

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48032; File No. SR-Phlx-2003-42]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Payment for Order Flow Fees Assessed on Registered Options Traders

June 13, 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 a proposed rule change with the Securities and Exchange Commission ("Commission"). The proposed rule change is described in Items I, II and III below, which the Phlx has prepared. The Phlx has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under section 19(b)(3)(A)(ii) of the Act,³ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its payment for order flow fees imposed on the transactions of Phlx Registered Options Traders ("ROT's") for the equity options currently ranked two through fifty.⁴ The fees for the equity options ranked from two through fifty will decrease from \$0.50 per contract to \$0.40 per contract. The fee for the top-

ranked equity option will remain at \$1.00 and the fee for equity options ranked 51 through 120 will remain at \$0.00. No other changes to the Phlx's payment for order flow program are being made at this time.⁵

The Phlx intends to implement the attached payment for order flow fees for trades settling June 1, 2003 through July 31, 2003.⁶

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

1. Purpose

The Phlx previously filed a proposed rule change with the Commission to reinstate its payment for order flow program.⁷ Pursuant to the Phlx's current program, ROTs are assessed a payment for order flow fee on the 120 most actively traded equity options, on a per-contract, per-options issue basis, as set forth on the Phlx's ROT Equity Option Payment for Order Flow Charges Schedule.⁸

⁵ Therefore, the top 120 options currently in effect will remain the same through July 31, 2003. No recalculation of the top 120 options is being done at this time.

⁶ The Exchange previously filed a proposed rule change to establish the payment for order flow fees for the time period May 1, 2003 through July 31, 2003. See Securities Exchange Act Release No. 47805 (May 6, 2003), 68 FR 25669 (May 13, 2003) (SR-Phlx-2003-34). This proposal seeks to amend the payment for order flow fees within this three-month cycle, specifically for transactions settling on June 1, 2003 through July 31, 2003. Thereafter, consistent with the Phlx's payment for order flow program, the Phlx will file with the Commission a proposed rule change to address any changes to its fee schedule for subsequent time periods.

⁷ See Securities Exchange Act Release No. 47090 (December 23, 2002), 68 FR 141 (January 2, 2003) (SR-Phlx-2002-75).

⁸ 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. Indeed, because the primary focus of the program is to attract order flow from customers, the payment for order flow fee is not imposed on the above-specified transactions. Also, the payment for order flow fee does not apply to index or foreign currency options.

The purpose of the proposed rule change is to encourage additional volume in the most actively traded equity options ranked two through fifty by decreasing the payment for order flow fee assessed on ROTs from the current rate of \$0.50 per contract to \$0.40 per contract. The reduced fee, applicable to trades settling from June 1, 2003 through July 31, 2003, should promote additional liquidity in those options by reducing the ultimate costs incurred by the ROTs in connection with trading these options.

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 Act⁹ in general, and furthers the objectives of section 6(b)(4) of the Act¹⁰ in particular, in that it is an equitable allocation of reasonable fees among Phlx members.

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

The Phlx does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Phlx neither solicited nor received written comments with respect to the proposal.

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

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act¹¹ and subparagraph (f)(2) of Rule 19b-4 thereunder,¹² because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days after the filing of the proposed rule change, the Commission 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 purposes of the Act.

IV. Solicitation of Comments

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

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ The Phlx's payment for order flow fee is assessed on ROTs on the top 120 most actively traded equity options in terms of the total number of contracts that are traded nationally, based on volume statistics provided by the Options Clearing Corporation. The measuring periods for the top 120 options are calculated every three months. See Securities Exchange Act Release No. 47424 (February 28, 2003), 68 FR 11168 (March 7, 2003) (SR-Phlx-2003-04). For the payment for order flow fees imposed on trades settling on or after May 1, 2003 through July 31, 2003, the measuring period for the top 120 options was based on volume statistics from January, February and March 2003. See Securities Exchange Act Release No. 47805 (May 6, 2003), 68 FR 25669 (May 13, 2003) (SR-Phlx-2003-34).