

30, 2004, while the Exchange phases in its new trading platform for options. The Commission believes that it is appropriate to grant accelerated approval to the proposal in order to ensure continuous operation of this feature of PCX's current framework for the automatic execution of options orders.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹² that the proposed rule change (SR-PCX-2003-15) is hereby approved on an accelerated basis, as a pilot program scheduled to expire on June 30, 2004.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48034; File No. SR-Phlx-2003-41]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to an Increase in the Technology Fee

June 16, 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 May 30, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Phlx. 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 schedule of dues, fees, and charges to increase its technology fee from \$150 per month to \$950 per month for Phlx members. The text of the proposed rule change is available at the Office of the

Secretary, the Phlx, and 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 received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx proposes to amend its schedule of dues, fees, and charges to increase its technology fee from \$150 per month to \$950 per month for Phlx members. The technology fee is currently assessed on members as well as on foreign currency options participants who do not also hold legal title to a Phlx membership.³ The current proposal will assess the \$950 proposed technology fee on Phlx members. A foreign currency options participant who does not also hold legal title to a Phlx membership will continue to be assessed the current technology fee of \$150 per month, and not the increased fee of \$950 per month.

In addition, the Exchange intends to amend a footnote related to its technology fee, which appears on its schedule of dues, fees, and charges, to clarify that foreign currency options participants that hold legal title to an Exchange membership are assessed the technology fee in their capacity as a Phlx member and not additionally in their capacity as a foreign currency options participant.⁴ The Exchange

³ A foreign currency options participant who also holds legal title to a Phlx membership is only assessed the fee once—in his or her capacity as a Phlx member. For example, a foreign currency options participant who also holds legal title to a Phlx membership is currently assessed a total of \$150 per month for the technology fee. Under this proposal, a total of \$950 per month would be assessed for the technology fee. Equity Trading Permit holders/organizations are not assessed the technology fee. See Securities Exchange Act Release No. 45480 (February 26, 2002), 67 FR 10029 (March 5, 2002) (SR-Phlx-2002-10).

⁴ The Phlx revised the footnote in its schedule of dues, fees, and charges from what it had originally proposed in this rule filing. The footnote relating to the technology fee will now state the following: "Foreign currency options participants who also hold legal title to a Phlx membership are assessed the technology fee in their capacity as a Phlx member, for that membership, and not additionally

intends to implement this fee effective June 1, 2003."⁵

The Phlx states that the technology fee was originally instituted to reflect the costs of needed upgrades to the operating systems on the Exchange's trading floors, system software modifications, year 2000 modifications, and hardware upgrades. Also, system development costs for new risk management systems, order handling rule revisions, specialized quote feeds, and new products were captured by this fee.⁶ Now, in addition to its original purpose, the Exchange believes the revenue generated from the technology fee should provide for a source of general funds to be used, for example, in connection with other technology-related capital and expenses, such as the purchasing, leasing, and maintenance of equipment and software, programming costs, outside vendor charges, communications costs, and debt service for funds borrowed in relation to the foregoing.

The Exchange believes an increase in the technology fee is reasonable and necessary to support the ongoing efforts and deployment of technology to facilitate trading and remain competitive. In addition, the Exchange believes that assessing the \$950 per month technology fee on members and the \$150 per month technology fee on foreign currency options participants who do not hold legal title to a Phlx membership is equitable in that the additional revenue generated from the increased technology fee is intended to be mainly used to facilitate trading on the equity and options floors, and not the foreign currency options trading floor.

The purpose of amending the footnote that accompanies the technology fee entry on the fee schedule is to clarify that foreign currency options participants that hold legal title to a Phlx membership are assessed the

in their capacity as a foreign currency options participant. ETP holders/organizations are not assessed the technology fee." Telephone conversation between Cynthia Hoekstra, Counsel, Phlx, and Mia C. Zur, Attorney, Division of Market Regulation ("Division"), Commission, on June 12, 2003.

⁵ The technology fee had heretofore been eligible for a monthly credit of up to \$1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. See Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR-Phlx-2001-49). This credit program expired effective May 2003. The Exchange intends to file a separate proposed rule change to remove references to the member credit throughout the entire schedule of dues, fees and charges.

⁶ See Securities Exchange Act Release Nos. 45289 (January 16, 2002), 67 FR 3525 (January 24, 2002) (SR-Phlx-2001-117), and 38394 (March 12, 1997), 62 FR 13204 (March 19, 1997) (SR-Phlx-97-09).

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.