

Plan, regulatory trading halts instituted by Nasdaq would be honored by exchanges trading Nasdaq securities on an unlisted trading privileges basis ("UTP Exchanges") and the NASD's Alternative Display Facility ("ADF") participating in the Reporting Plan (collectively, "Plan Participants"). The Commission understands that Nasdaq and the other Plan Participants are still discussing this issue. The Commission believes that an agreement would need to be reached among the Plan Participants on this subject before trading halts instituted by Nasdaq under the proposed rule would be considered "regulatory" trading halts under the Reporting Plan. Thus, approval of the proposed rule change, as amended, does not resolve the issue of whether a trading halt instituted by Nasdaq under the proposed rule constitutes a "regulatory" trading halt under the Reporting Plan.

The Commission finds good cause for approving proposed Amendment No. 2 before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. Nasdaq filed Amendment No. 2 to further clarify the manner in which Nasdaq envisions implementing the proposed rule change. The Commission believes the substance of Amendment No. 2 does not warrant republication of the proposed rule change as amended. Therefore, the Commission finds good cause for accelerating approval of the proposed rule change, as amended by Amendment No. 2.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether Amendment No. 2 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 Amendment No. 2 that are filed with the Commission, and all written communications relating to Amendment No. 2 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 NASD. All submissions should refer to file number SR-NASD-2001-75 and should be submitted by June 27, 2003.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act¹², that the proposed rule change (SR-NASD-2001-75), as amended by Amendment No. 1, be, and it hereby is, approved, and that Amendment No. 2 to the proposed rule change be, and hereby is, approved on an accelerated basis.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-14295 Filed 6-5-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47958; File No. SR-Phlx-2002-87]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. and Amendment No. 1 Thereto Relating to the Imposition of a 500 Contract Cap on Payment for Order Flow Fees

May 30, 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 December 26, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III, below, which the Phlx has prepared. The Phlx submitted Amendment No. 1 to the proposed rule change on May 29, 2003. 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 Phlx proposes to amend its options payment for order flow program by imposing a 500 contract cap per individual cleared side of a transaction. Specifically, the applicable payment for order flow fee would not apply to any contracts over 500, per individual cleared side of a transaction. For example, if a transaction consists of 750 contracts by one Registered Options Trader ("ROT"), the applicable payment for order flow fee would be applied to,

and capped at, 500 contracts for that transaction. Also, if a transaction consists of 600 contracts, but is divided equally among three ROTs, the 500 contract cap would not apply to any such ROT and each ROT would be assessed the applicable payment for order flow fee on 200 contracts, as the payment for order flow fee is assessed on a per ROT, per transaction basis.³ The Phlx is proposing to implement the 500 contract cap for trades settling on or after June 2, 2003.⁴

The text of the proposed rule change is available at the Phlx and at the Commission.

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 had 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

The Phlx recently filed a rule change with the Commission to reinstate its payment for order flow program.⁵ Under

³ Currently, specialists may request reimbursement for payment for order flow funds in connection with any transactions to which they were not a party, based on the percentage of ROT monthly volume to total specialist and ROT monthly volume. The 500 contract cap would be imposed in connection with calculating the amount of the payment for order flow fee, and not for determining the percentage of ROT monthly volume to total specialist and ROT monthly volume.

⁴ The proposed rule change specifies that the Phlx's fee schedule, entitled "Exchange's ROT Equity Option Payment for Order Flow Charges," are subject to a 500 contract cap, by individual cleared side of a transaction. The Phlx's original rule change proposal included a fee schedule that was current as of December 2002 but has been superseded by more recent schedules. The Phlx submitted Amendment No. 1 to the proposed rule change to indicate the current fee schedule and to propose that the cap be implemented for trades settling on or after June 2, 2003. See letter from Cindy Hoekstra, Counsel, Philadelphia Stock Exchange, to Patrick Joyce, Senior Counsel, Commission, dated May 29, 2003.

⁵ See Securities Exchange Act Release No. 47090 (December 23, 2002), 68 FR 141 (January 2, 2003) (SR-Phlx-2002-75). The rule change proposal, which originally included the 500-contract cap that is the subject of the current proposal, became effective immediately upon filing with the Commission in November 2002. In December 2002, the Phlx amended the filing to remove the 500-

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.