

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁵

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Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47424; File No. SR-Phlx-2003-04]

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

February 28, 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 January 28, 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 ("ROT's") for the period from February through April 2003, for the top 120 options based on volume statistics from October, November, and December 2002,³ as set forth on the ROT Equity Option Payment for Order Flow Charges Schedule. The Phlx intends to implement the fees for trades settling on

February 1, 2003, through April 30, 2003. 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.⁴ Pursuant to the Phlx's current program, Phlx ROT's 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.⁵

1. Purpose

The purpose of the proposed rule change is to establish the payment for order flow fees for trades settling on or after February 1, 2003, through April 30, 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.

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 Act⁶ and in particular furthers the objectives of section 6(b)(4) of the Act⁷ 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 or 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 Act⁸ and rule 19b-4(f)(2) thereunder.⁹ 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

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Phlx's payment for order flow fee is assessed on ROT's 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. For example, for the period from February through April 2003, the measuring period for the top 120 options is based on volume statistics from October, November and December 2002. For the period from May through July 2003, the measuring period for the top 120 options will be based on volume statistics from January, February and March 2003. This cycle is scheduled to continue every three months, with a separate proposed rule change filed for each three-month period.

⁴ See Securities Exchange Act Release No. 47090 (December 23, 2002), 68 FR 141 (January 2, 2003) (SR-Phlx-2002-75).

⁵ 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.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).