

Standards. No substantive changes are being made to the pilot program, other than extending the operation of pilot program.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of section 6(b)(5) of the Act,<sup>13</sup> in that it is designed to promote just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

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

The Exchange 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

Written comments on the proposed rule change were neither solicited nor received.

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

PCX has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Therefore, the foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup> At any time within 60 days of 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 would otherwise further the purposes of the Act.

Pursuant to Rule 19b-4(f)(6)(iii) under the Act,<sup>16</sup> the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the self-regulatory organization must file notice of its

intent to file the proposed rule change at least five business days beforehand. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>17</sup> Waiving the pre-filing requirement and accelerating the operative date will merely extend a pilot program that is designed to provide investors with a mechanism to resolve disputes with broker-dealers. During the period of this extension, the Commission and the Exchange will continue to monitor the status of the previously discussed litigation. For these reasons, the Commission designates the proposed rule change as effective and operative immediately.

## 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. Comments may be submitted by any of the following methods:

### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-PCX-2004-25 on the subject line.

### Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-PCX-2004-25. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PCX-2004-25 and should be submitted on or before June 18, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 04-12093 Filed 5-27-04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49751; File No. SR-Phlx-2004-25]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Broker-Dealer Equity Option Transaction Fees

May 21, 2004.

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 30, 2004, 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 Phlx. On May 13, 2004, the Exchange submitted Amendment No. 1 to the proposal.<sup>3</sup> The

<sup>18</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> See letter from Mark I. Salvacion, Director & Counsel, Phlx, to Nathan H. Saunders, Attorney, Division of Market Regulation, Commission, dated May 12, 2004 ("Amendment No. 1"). In Amendment No. 1, the Exchange revised the filing to clarify the purpose of the proposed rule change and to correct a typographical error in the text of the proposed rule change.

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>17</sup> For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

proposed rule change, as amended, has been filed by the Phlx as establishing or changing a due, fee, or other charge, pursuant to section 19(b)(3)(A)(ii) of the Act<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission. 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**

The Phlx proposes to amend its schedule of dues, fees and charges to increase certain broker-dealer equity option transaction charges for orders delivered through the Philadelphia Stock Exchange Automated Options Market ("AUTOM") System<sup>6</sup> to \$.45 per contract, without regard to whether such contracts are executed automatically or manually. The Exchange has implemented this fee on

transactions settling on or after May 1, 2004. All other equity option transaction charges remain unchanged. Below is the text of the proposed rule change, as amended. Proposed new language is in *italics*; language to be deleted is in brackets.

**SUMMARY OF EQUITY OPTION CHARGES**

* * * * *
Option Transaction Charge
* * * * *

<i>Broker/Dealer</i> <sup>11</sup> ( <i>AUTOM-delivered</i> ) .....	\$.45 per contract
<i>Broker/Dealer</i> [ <sup>11</sup> ] <sup>12</sup> (non-[ <i>AUTO-X</i> ] <i>AUTOM-delivered</i> ) and Linkage "P" Orders[ <sup>12</sup> ] <sup>13</sup>	
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)
[ <i>Broker/Dealer</i> <sup>13</sup> ( <i>AUTO-X</i> ) .....	\$.45 per contract]
* * * * *	* * * * *

<sup>11</sup> For the purpose of this Summary of Equity Option Charges, 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.

<sup>12</sup> See footnote 11. [Fees for linkage "P" Orders are subject to a pilot program scheduled to expire July 31, 2004.]

<sup>13</sup> [See footnote 11.] Fees for linkage "P" Orders are subject to a pilot program scheduled to expire July 31, 2004.

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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, the 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. 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*

1. Purpose

The purpose of the proposed rule change is to establish a uniform charge for all broker-dealer orders delivered via AUTOM, regardless of whether those orders are executed automatically or manually. Currently, the Exchange

charges fees for broker-dealer orders based on the method of execution: transactions that are executed automatically are charged \$.45 per contract<sup>7</sup> and transactions that are executed manually are charged up to \$.35 per contract.<sup>8</sup> Under the current proposal, broker-dealer orders will be charged based on the method of delivery. Orders delivered via AUTOM will be charged \$.45 per contract, regardless of whether they receive automatic or manual execution. Non-AUTOM delivered orders, consisting of manually delivered floor broker orders, including orders transmitted by the Floor Broker Management System ("FBMS"),<sup>9</sup> and Linkage "P" orders,<sup>10</sup> will continue to be charged up to \$.35 per contract, depending on the size of the order.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act<sup>11</sup> in general, and furthers the objectives of section 6(b)(4) of the Act<sup>12</sup> in particular, in that it is an equitable allocation of reasonable dues, fees, and

other charges among Exchange members relating to the automatic delivery of off-floor broker-dealer orders. The Exchange believes the proposal is reasonable and equitable because it equalizes transaction costs for broker-dealers delivering orders to the Exchange via AUTOM, without regard to the manner in which they are executed.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition 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 with respect to the proposed rule change.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

<sup>6</sup> AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange

members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. See Exchange Rule 1080.

