for those options contracts executed pursuant to a dividend spread strategy by member registered options traders ("ROT") and options specialists who have not elected to have the specialist unit fixed monthly fee ("non-fixed specialists")⁴ be applicable on the business day before the underlying stock's ex-date,⁵ the Exchange would rebate \$0.08 per contract side for ROT executions and \$0.07 per side for non-fixed specialists executions. The proposed rebate would be effective for trades clearing on and after December 17, 2003.

The Exchange's billing system is unable to distinguish between dividend spreads and other types of trades. The Exchange has therefore developed a manual procedure to implement the proposed rebate. Specifically, within thirty calendar days of the billing period (*i.e.*, within thirty days from the issue date of the invoice) for these transactions, a Fee Reimbursement Form, including the appropriate documentation, must be completed and submitted to the Exchange. After the appropriate verification and subsequent acceptance, the Exchange would credit the appropriate member's account for the amount of the rebate (*i.e.*, either \$0.08 or \$0.07 per contract side) charged on contracts executed in trades occurring as part of a dividend spread strategy.

The Exchange states that the primary reason for this fee is to create a cost effective environment for a dividend spread strategy to be executed. By keeping fees low, the Exchange believes that this program should encourage specialists and registered options traders to provide liquidity for these

⁴ Specialist units that have been active trading equity and index option books in the capacity of a specialist unit for at least one year from September 1, 2002 may elect to pay a fixed monthly charge as described in the Exchange's fee schedule. A specialist unit may, by the 15th day of the billing month, select the fixed monthly fee methodology for subsequent months, which would be continued until February 29, 2004. See Securities Exchange Act Release No. 48459 (September 8, 2003), 68 FR 54034 (September 15, 2003).

⁵ The ex-date is the date on or after which a security is traded without a previously declared dividend or distribution. After the ex-date, a stock is said to trade ex-dividend.

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ 17 CFR 240.19b-4(f)(2).

⁸ 17 CFR 200.30-3(a)(12).

types of financial strategies and should permit the Exchange to remain competitive.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act⁶ in general, and furthers the objectives of section 6(b)(4) of the Act⁷ in particular, because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members. The Exchange notes that although the rebate would result in a net transaction charge of \$0.11 per contract side for a ROT and \$0.14 per contract side for non-fixed specialist executions, ROTs pay an additional comparison charge of \$0.03. Thus, both member organizations—ROTs and non-fixed specialist—would pay the same net per contract side charge.

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 proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act⁸ and subparagraph (f)(2) of Rule 19b-4 thereunder⁹ because it establishes or changes a due, fee, or other charge imposed by the Exchange. 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 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-Phlx-2003-80. 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, comments should be sent in hardcopy or by e-mail but not by both methods. 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 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-2003-80 and should be submitted by January 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48961; File No. SR-NASD-2003-176]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Chief Executive Officer and Chief Compliance Officer Certification

December 23, 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 November 28, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described

in Items I, II, and III below, which Items have been prepared by NASD. 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

NASD is proposing to establish NASD Rule 3013 and accompanying Interpretive Material ("IM") 3013 to require each member to designate a chief compliance officer ("CCO") and further require the member's chief executive officer ("CEO") and CCO to certify annually to having in place a process to establish, maintain, review, modify, and test policies and procedures reasonably designed to achieve compliance with applicable NASD rules, MSRB rules and the federal securities laws. Below is the text of the proposed rule change. Proposed new language is in *italics*.

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3013. Annual Certification of Compliance and Supervisory Processes

(a) Designation of Chief Compliance Officer

Each member shall designate and specifically identify to NASD on Schedule A of Form BD a principal to serve as chief compliance officer.

(b) Annual Certification

Each member shall have its chief executive officer (or equivalent officer) and chief compliance officer jointly certify annually, as set forth in IM-3013, that the member has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable NASD rules, MSRB rules and federal securities laws and regulations.

IM-3013. Annual Compliance and Supervision Certification

The NASD Board of Governors is issuing this interpretation to the requirement under Rule 3013(b), which requires that the member's chief executive officer (or equivalent officer) and chief compliance officer execute annually¹ a certification that the member has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable NASD

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹ Members must ensure that each ensuing annual certification is effected no later than on the anniversary date of the previous year's certification.