

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.