

<sup>15</sup> pursuant to which shares listed for a continuous period of 15 years or more were eliminated from the calculation of continuing annual fees, should eliminate disparities in annual fees for companies with similar amounts of stock listed on the NYSE. Moreover, the Commission notes the NYSE's belief that only a limited percentage of listed companies—8%—will be affected by the discontinuance of the 15-year policy. Finally, the Commission believes that the phase-in of the proposed fee schedule over a three-year period should mitigate the impact of the proposed fee schedule on issuers.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**, and prior to the expiration of the public comment period, ending December 31, 2002.<sup>16</sup> The Commission believes that good cause exists to justify accelerated effectiveness of the proposed rule change, in part, because the pilot program of Section 902.02 of the NYSE Listed Company Manual, which currently institutes the \$1 million per-issuer fee cap on a pilot basis is due to expire on December 31, 2002. In finding good cause to accelerate effectiveness on this basis, the Commission notes that the NYSE has represented to the Commission that the expiration of the pilot program at any time before the effective date of this proposed rule change could lead to significant operational and billing problems.<sup>17</sup>

Finally, the accelerated approval of the proposed rule change will enable the new fee schedule to be in effect on January 1, 2003, the date which the NYSE wishes to make the new fees applicable. Therefore, the Commission finds that granting accelerated approval to the proposed rule change, as amended, is appropriate and consistent with Section 19(b)(2) of the Act.<sup>18</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether the proposed amendment 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 NYSE. All submissions should refer to File No. SR-NYSE-2002-62 and should be submitted by January 31, 2003.

#### V. Order Granting Accelerated Approval

The original rule proposal was published for public comment on December 16, 2002.<sup>19</sup> The NYSE submitted Amendment No. 1 to the proposed rule on December 30, 2002 in order to respond to four letters, which it had received prior to the filing of the proposed rule change, in which four issuers expressed their views opposing the proposed increase in listing fees.<sup>20</sup> For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder. Moreover, the Commission finds that there is good cause to grant accelerated approval to the proposed rule change and Amendment No. 1, thereto.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>21</sup> that the proposed rule change and Amendment No. 1 thereto (SR-NYSE-2002-62) are approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>22</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47124; File No. SR-Phlx-2002-84]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Off-Floor Trader Fees

January 3, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),<sup>1</sup> and rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 18, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") 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 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 amend its schedule of dues, fees and charges to require: (1) Future off-floor traders to pay an initial registration fee of \$100, an increase from \$50; and (2) current and future off-floor traders registered as of April 1 of each year to pay an annual fee of \$350, an increase from \$250. An off-floor trader is a person who is compensated directly or indirectly by a member or participant organization for which the Exchange is the Designated Examination Authority ("DEA") for the solicitation or handling of business in securities, including trading securities for the account of the member or participant organization, and who is not otherwise required to register with the Exchange.<sup>3</sup> The proposed increase in the initial registration fee is to become effective January 2, 2003, with the increased annual fee to be implemented April 1, 2003.<sup>4</sup> The text of the proposed rule change is available at the principal

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

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

<sup>3</sup> Off-floor traders are required to file the Uniform Application for Securities Industry Registration or Transfer form ("form U-4") with the Exchange. See Phlx rule 604(e)(i).

<sup>4</sup> The Exchange has not designated the Off-Floor Trader Registration Fee as eligible for the monthly credit. See Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR-Phlx-2001-49). The monthly credit allows Exchange members to receive a monthly credit of up to \$1,000 to be applied against certain fees, dues, charges and other such amounts.

<sup>15</sup> The Commission notes that the NYSE proposes to maintain the 15 year policy in Section 902.02C of the NYSE Listed Company Manual for closed-end fund issuers.

<sup>16</sup> The Commission notes that it had received one letter regarding the proposed rule change as of the close of business, December 31, 2002. See note 10, *supra*.

<sup>17</sup> See Item 7, Amendment No. 1.

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</sup> See Securities Exchange Act Release No. 46960 (December 6, 2002), 67 FR 77124 (December 16, 2002) (SR-NYSE-2002-62).

<sup>20</sup> In Amendment No. 1, the NYSE also requested accelerated approval and articulated its view as to why the Commission should find good cause to accelerate the effectiveness of the proposed rule change.

<sup>21</sup> 15 U.S.C. 78s(b)(2).

<sup>22</sup> 17 CFR 200.30-3(a)(12).

offices of 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 the 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 increase initial and annual off-floor trader fees to generate additional revenue to help off-set the Exchange's costs associated with conducting off-floor trader examinations, including administrative costs, such as cost incurred in conducting background checks on the individuals to whom the fees apply, processing of forms, fingerprint charges, and requests for disciplinary history from the Central Registration Depository.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of section 6(b)(4) of the Act,<sup>6</sup> in particular, 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 Exchange does not believe that the proposed rule change will result in 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

Written comments were neither solicited nor received.

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

## 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)(ii) of the Act<sup>7</sup> and rule 19b-4(f)(2) thereunder,<sup>8</sup> as establishing or changing a due, fee, or other charge. 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.<sup>9</sup>

## 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 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-2002-84 and should be submitted by January 31, 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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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

<sup>9</sup> See section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

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

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47120; File No. SR-Phlx-2002-83]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Extension of Its Pilot Program To Implement Its Existing Fee Schedule for Electronic Communication Networks

January 3, 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 December 18, 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 extend its two-year pilot program for an additional one-year period, in order to continue to impose a \$2,500 monthly fee for Electronic Communications Networks ("ECNs") that are member organizations and send order flow to the Exchange's equity trading floor.<sup>3</sup> The pilot program is due to expire on January 31, 2003.<sup>4</sup>

The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and the Commission.

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

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

<sup>3</sup> As stated in the Phlx fee schedule, the term ECN shall mean any electronic system that widely disseminates to third parties orders entered therein by an Exchange market maker or over-the-counter ("OTC") market maker, and permits such orders to be executed against in whole or in part. The term ECN shall not include: any system that crosses multiple orders at one or more specified times at a specified price set by the ECN, algorithm, or by any derivative pricing mechanism and does not allow orders to be crossed or executed against directly by participants outside of such times; or any system operated by or on behalf of an OTC market maker or exchange market maker as principal, other than riskless principal.

<sup>4</sup> See Exchange Act Release No. 45456 (February 19, 2002), 67 FR 8831 (February 26, 2002) (SR-Phlx-2002-08) (extending the initial ECN fee pilot program).