

thereunder because the proposal: (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; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>11</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. Nasdaq has requested that the Commission waive the 30-day pre-operative waiting period because the processing described by this proposal is already operative in SuperMontage during the trading day and Nasdaq believes that designating the proposal as immediately effective and operative will ensure that formal notice of this processing during the SuperMontage opening is provided to market participants as soon as practicable.

The Commission, consistent with the protection of investors and the public interest, has waived the 30-day operative date requirement for this proposed rule change, and has determined to designate the proposed rule change as operative on April 24, 2003, the date of filing of Amendment No. 1 to the proposed rule change, in order to allow Nasdaq to provide notice to its members of this aspect of the Nasdaq opening process immediately.<sup>12</sup> 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>13</sup>

<sup>10</sup> As required under Rule 19b-4(f)(6)(iii), Nasdaq provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f)

<sup>13</sup> For purposes of determining the effective date of the filing and calculating the 60-day abrogation period, the Commission considers the period to

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 Amex. All submissions should refer to File No. SR-NASD-2003-38 and should be submitted by May 27, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 03-11014 Filed 5-2-03; 8:45 am]

**BILLING CODE 8010-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47750; File No. SR-Phlx-2003-16]

#### Self-Regulatory Organizations; Notice of Filing of Amendment No. 2 to Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Charges to Members for Orders Entered Through the Intermarket Options Linkage

April 28, 2003.

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 March 18, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a

commence on April 24, 2003, the date that Nasdaq filed Amendment No. 1.

<sup>14</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.

proposed rule change,<sup>3</sup> as described in Items I, II, and III below, which Items have been prepared by the Phlx. On March 21, 2003, Phlx filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The proposed rule change, as amended by Amendment No. 1, was originally published for comment in the **Federal Register** on April 2, 2003.<sup>5</sup> On April 23, 2003, Phlx filed Amendment No. 2 to the proposed rule change.<sup>6</sup> On April 23, 2003, Phlx filed a supplementary letter to Amendment No. 2.<sup>7</sup> The Commission is publishing this notice to solicit comments on Amendment No. 2 to the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In the Original Filing, Phlx proposed to amend its fee schedule to set forth charges applicable to Principal Orders sent to the Exchange via the Intermarket Options Linkage ("Linkage"). In the proposed fee schedule attached to the Original Filing, floor brokerage assessments (which do not apply to Linkage orders) were not accurately described.<sup>8</sup> In addition, in a separate filing, Phlx amended its fee schedule on April 11, 2003 to modify the fees applicable to broker/dealers for non-AUTO-X trades.<sup>9</sup> Previously, the fee was \$.35 per contract. Now, the fee ranges from \$.35 per contract to \$.20 per contract, depending on the number of contracts.<sup>10</sup> In the Original Filing, Phlx

<sup>3</sup> See letter from Richard S. Rudolph, Director and Counsel, Phlx to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 17, 2003 ("Original Filing").

<sup>4</sup> See letter from Richard S. Rudolph, Director and Counsel, Phlx to Jennifer Lewis, Attorney, Division, Commission, dated March 20, 2003 ("Amendment No. 1").

<sup>5</sup> See Securities Exchange Act Release No. 47561 (March 21, 2003), 68 FR 15250.

<sup>6</sup> See letter from Richard S. Rudolph, Director and Counsel, Phlx to Jennifer Lewis, Attorney, Division, Commission, dated April 22, 2003 ("Amendment No. 2").

<sup>7</sup> See letter from Richard S. Rudolph, Director and Counsel, Phlx to Jennifer Lewis, Attorney, Division, Commission, dated April 22, 2003.

<sup>8</sup> In the Original Filing, the Option Floor Brokerage Assessment was set forth as 5% of net floor brokerage income. The current Option Floor Brokerage Assessment is 5% of net floor brokerage income for brokers with monthly net brokerage income of \$0 to \$300,000; 6.5% of net floor brokerage income for brokers with monthly net brokerage income of \$301,000 to \$500,000; and 7.5% of net floor brokerage income for brokers with monthly net brokerage income of \$500,001 and over.

<sup>9</sup> See Securities Exchange Act Release No. 47715 (April 23, 2003), 68 FR 22446 (April 28, 2003).

<sup>10</sup> The fee is \$.35 per contract for up to 2,000 contracts, \$.25 per contract for between 2,001 and 3,000 contracts; and \$.20 per contract above 3,001

Continued