

Any fees, credits, discounts and other charges in the Exchange's fee schedule which are based upon an equity specialist's specialist activity apply to competing specialists.

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¹ However, this charge applies where an order, after being delivered to the Exchange by the PACE system is executed by the specialist by way of an outbound commitment, when such outbound ITS commitment reflects the PACE order's clearing information, but does not apply where a PACE trade was executed against an inbound ITS commitment.

² This charge does not apply to transactions in Nasdaq-100 Index Tracking StockSM [and] SPDRs and DIAMONDS®.

³ Applies to each member who derives at least 80% of gross income generated from Phlx floor based activities from his/her floor brokerage business conducted on the Exchange. Floor brokerage business conducted on the Exchange includes orders that are received on the Phlx, even if those orders are executed on an exchange other than the Phlx. The 5% floor brokerage assessment is waived until Dec. 31, 2003 and is scheduled to be reinstated Jan. 1, 2004.

⁴ This fee will only apply when the specialist sends an order received over PACE to ITS and receives an execution, if the specialist used the PACE customer's clearing information on the outbound ITS commitment.

⁵ This credit will include all inbound and outbound ITS executions, including both PACE and non-PACE and both proprietary and customer commitments.

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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, the Exchange 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 III 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

The purpose of the proposed rule change is to adopt a license fee that will apply to trading DIAMONDS on the Exchange. The Exchange recently determined to begin trading DIAMONDS. The license fees should help off-set licensing fees incurred by the Exchange associated with the trading of these products on the Exchange.

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 that charging members that trade these

products a licensing fee is an equitable means of recovering a portion of the licensing fees incurred by the Exchange.¹⁰

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 Act¹¹ and Rule 19b-4(f)(2) thereunder.¹² At any time within 60 days of the filing of the proposed rule change, the Commission

¹⁰ With regard to the distinction between Customer PACE and Non-PACE license fees, the Exchange states that it is consistent with its current practice to not impose customer charges for equity transactions delivered through PACE, but to impose customer charges for Non-PACE executions. See, e.g., Securities Exchange Act Release Nos. 47385 (February 20, 2003), 68 FR 10295 (March 4, 2003) (SR-Phlx-2003-06); 44381 (June 1, 2001), 66 FR 31264 (June 11, 2001) (SR-Phlx-2001-57); and 43776 (December 28, 2000), 66 FR 1166 (January 5, 2001) (SR-Phlx-2000-103). Also, consistent with its current practice, the Exchange charges customer transaction fees and specialist transaction fees at different rates. See, e.g., Securities Exchange Act Release Nos. 44381 (June 1, 2001), 66 FR 31264 (June 11, 2001) (SR-Phlx-2001-57); 47109 (December 30, 2002), 68 FR 841 (January 7, 2003) (SR-Phlx-2002-78); and 42332 (January 12, 2000), 65 FR 3517 (January 21, 2000) (SR-Phlx-2000-59).

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

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 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-2003-20 and should be submitted by May 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-9035 Filed 4-11-03; 8:45 am]

Editorial Note: Due to numerous footnote errors, this document is being reprinted in its

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹³ 17 CFR 200.30-3(a)(12).