

the program, Phlx ROTs are assessed a payment for order flow fee, per contract, per options issue, as set forth in the Phlx's ROT Equity Option Payment for Order Flow Charges Schedule, subject to certain exceptions.⁶

1. Purpose

The purpose of the proposed rule change is to establish a 500 contract cap, which the Phlx believes is reasonable and equitable because capping each trade with a 500 contract cap should provide sufficient payment for order flow funds for the specialists while lessening the economic burden on ROTs.⁷ In the Phlx's view, the imposition of a cap should provide increased liquidity and encourage competition in markets where ROTs may otherwise not be able to compete. Moreover, the Phlx believes that the absence of a cap would cause ROTs to incur expenses that may impair their ability to participate in a larger share of the market.

2. Statutory Basis

The Phlx believes that its proposal to amend its schedule of dues, fees and charges is consistent with section 6(b) of the Act⁸ and furthers the objectives of sections 6(b)(4) and 6(b)(5) of the Act.⁹ The Phlx believes that the proposed rule change would serve as an equitable allocation of reasonable fees among Phlx members because the 500 contract cap per individual cleared side of a transaction imposed in connection with the payment for order flow fee should lessen the economic burden on ROTs. Moreover, the Phlx believes that the 500 contract cap should attract more order flow to the Phlx, which should result in increased liquidity, tighter markets, and more competition among exchange members, thereby promoting just and equitable principles of trade, removing impediments to and perfect the

mechanism of a free and open market, and protecting investors and the public interest consistent with section 6(b)(5) of the Act.¹⁰

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

The Phlx 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

The Phlx did not solicit or receive written comments concerning the proposal.

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

Within 35 days of the date 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 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 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 Phlx. All submissions should refer to File No. SR-Phlx-2002-87 and should be submitted by June 27, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47953; File No. SR-Phlx-2003-16]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Accelerating Approval of Amendment No. 3 Thereto, by the Philadelphia Stock Exchange, Inc., Relating to a Pilot Program for Options Intermarket Linkage Fees

May 30, 2003.

On March 18, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its fee structure to clarify which fees apply to trades pertaining to the options intermarket linkage ("Linkage") and to specify that such fees are for a one-year pilot.³ On March 21, 2003, Phlx submitted Amendment No. 1 to the proposed rule change.⁴ The proposed rule change, as amended by Amendment No. 1, was originally published for comment in the **Federal Register** on April 2, 2003.⁵ On April 23, 2003, Phlx filed Amendment No. 2 to the proposed rule change.⁶ On April 23, 2003, Phlx filed a supplementary letter to Amendment No. 2.⁷ Amendment No. 2 was published for comment in the

contract cap. Accordingly, the 500 contract cap was in effect for only those trades executed on or after November 18 that settled through December 31, 2002.

⁶ The payment for order flow fee does not apply to transactions between: (1) A ROT and a specialist; (2) a ROT and a ROT; (3) a ROT and a firm; and (4) a ROT and a broker-dealer. Also, the payment for order flow fee does not apply to index or foreign currency options.

⁷ According to the Phlx, the imposition of a monetary cap has been implemented by other exchanges in connection with payment for order flow programs. See, e.g., Securities Exchange Act Release Nos. 45240 (January 7, 2002), 67 FR 1531 (January 11, 2002) (SR-PCX-2001-53) (implementing a ceiling on marketing charges of \$200 per trade); 46976 (December 9, 2002), 67 FR 77116 (December 16, 2002) (SR-ISE-2002-26) (lowering the cap on each payment for order flow fund from \$650,000 to \$550,000).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and 78f(b)(5).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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").

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

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

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

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