

SR-CHX-2003-08 and should be submitted by June 3, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47805; File No. SR-Phlx-2003-34]

### 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

May 6, 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 April 25, 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 ("ROTs") for the period from May through July 2003 for the top 120 options based on volume statistics from January, February, and March 2003,<sup>3</sup> as set forth on the ROT Equity Option Payment for Order Flow Charges Schedule.<sup>4</sup> 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>5</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>6</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 May 1, 2003 through July 31, 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.

<sup>5</sup> See Securities Exchange Act Release No. 47090 (December 23, 2002), 68 FR 141 (January 2, 2003) (SR-Phlx-2002-75).

<sup>6</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.

##### 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>7</sup> and in particular furthers the objectives of section 6(b)(4) of the Act<sup>8</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 nor 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>9</sup> and Rule 19b-4(f)(2) thereunder.<sup>10</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 public in accordance with the provisions of 5 U.S.C. 552, will be

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

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78(s)(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>9</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. See Securities Exchange Act Release No. 47424 (February 28, 2003), 68 FR 11168 (March 7, 2003) (SR-Phlx-2003-04). This cycle is scheduled to continue every three months, with a separate proposed rule change filed for each three-month trading period.

<sup>4</sup> To avoid confusion, the ROT Equity Option Payment for Order Flow Charges Schedule reflects only those options being charged more than \$0.00

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-2003-34 and should be submitted by June 3, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47799; File No. SR-Phlx-2003-28]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Retroactively Apply Its Broker-Dealer Transaction Fee for Equity Option Transactions for the Period From April 1, 2003 to April 10, 2003

May 6, 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 April 28, 2003, 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 amend its schedule of dues, fees and charges to apply the following reduced broker-dealer transaction fee for block equity option transactions retroactively to equity options transactions settling from April 1, 2003, to April 10, 2003: Broker/Dealer<sup>3</sup> (non-AUTO-X)

Up to 2,000 contracts	\$ .35 per contract
Between 2,001 and 3,000 contracts.	\$ .25 per contract (for all contracts)
Residual above 3,000 contracts.	\$ .20 per contract above 3,000 contracts (with the first 3,000 contracts charged \$.25 per contract)

This fee is applied per transaction (not per month).<sup>4</sup> This revised fee became effective for trades settling on or after April 11, 2003. The Exchange now proposes to implement this fee on transactions that have settled from April 1, 2003, to April 10, 2003.<sup>5</sup> All other equity option transaction charges will remain unchanged. The text of the proposed rule change is available upon request from the Office of the Secretary, the Commission, and the Exchange.

#### 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 aspects of such statements.

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

###### 1. Purpose

On April 11, 2003, the Exchange filed a proposed rule change that amended its schedule of dues, fees and charges to adopt decreases in its broker-dealer transaction fee for equity option transactions.<sup>6</sup> This fee change became effective for transactions settling on or after April 11, 2003. This current proposal seeks to apply these decreases to the broker-dealer transaction fee to transactions that settled from April 1, 2003, to April 10, 2003.<sup>7</sup> The purpose of

<sup>4</sup> Member organizations may need to file a form with the Exchange to identify eligible block trades.

<sup>5</sup> This fee will continue to be eligible for the monthly credit of up to \$1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. See Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 28, 2001)(SR-Phlx-2002-32).

<sup>6</sup> See Securities Exchange Act Release No. 47715 (April 22, 2003), 68 FR 22446 (April 28, 2003)(SR-Phlx-2003-26).

<sup>7</sup> The Phlx stated that from April 1, 2003, to April 10, 2003, there were approximately seven

the proposed rule change is to provide equivalent fee decreases to those broker-dealers whose transactions would have qualified for discounted broker-dealer transaction fees during the above-referenced ten-day period.

This proposal seeks to apply the current transaction levels set forth above per to applicable broker-dealer transactions for trades settling from April 1, 2003, to April 10, 2003. For example, under the proposal (i) a transaction of 1,700 option contracts will be charged \$0.35 per contract, (ii) a transaction of 2,500 contracts will be charged \$0.25 per contract for all contracts, and (iii) a transaction of 3,500 contracts will be charged \$0.25 for each of the first 3,000 contracts and \$0.20 for each of the remaining 500 contracts.<sup>8</sup>

###### 2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of section 6(b)(4) of the Act<sup>10</sup> in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members. The Exchange believes the proposal is reasonable and equitable because it applies the same fee decreases for broker-dealers executing equity options transactions on the Exchange settling from April 1, 2003, to April 10, 2003, as those applicable to broker-dealers whose transactions settle on or after April 11, 2003.

###### 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

No written comments were solicited or received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or

transactions that would have qualified for the lower "block" broker-dealer transaction fee.

<sup>8</sup> Of course, the contra-side to a transaction may also be subject to transaction and other charges.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 17 CFR 200.03-(a)(12).

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

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

<sup>3</sup> This charge applies to members for transactions, received from other than the floor of the Exchange, for any account (i) in which the holder of beneficial interest is a member or non-member broker-dealer or (ii) in which the holder of beneficial interest is a person associated with or employed by a member or non-member broker-dealer. This includes transactions for the account of an ROT entered from off-floor.