

the funds available to LMMs for their use in attracting orders in the options traded at the posts. The PCX charges the marketing fees as set forth in the Schedule of Rates.

The PCX is proposing to change the marketing fee for certain options as set forth in the Schedule of Rates beginning at the commencement of the December trade month and continuing until further notice. The PCX proposes to change only the amounts of the fees that it charges for transactions in the options that are included in the proposed Schedule of Rates. Any fees currently being charged for transactions in options that are not listed in this change to the Schedule of Rates would not be affected by the proposed rule change. The PCX believes that its proposed rule change is reasonable and equitable because it is designed to enable the PCX to compete with other markets in attracting options business. Only the amount of the fee is being changed.

#### Basis

The PCX believes that the proposal is consistent with Section 6(b) of the Act,<sup>4</sup> particularly Section 6(b)(4) of the Act,<sup>5</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

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

The PCX 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 PCX 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 immediately effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f) thereunder<sup>7</sup> because it changes the PCX fee schedule. At any time within 60 days after 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. 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-2002-72 and should be submitted by January 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47059; File No. SR-Phlx-2002-11]

### Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Proposing To Amend Phlx Rule 201A(b), Alternate Specialist Assignment

December 20, 2002.

#### I. Introduction

On February 11, 2002, 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"),<sup>1</sup> and

Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Phlx Rule 201A(b), Alternate Specialist Assignment, to delete restrictions on members, member organizations and persons affiliated with member organizations from acting as an alternate specialist while that member, member organization or person affiliated with member organization is either a specialist in the options overlying the equity issue or a Registered Options Trader ("ROT") with an assignment in the overlying options. The Exchange filed Amendment No. 1 to the proposed rule change on September 10, 2002.<sup>3</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on November 7, 2002.<sup>4</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change, as amended.

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>5</sup> In particular, the Commission finds that the proposed rule change to eliminate the restriction on an alternate specialist being affiliated with a specialist or ROT in the overlying option is consistent with Section 6(b)(5) of the Act,<sup>6</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market.

The Exchange's rules do not restrict a Phlx primary equity specialist from being affiliated with a specialist or ROT trade in the overlying option. The Commission does not believe that such a restriction is necessary for alternate specialists. The Commission also believes that the potential for manipulative or other improper trading activity is minimized by the physical separation of the Exchange's options and equity trading floors. Further, the Commission notes that the Exchange's Market Surveillance and Examinations Departments will continue to monitor and surveil for improper trading activity.

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

<sup>3</sup> On September 10, 2002, the Exchange filed a Form 19b-4, which replaced the original filing in its entirety ("Amendment No. 1").

<sup>4</sup> See Securities Exchange Act Release No. 46758 (October 31, 2002), 67 FR 67885.

<sup>5</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4.

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

## II. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, 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,<sup>7</sup> that the proposed rule change (SR-Phlx-2002-11), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47062; File No. SR-Phlx-2002-67]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Regarding Rules Implementing the Options Intermarket Linkage Plan

December 20, 2002.

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 October 29, 2002, 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 Phlx proposes to adopt rules ("rules") implementing the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage ("Plan").<sup>3</sup> The Exchange previously filed proposed rules adopting the Plan on August 16,

2001.<sup>4</sup> Below is the text of the proposed rule change; proposed new text is italicized.

#### Intermarket Linkage

##### Definitions

*Rule 1083. The following terms shall have the meaning specified in this rule solely for the purpose of rules 1083 through 1087:*

(a) "Aggrieved Party" means a member of a Participant Exchange whose bid or offer was traded-through.

(b) "Block Trade" means a trade on a Participant Exchange that:

(i) Involves 500 or more contracts and has a premium value of at least \$150,000;

(ii) Is effected at a price outside of the NBBO; and

(iii) Involves either:

(A) A cross (where a member of the Participant Exchange represents all or a portion of both sides of the trade), or

(B) Any other transaction (i.e., in which such member represents an order of block size on one side of the transaction only) that is not the result of an execution at the current bid or offer on the Participant Exchange.

Contemporaneous transactions at the same price on a Participant Exchange shall be considered a single transaction for the purpose of this definition.

(c) "Complex Trade" means the execution of an order in an options series in conjunction with the execution of one or more related orders(s) in different options series in the same underlying security occurring at or near the same time for the equivalent number of contracts and for the purpose of executing a particular investment strategy.

(d) "Crossed Market" means a quotation in which the Exchange disseminates a bid (offer) in a series of an Eligible Option Class at a price that is greater than (is less than) the price of the offer (bid) for the series then being displayed from another Participant Exchange.

(e) "Eligible Market Maker," with respect to an Eligible Option Class, means a specialist or ROT that:

(i) Is assigned to, and is providing two-sided quotations in, the Eligible Option Class;

(ii) Is in compliance with the requirements of rule 1087;

(iii) Is participating in the Exchange's AUTOM system (logged onto the Exchange's "Wheel") in such Eligible Option Class;

(iv) Has a clearing arrangement with a clearing firm that is a member of the exchange to which such specialist or ROT sends a Linkage Order (as defined below).

(f) "Eligible Option Class" means all option series overlying a security (as that term is defined in section 3(a)(10) of the Exchange Act) or group of securities, including both put options and call options, which class is traded on the Exchange and at least one other Participant Exchange.

(g) "Firm Customer Quote Size" with respect to a P/A Order means the lesser of (a) the number of option contracts that the Participant Exchange sending a P/A Order guarantees it will automatically execute at its disseminated price in a series of an Eligible Option Class for Public Customer orders entered directly for execution in that market; or (b) the number of option contracts that the Participant Exchange receiving a P/A Order guarantees it will automatically execute at its disseminated price in a series of an Eligible Option Class for Public Customer orders entered directly for execution in that market. This number shall be at least 10.

(h) "Firm Principal Quote Size" means the number of options contracts that a Participant Exchange guarantees it will execute at its disseminated price for incoming Principal Orders in an Eligible Option Class. This number shall be at least 10.

(i) "Linkage" means the systems and data communications network that link electronically the Participant Exchanges for the purposes specified in the Plan.

(j) "Linkage Order" means an order routed through the Linkage as permitted under the Plan. There are three types of Linkage Orders:

(i) "Principal Acting as Agent ("P/A") Order," which is an order for the principal account of a specialist (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent;

(ii) "Principal Order," which is an order for the principal account of an Eligible Market Maker and is not a P/A Order; and

(iii) "Satisfaction Order," which is an order, for the principal account of a member who initiated a Trade-Through, sent through the Linkage to satisfy the liability arising from that Trade-Through.

(k) "Locked Market" means a quotation in which the Exchange disseminates a bid (offer) in a series of an Eligible Option Class at a price that

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</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> Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (approving the Plan), 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (approving Phlx joining the Plan); and 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001) (approving amendment to Plan to conform to the requirements of rule 11Ac1-7 ("Amendment")).

<sup>4</sup> See SR-Phlx-2001-78, which has been withdrawn. The instant proposal is intended to replace the previous filing and amendment(s) in their entirety.