

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47561; File No. SR-Phlx-2003-16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Charges to Exchange Members for Orders Entered Through the Intermarket Options Linkage

March 21, 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 March 18, 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. On March 21, 2003, Phlx submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to amend its schedule of dues, fees and charges to adopt charges applicable to Principal Orders ("P Orders") sent via the Intermarket Options Linkage (the "Linkage") under the Plan for the Purpose of Creating and Operating an Options Intermarket Linkage ("Plan").⁴

The Exchange intends to implement this fee on a pilot basis, ending January 31, 2004, for transactions settling on or after the first day of the next calendar month following the Commission's approval of the proposal.⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Richard S. Rudolph, Director and Counsel, Phlx, to Jennifer Lewis, Attorney, Division of Market Regulation, Commission, dated March 20, 2003 ("Amendment No. 1"). In Amendment No. 1, Phlx proposed a new footnote to its fee schedule to indicate that the proposed fees would be subject to a pilot program scheduled to expire January 31, 2004.

⁴ See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); and 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). The Plan was subsequently amended on June 27, 2001, May 30, 2002, January 29, 2003, and January 31, 2003. See Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001); 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002); 47298 (January 31, 2003), 68 FR 6524 (February 7, 2003); and 47274 (January 29, 2003), 68 FR 5313 (February 3, 2003).

⁵ For example, if the Commission approves the proposal on April 20, 2003, the Exchange intends

The text of the proposed rule change is below. Proposed language is italicized; deleted language is in brackets.

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Summary of Equity Option Charges (p. 1/2)

Option Comparison Charge I (Applicable to All Trades—Except Specialist Trades)

Registered Option Trader: \$.03 per contract
 Firm/Proprietary⁶: \$.04 per contract
 Customer Executions, *Linkage Orders*, *Broker-Dealer Orders*: No charge

Option Transaction Charge I (Other Than Intermarket Option Linkage Charges Set Forth Below)

Customer Executions: No charge
 Firm/Proprietary⁷: \$.15 per contract
 Firm/Proprietary Facilitation Transaction⁸: \$.08 per contract
 Registered Option Trader (on-floor): \$.16 per contract
 Specialist: \$.18 per contract
 Broker/Dealer⁹ (non-AUTO-X): \$.35 per contract
 Broker/Dealer¹⁰ (AUTO-X): \$.45 per contract

Intermarket Option Linkage Charge I¹¹

Satisfaction Order: No charge
Principal Acting as Agent (P/A) Orders—Inbound: No charge
Principal Acting as Agent (P/A) Orders—Outbound: No charge
Principal (P) Orders—Inbound: \$.35 per contract

to implement this fee for transactions settling on or after May 1, 2003.

⁶ For the purpose of this Summary of Equity Option Charges, the Firm/Proprietary comparison or transaction charge applies to members for orders for the proprietary account of any member or non-member broker-dealer that derives more than 35% of its annual, gross revenues from commissions and principal transactions with customer. Firms will be required to verify this amount to the Exchange by certifying that they have reached this threshold and by submitting a copy of their annual report, which was prepared in accordance with Generally Accepted Accounting Principles ("GAAP"). In the event that a firm has not been in business for one year, the most recent quarterly reports, prepared in accordance with GAAP, will be accepted.

⁷ See footnote [4] 6.

⁸ Equity Option Transaction Charges continue to apply to facilitation transactions involving Exchange-traded options subject to licensing agreements.

⁹ For the purpose of this Summary of Equity Option Charges, this charge applies to members for orders, 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 orders for the account of an ROT entered from off-floor.

¹⁰ See footnote [8] 9.

¹¹ Subject to a pilot program scheduled to expire January 31, 2004.

Summary of Equity Option Charges (p. 2/2)

Option Floor Brokerage Assessment I

5% of net floor brokerage income.

Floor Brokerage Transaction Fee I

\$.05 per contract, for floor brokers executing transactions for their own member firms

Specialist Deficit (Shortfall) Fee I

\$.35 per contract for specialists trading any Top 120 Option if the following total national monthly contract volume for such Top 120 Option is not effected on the PHLX: 11% for the period January through March 2002; 12% for the period April through June 2002; 13% for the period July through September 2002; and 14% for the period October through December 2002.

