

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

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*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47148; File No. SR-Phlx-2002-79]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Application Fee and the ETP Application Fee

January 9, 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 December 17, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III 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 to increase its current Application Fee from \$200 to \$350, and to delete the reference to the separate ETP Application Fee.

#### 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 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

##### 1. Purpose

The purpose of the proposed rule change is to amend the Exchange's schedule of dues, fees and charges to increase its current Application Fee to \$350 in order to generate additional revenue. The Exchange currently charges a \$200 Application Fee for applications handled by the Exchange's Membership Services Department, including applications for Exchange membership and foreign currency options ("FCO") participation and for other applications including for approval as a seat lessor or as an inactive nominee.<sup>3</sup> The Application Fee is charged only upon the first such approval and is non-recurring; however, a lapse for six months or more necessitates the payment of an Application Fee for reapplication. For example, if a member ceases to be a member on January 1st and applies on or after July 1st of that year to once again become a member, an Application Fee will be charged. Application Fees are used to help offset Exchange clerical and administrative expenditures related to application processing including, but not limited to, regulatory background checks, registration and fingerprint card processing.<sup>4</sup>

Similarly, a \$200 ETP Application Fee is charged to applicants for equity trading permits ("ETPs") who, at the time application is made, are not Exchange members or FCO participants.<sup>5</sup> The Exchange proposes to delete the \$200 ETP Application Fee from the fee schedule and to simply apply the Application Fee discussed in the previous paragraph to ETP applications to the same extent the Application Fee applies to membership applications. This proposal is intended to remove unnecessary complexity and duplication from the Exchange's fee schedule in order to avoid confusion.

<sup>3</sup> Under Exchange rules a lessor need not be an Exchange member. See Phlx Rule 931, Approved Lessor.

<sup>4</sup> The Exchange has not designated the Application Fee as eligible for the Monthly Member Credit. See Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (approving SR-Phlx-2001-49). The Monthly Member Credit allows Exchange members to receive a monthly credit of up to \$1,000 to be applied against certain fees, dues, charges and other such amounts.

<sup>5</sup> See Securities Exchange Act Release No. 45523 (March 8, 2002), 67 FR 11738 (March 15, 2002).

##### 2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of section 6(b)(4) of the Act<sup>7</sup> in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members and issuers and other persons using its facilities, in particular, in that it fairly allocates costs associated with application processing to those individuals and firms making such applications. The proposal also simplifies the fee schedule by eliminating the reference to the separate ETP Application Fee.

#### 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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

<sup>10</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.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).