

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 the statements.

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

The Phlx recently reinstated its payment for order flow program.⁶ Under the program, the Phlx charges ROTs a per-contract fee with respect to their transactions in the top 120 most actively traded equity options issues, subject to certain exceptions.⁷ The fees are set forth in the Phlx's ROT Equity Option Payment for Order Flow Charges Schedule.

1. Purpose

The purpose of the proposed rule change is to establish the applicable payment for order flow fees for the top 120 options for trades settling on or after August 1, 2003 through October 31, 2003. The Phlx will file with the Commission a proposed rule change to address changes to the fee schedule for subsequent time periods. The Phlx is not making any other changes to its payment for order flow program at this time.

2. Statutory Basis

The Exchange believes that this proposal to amend its schedule of dues, fees and charges would be an equitable allocation of reasonable fees among Phlx members, and that the proposal is consistent with section 6(b) of the Act⁸ and furthers the objectives of section 6(b)(4) of the Act.⁹

⁶ See Securities Exchange Act Release No. 47090 (December 23, 2002), 68 FR 141 (January 2, 2003) (SR-Phlx-2002-75).

⁷ The payment for order flow fee does not apply to specialist transactions or 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. According to the Phlx, the fee is not imposed with respect to the above-specified transactions because the primary focus of the payment for order flow program is to attract order flow from customers. The payment for order flow fee also does not apply to index or foreign currency options.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

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

The Exchange 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 neither solicited nor received written comments on this proposal.

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

The foregoing proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act¹⁰ and Rule 19b-4(f)(2) thereunder.¹¹ Accordingly, the proposal has taken effect upon filing with the Commission. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the 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, 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-2003-50 and should be submitted by August 19, 2003.

¹⁰ 15 U.S.C. 78(s)(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48207; File No. SR-Phlx-2003-47]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Equity Option Specialist Deficit (Shortfall) Fee

July 22, 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 June 27, 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.

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 amend the Equity Option Specialist Deficit (Shortfall) fee ("shortfall fee") to impose a limit of \$10,000 to the specialist³ on the monthly amount of the shortfall fee for any Top 120 Equity Option,⁴ provided that the market share effected on the Phlx for a Top 120 Option is equal to or greater than 50 percent of the current total national monthly contract volume threshold ("volume threshold") in effect. As of July 1, 2003, the volume threshold is 12 percent in most cases.⁵

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange uses the terms "specialist" and "specialist unit" interchangeably herein.

⁴ 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 OCC.

⁵ An exception to the volume threshold amount relates to a transition period for newly listed options, which is described in Footnote 9.