<sup>7</sup> See Securities Exchange Act Release No. 47109 (December 30, 2002), 68 FR 841 (January 7, 2003)(SR-Phlx-2002-78).

<sup>8</sup> See Securities Exchange Act Release No. 47715 (April 22, 2003), 68 FR 22446 (April 28, 2003)(SR-Phlx-2003-26).

<sup>9</sup> See Exchange Rule 1063(e) and Exchange Rule 1080, Commentary .06.

<sup>10</sup> See Securities Exchange Act Release No. 47953 (May 30, 2003), 68 FR 34027 (June 6, 2003)(SR-Phlx-2003-16). Fees for linkage "P" orders are subject to a pilot program scheduled to expire on July 31, 2004.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</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 upon filing pursuant to section 19(b)(3)(A)(ii) of the Act<sup>13</sup> and Rule 19b-4(f)(2) thereunder,<sup>14</sup> because it changes a fee imposed by the Exchange. At any time within 60 days of the filing of the 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>15</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. Comments may be submitted by any of the following methods:

#### *Electronic comments:*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2004-25 on the subject line.

#### *Paper comments:*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Phlx-2004-25. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2004-25 and should be submitted on or before June 18, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

[Docket No. OST-1995-246]

### North American Free Trade Agreement's Land Transportation Standards Subcommittee and Transportation Consultative Group: Annual Plenary Session

**AGENCY:** Office of the Secretary (OST), DOT.

**ACTION:** Notice.

**SUMMARY:** This notice (1) announces the tenth annual plenary session of the North American Free Trade Agreement's (NAFTA) Land Transportation Standards Subcommittee (LTSS) and the Transportation Consultative Group (TCG) and other related meetings; and (2) invites representatives of non-governmental entities with an interest in land transportation issues to participate in these proceedings and to attend a briefing at a later date. With the exceptions noted below, only U.S., Canadian, and Mexican government officials may attend the plenary and working group meetings.

#### *Background:*

The Land Transportation Standards Subcommittee (LTSS) was established by the North American Free Trade Agreement's (NAFTA) Committee on Standards-Related Measures to examine the land transportation regulatory regimes in the United States, Canada, and Mexico, and to seek to make certain

standards more compatible. The Transportation Consultative Group (TCG) was formed by the three countries' departments of transportation to address non-standards-related issues that affect cross-border movements among the countries, but that are not included in the NAFTA's LTSS work program (Annex 913.5.a-1).

#### *Meetings and Deadlines:*

The tenth annual LTSS/TCG plenary session will be held from June 3 and 4, 2004 at the Hotel Nikko, Campos Eliseos 204, Polanco, Mexico City, Mexico. The following LTSS working groups are expected to meet during the same dates and at the same location: (1) Compliance and Driver and Vehicle Standards; and (2) Hazardous Materials Transportation Standards. The following TCG working groups also are expected to meet: (1) Cross-Border Operations and Facilitation; (2) Rail Safety and Economic Issues; and (3) Science and Technology.

An opportunity will be provided for non-governmental organizations to address officials of the individual working groups regarding issues that concern them and that are within the purview of those working groups. Representatives of the truck, bus, and rail industries, transportation labor unions, brokers and shippers, chemical manufacturers, insurance industry, public safety advocates, and others who wish to take advantage of this opportunity are asked to contact the U.S. chairperson of the group they wish to address. Contact names, addresses and phone numbers are provided later in this notice. Copies of presentations, in English and Spanish, should be mailed to the working group chairs no later than June 2, 2004. This is an opportunity for presenters to voice their concerns, provide technical information, and offer suggestions relevant to achieving greater standards compatibility and improving cross-border trade. While written statements may be of any length, oral presentations will be limited based on the number of presenters to be accommodated. Working group chairs will determine the allowable length of any oral presentation and communicate that to the interested NGOs at least one week prior to the meeting dates. After June 2, statements may be submitted for the record and requests to present oral comments to the working groups will be accommodated only on a time-available basis. Interested parties can make hotel reservations by telephoning Ms. Laura Estrada at the Hotel Nikko at (5255) 283-8700 Ext 8020/7776 and identifying themselves as attendees to the NAFTA LTSS. This will ensure that attendees

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

<sup>15</sup> For purposes of calculating the 60 day abrogation period, the Commission considers the period to have begun on May 13, 2004, the date on which the Phlx submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

<sup>16</sup> 17 CFR 200.30-3(a)(12).