

the proposed rule change is to permit any existing member of EMCC who no longer meets the capital requirements set forth in Section 6 to also have the capital of an affiliate be included in calculating the member's continuance requirements provided that the affiliate enters in a similar form of guaranty.

EMCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it will permit members to have the same standards applicable to their participation in EMCC as Applicants have.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

EMCC does not believe that the proposed rule change would have an impact on or impose a burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments from EMCC members have not been solicited or received on the proposed rule change.

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

Within thirty five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety 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 the 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. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-EMCC-2003-01. This file number should be included on the subject line if e-mail is used. To help us process and

review comments more efficiently, comments should be sent in hardcopy or by e-mail, but not by both methods. 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 Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of EMCC. All submissions should refer to the File No. SR-EMCC-2003-01 and should be submitted by August 19, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>3</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-48206; File No. SR-Phlx-2003-45]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Volume Threshold for the Options Specialist Shortfall Fee**

July 22, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 25, 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>3</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

The Phlx proposes to amend its Equity Option Specialist Deficit (Shortfall) fee ("shortfall fee") to reduce the total national monthly contract volume threshold associated with the shortfall fee from the current rate of 14 percent to 12 percent for specialists trading in any Top 120 Option.<sup>3</sup>

Currently, specialists<sup>4</sup> are required to reach a total national monthly contract volume threshold of 14 percent in order not to be charged a shortfall fee by the Phlx.<sup>5</sup> Under this proposal, the total national monthly contract volume threshold would be reduced to 12 percent.

The current rate of \$0.35 per contract and other procedures relating to shortfall fee, including the Specialist Deficit (Shortfall Fee) Credit, remain unchanged at this time.<sup>6</sup>

The Exchange intends to implement the 12 percent total national monthly contract volume threshold for transactions settling on or after July 1, 2003.<sup>7</sup>

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

<sup>3</sup> A Top 120 Option is defined as one of the 120 most actively traded equity options in terms of the total number of contracts in that option that were traded nationally for a specified month, based on volume reflected by the Options Clearing Corporation.

<sup>4</sup> The Exchange uses the terms "specialist" and "specialist unit" interchangeably herein.

<sup>5</sup> See Securities Exchange Act Release No. 45322 (January 22, 2002), 67 FR 3927 (January 28, 2002) (SR-Phlx-2001-115).

<sup>6</sup> A shortfall credit of \$0.35 per contract may be earned toward previously-imposed shortfall fees for each contract traded in excess of the 14 percent volume threshold during a subsequent monthly time period. See Securities Exchange Act Release No. 45322 (January 22, 2002), 67 FR 3927 (January 28, 2002) (SR-Phlx-2001-115). The Exchange intends to file a separate proposed rule change to eliminate the shortfall credit and to clarify the application of the credit while it was in effect.

<sup>7</sup> The shortfall 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.