

respect to transactions in municipal securities.

The MSRB proposed the exemption because it believes that transactions in municipal fund securities appear not to present the same potential for adverse impact on an employing dealer as might exist with respect to transactions in other types of municipal securities. Furthermore, fulfilling Rule G-28 requirements may impose an unnecessary burden in the context of municipal fund securities, particularly 529 college savings plans, without any countervailing benefit. The MSRB notes that transactions in registered mutual fund shares are currently exempted from similar requirements imposed under NASD Rule 3050. Since there is no trading market in municipal fund securities, the MSRB believes the safeguards provided by Rule G-28 are not needed in the context of this market.

II. Summary of Comments

The Commission did not receive any comment letters relating to the MSRB's proposed rule change.

III. Discussion

The Commission has reviewed carefully the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, which govern the MSRB.⁴ The language of section 15B(b)(2)(C) of the Act requires that the MSRB's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.⁵ The rule change is consistent with the Act in that it amends an existing MSRB rule to accommodate the unique characteristics of municipal fund securities. Furthermore, the rule change removes impediments to a free and open market in such securities and promoting the protection of investors and the public interest.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,⁶

that the proposed rule change (File No. SR-MSRB-2002-15) be and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47409; File No. SR-NYSE-2003-04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Extending the Pilot Regarding Shareholder Approval of Stock Option Plans Through June 30, 2003, or Such Earlier Date as the NYSE's Pending Rule Proposal Requiring Shareholder Approval of Equity-Compensation Plans Is Approved by the Commission

February 26, 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 February 26, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II 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 extend until June 30, 2003, or such earlier date as the NYSE's pending rule proposal requiring shareholder approval of equity-compensation plans³ is approved by the Commission, the effectiveness of the amendments to Sections 312.01, 312.03 and 312.04 of the Exchange's Listed Company Manual with respect to the definition of a "broadly-based" stock option plan, which were approved by the Commission on a pilot basis (the

"Pilot") on June 4, 1999.⁴ The Pilot was subsequently amended and extended on March 30, 2001 until September 30, 2001.⁵ The Pilot has since been extended until January 11, 2002,⁶ March 11, 2002,⁷ May 13, 2002,⁸ June 30, 2002,⁹ August 31, 2002,¹⁰ October 30, 2002,¹¹ December 30, 2002,¹² and February 28, 2003.¹³

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

The Exchange has had the Pilot with respect to the definition of a "broadly-based" stock option plan since June 4, 1999.¹⁴ On July 13, 2000, the Exchange filed a proposed rule change seeking to

⁴ See Securities Exchange Act Release No. 41479, 64 FR 31667 (June 11, 1999) (notice of filing and order granting accelerated approval, on a pilot basis, to File No. SR-NYSE-98-32) ("Original Pilot Approval Order").

⁵ See Securities Exchange Act Release No. 44141, 66 FR 18334 (April 6, 2001) (order granting approval, on a pilot basis, to the File No. SR-NYSE-00-32).

⁶ See Securities Exchange Act Release No. 44886 (September 28, 2001), 66 FR 51083 (October 5, 2001) (notice of filing and immediate effectiveness of File No. SR-NYSE-2001-37) ("2001 Extension Request").

⁷ See Securities Exchange Act Release No. 45275 (January 14, 2002), 67 FR 2718 (January 18, 2002) (File No. SR-NYSE-2002-03).

⁸ See Securities Exchange Act Release No. 45546 (March 12, 2002), 67 FR 10272 (March 18, 2002) (File No. SR-NYSE-2002-14).

⁹ See Securities Exchange Act Release No. 45918 (May 13, 2002), 67 FR 35174 (May 17, 2002) (File No. SR-NYSE-2002-18).

¹⁰ See Securities Exchange Act Release No. 46143 (June 28, 2002), 67 FR 35174 (July 5, 2002) (File No. SR-NYSE-2002-22).

¹¹ See Securities Exchange Act Release No. 46437 (August 29, 2002), 67 FR 57262 (September 9, 2002) (File No. SR-NYSE-2002-42).

¹² See Securities Exchange Act Release No. 46747 (October 30, 2002), 67 FR 67680 (November 6, 2002) (File No. SR-NYSE-2002-57).

¹³ See Securities Exchange Act Release No. 47084 (December 23, 2002), 67 FR 79681 (December 30, 2002) (File No. SR-NYSE-2002-67).

¹⁴ See Original Pilot Approval Order note 4 *supra*.

⁴ Additionally, in approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78o(b)(2)(C).

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 46620 (October 8, 2002), 67 FR 63486 (October 11, 2002) (File No. SR-NYSE-2002-46).

extend the effectiveness of the Pilot until September 30, 2003.¹⁵ Following receipt of comments from interested parties and the SEC staff, on January 19, 2001, the Exchange amended the 2000 Extension Request to shorten the three-year extension request to one year and to amend the definition of "broadly based" under the Exchange's rule. While the 2000 Extension Request was under consideration, the Commission extended the Pilot to provide the Commission and the Exchange with additional time to review and evaluate comment letters.¹⁶ On March 30, 2001, the Commission approved the 2000 Extension Request, which amended and extended the Pilot, on a pilot basis until September 30, 2001.¹⁷ The Exchange's 2001 Extension Request extended the Pilot until January 11, 2002 to provide additional time to evaluate the issues presented by the Pilot.¹⁸ The Pilot was again extended several times, most recently until February 28, 2003.¹⁹