Specialist Deficit (Shortfall) Fee Credit

A credit of \$.35 per contract may be earned by options specialists for all contracts traded in excess of the following volume thresholds in eligible issues for the monthly periods commencing September 1, 2001. These credits may be applied against previously imposed "shortfall fees" for the preceding six months for issues that in the month the deficit occurred, the equity option traded in excess of 10 million contracts per month: 11% for the period January through March 2002; 12% for the period April through June 2002; 13% for the period July through September 2002; and 14% for the period October through December 2002.

Real-Time Risk Management Fee I

\$.0025 per contract for firms/members receiving information on a real-time basis See Appendix A for additional fees.

I denotes fee eligible for monthly credit of up to \$1,000.

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

In its filing with the Commission, Phlx 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. 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

1. Purpose

Phlx represents that the purpose of the proposed rule change is to raise revenue for the Exchange by charging Exchange members for transactions involving inbound P Orders sent by such members via the Linkage pursuant to the Plan.¹²

The Exchange will charge Exchange members for P Orders sent to the Exchange over the Linkage from the floor of another exchange \$.35 per contract executed.¹³ The Exchange will not charge fees for other types of Linkage Orders.¹⁴

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 Act¹⁵ in general, and furthers the objectives of section 6(b)(4) of the Act¹⁶ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members who avail themselves of the Linkage, consistent with other fees charged by the Exchange for non-Linkage Orders.¹⁷

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

The Exchange does not believe that the proposed rule change will impose

¹² Under the Plan and Exchange Rule 1083(k), which tracks the language of the Plan, a "Linkage Order" means an Immediate or Cancel 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 ("P") 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 sent through the Linkage to notify a member of another Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

The Exchange will not assess any charges for P/A Orders and Satisfaction Orders.

¹³ Currently, for non-Linkage off-floor broker-dealer orders sent via the Philadelphia Stock Exchange Automated Options Market ("AUTOM"), which is the Exchange's electronic order delivery, routing, execution and reporting system, the Exchange charges \$.35 per contract to the sending off-floor broker-dealer for non-AUTO-X trades, and \$.45 per contract for trades executed by AUTO-X, the automatic execution feature of AUTOM.

¹⁴ See *supra* note 6.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4).

¹⁷ See *supra* note 7.

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

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 (ii) as to which Phlx consents, the Commission shall:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2003-16 and should be submitted by April 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,
Deputy Secretary.

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¹⁸ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47582; File No. SR-PHLX-2002-18]

Self Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change To Make Permanent a PACE Automatic Price Improvement Pilot Program and a PACE Order Execution and Price Protection Pilot Program

March 27, 2003.

On March 11, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and rule 19b-4 thereunder,² a proposed rule change to make permanent two Philadelphia Stock Exchange Automated Communication and Execution System ("PACE") pilot programs that were introduced with the advent of decimal pricing in the securities industry. The first pilot program consists of an automated price improvement feature that incorporates a percentage of the spread between the bid and the offer, and has been in effect since January 30, 2001.³ The second pilot program incorporates immediate execution of certain market orders through the Public Order Exposure System ("POES") and mandatory double-up/double-down price protection, and has been in effect since August 25, 2000.⁴

The proposed rule change was published for comment in the **Federal Register** on March 22, 2002.⁵ The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁶ and, in particular, the requirements of section 6 of the Act⁷ and the rules and regulations thereunder. The Commission finds

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 43901 (January 30, 2001), 66 FR 8988 (February 5, 2001) (SR-Phlx-2001-12).

⁴ See Securities Exchange Act Release No. 43206 (August 25, 2000), 65 FR 53250 (September 1, 2000) (SR-Phlx-2000-08).

⁵ See Securities Exchange Act Release No. 45580 (March 18, 2002), 67 FR 13399.

⁶ 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).

⁷ 15 U.S.C. 78f.