

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

Currently, the Exchange imposes a flat \$0.35 per contract for broker-dealer transactions not executed via the AUTO-X feature of AUTOM,⁶ the Exchange's automated options trading system. The intent of the present fee change is to add breakpoints above which the per contract charge for broker-dealer transactions will be reduced, thereby potentially attracting additional options business to the Exchange, particularly large transactions. For example, under the proposal (i) a transaction of 1,700 contracts will be charged \$0.35 per contract, (ii) a transaction of 2,500 contracts will be charged \$0.25 per contract for all contracts, and (iii) a transaction of 3,500 option contracts will be charged \$0.25 for each of the first 3,000 contracts and \$0.20 for each of the remaining 500 contracts.⁷ Footnote 10 of the Exchange's fee schedule is also being amended to change the term "orders" to "transactions."

The purpose of the proposed rule change is to generate additional revenue for the Exchange by attracting additional order flow through lowering the cost of executing certain large block equity option transactions. The proposed rule change should also make the Exchange's fees for trading equity option contracts on the Phlx more competitive with other options exchanges.

⁶ 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. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO-X. 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.

⁷ Of course, the contra-side to a transaction may also be subject to transaction and other charges.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,⁸ in general, and furthers the objectives of section 6(b)(4) of the Act,⁹ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members. The Exchange believes the proposal is reasonable and equitable because it decreases transaction costs for broker-dealers executing equity options transactions on the Exchange.

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

The Exchange 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

No written comments were either solicited or received.

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

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act¹⁰ and rule 19b-4(f)(2) thereunder.¹¹ 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 purpose 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

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78(s)(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(2).

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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Phlx-2003-26 and should be submitted by May 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47714; File No. SR-Phlx-2003-25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Automatic Price Improvement for Buy Orders in Securities Exempt for the Short Sale Rule

April 22, 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 April 3, 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 Phlx. 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 Supplementary Material .07 to Phlx rule 229 to modify the Exchange's Automatic Price Improvement ("API") program to allow specialists to choose to improve buy orders in securities that are exempted from or otherwise not subject to rule 10a-1 under the Act³ (the "Short Sale rule").

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.10a-1.