On October 7, 2002, in connection with the Exchange's corporate governance proposals, the Exchange filed a proposal with the Commission that would require shareholder approval for equity-compensation plans, making it unnecessary to continue the Pilot. That proposal was published in the *Federal Register* on October 11, 2002.²⁰ As directed by the Commission staff, the Exchange is requesting an extension of the effectiveness of the Pilot until June 30, 2003, or until such earlier date as the Exchange's proposal relating to shareholder approval of equity-compensation plans is approved by the Commission.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,²¹ which requires, among other things, that an Exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster

cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

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

The Exchange has 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

Because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²² and Rule 19b-4(f)(6)²³ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)²⁴ normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. The Exchange seeks to have the proposed rule change become operative on or before February 28, 2003, in order to allow the Pilot to continue in effect on an uninterrupted basis. In addition, under Rule 19b-4(f)(6)(iii), the Exchange is required to provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter time as designated by the Commission. The Commission has waived the five-day pre-notice requirement for this proposed

rule change. In addition, for the reasons discussed below, the Commission has also waived the thirty-day operative date requirement for this proposed rule change.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change, which will extend the Pilot through June 30, 2003, or such earlier date as the NYSE's pending rule proposal requiring shareholder approval of equity-compensation plans²⁶ is approved by the Commission, become operative on February 28, 2003. The Commission notes that unless the Pilot is extended, the Pilot will expire and the provisions of Sections 312.01, 312.03, and 312.04 of the Exchange's Listed Company Manual that were amended in the Pilot will revert to those in effect prior to June 4, 1999. The Commission believes that such a result could lead to confusion.

The Commission recognizes that the Pilot has generated many comment letters from commenters that do not support the NYSE's definition of "broadly-based" stock option plans under the Pilot.²⁷ The Commission also notes that many commenters were critical of the NYSE's existing rules on broadly-based plans prior to the adoption of the original Pilot. As noted above, if the Pilot is not extended, the rules prior to the Pilot will go into effect. The proposed rule change merely extends the duration of the Pilot for only a short period of time and does not deal with the substantive issues presented by the Pilot itself.

The Commission notes that once the Exchange's proposed rule change relating to shareholder approval of equity compensation plans has been approved by the Commission, those approved rules will supercede this Pilot because the concept of "broadly-based" stock option plans will no longer be retained in the Exchange's shareholder approval rules.

Based on these reasons, the Commission has determined that it is consistent with the protection of investors and the public interest that the proposed rule change, which will extend the Pilot through June 30, 2003, or such earlier date as the NYSE's pending rule proposal requiring shareholder approval of equity-compensation plans is approved by the Commission, become operative on

¹⁵ See Securities Exchange Act Release No. 43111 (August 2, 2000), 65 FR 49046 (August 10, 2000) (notice of filing of File No. SR-NYSE-00-32) ("2000 Extension Request").

¹⁶ See Securities Exchange Act Release Nos. 43329 (September 22, 2000), 65 FR 58833 (October 2, 2000) (notice of filing and immediate effectiveness of File No. SR-NYSE-00-38); 43647 (November 30, 2000), 65 FR 77407 (December 11, 2000) (notice of filing and immediate effectiveness of File No. SR-NYSE-00-52); and 44018 (February 28, 2001), 66 FR 13821 (March 7, 2001) (notice of filing and immediate effectiveness of File No. SR-NYSE-2001-04).

¹⁷ See note 5 *supra*.

¹⁸ See note 6 *supra*.

¹⁹ See notes 7 through 13 *supra*.

²⁰ See note 3 *supra*.

²¹ 15 U.S.C. 78f(b)(5).

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f)(6).

²⁴ *Id.*

²⁵ 17 CFR 240.19b-4(f)(6)(iii).

²⁶ See note 3 *supra*.

²⁷ See Original Pilot Approval Order, note 4 *supra*.

February 28, 2003.²⁸ 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.

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 above-mentioned self-regulatory organization. All submissions should refer to the File No. SR-NYSE-2003-04 and should be submitted by March 26, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-5158 Filed 3-4-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47408; File No. SR-Phlx-2003-09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Index Option Charges

February 26, 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 February 19, 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 and II 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 by terminating the Index Option Book Charge of \$1000 per month on Phlx specialists in the Exchange's Sector Index Options ("Index Options"), and the \$2000 per month charge on Phlx specialists in the KBW Bank SectorSM ("BKXSM"), the Oil Service SectorSM ("OSXSM"), the Semiconductor SectorSM ("SOXSM") and the Gold and Silver SectorSM ("XAUSM"). The Index Option Book Charge became effective on January 2, 2003.³ The text of the proposed rule change is set forth below. Deleted text is in brackets.

Summary of Index Option Charges

Option Comparison Charge I (applicable to all trades—except specialist trades)

Registered Option Trader—\$.03 per contract

Firm (Proprietary and Customer Executions)—\$.04 per contract

Option Transaction Charge I

Customer Executions
Market value less than \$1.00*—\$.20 per contract

Market value \$1.00 or over*—\$.40 per contract

Firm **—\$.10 per contract

Registered Option Trade—\$.19 per contract

Specialist—\$.14 per contract

[Option Book Charge I

KBW Bank SectorSM—\$2,000 per month

Oil Service SectorSM

Semiconductor SectorSM

Gold and Silver SectorSM

All other Index Options—\$1,000 per month]

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.

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.

* Block transaction for customer executions of 500 to 999 contracts and 1000 contracts and more are eligible for a discount to such charges of 15% and 25% respectively from the stated rates upon submission to the PHLX of a customer option block discount request form with supportive documentation within thirty (30) days of monthly billing date.

** Non-clearing firm members' proprietary transactions are eligible for the "firm" rate based upon submission of a PHLX rebate request form with supportive documentation within thirty (30) days of invoice date.

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 III 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 terminate the Index Option Book Charge of \$1000 per month on Phlx specialists in the Exchange's Index

²⁸ For purposes only of accelerating the operative date of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ *See* Securities Exchange Act Release No. 47087 (December 23, 2002), 68 FR 146 (January 2, 2003).