

Currently, the Exchange imposes a fee of \$0.35 per contract to be paid by the specialist trading any Top 120 Option if at least 14 percent of the total national monthly contract volume for such Top 120 Option is not effected on the

Exchange in that month.⁶ Effective July 1, 2003, the Exchange intends to reduce the volume threshold rate to 12 percent.⁷ Therefore, as of July 1, 2003, for each month, if a specialist unit trades an amount equal to or greater

than 6 percent of the total national market share, the shortfall fee will be imposed, but limited to \$10,000.⁸

For example:

	Specialist market share for one month (in percent)	Full shortfall fee at 12%	Shortfall fee under new proposal
Scenario No. 1	9.1	⁹ \$18,976	\$10,000
Scenario No. 2	8.8	14,851	10,000
Scenario No. 3	5.6	10,916	10,916
Scenario No. 4	5.4	21,944	21,944

The current rate of \$0.35 per contract and other procedures relating to the shortfall fee, including the Specialist Deficit (Shortfall Fee) Credit, remain unchanged at this time.¹⁰

The Exchange intends to implement the monthly shortfall fee limited at \$10,000, as described above, for transactions settling on or after July 1, 2003.¹¹

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. 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 purpose of the proposed rule change is to reduce the burden on specialists who are competing for order flow in the national market in the Top 120 Options. Limiting the monthly amount of the shortfall fee to \$10,000, provided that the specialist unit garners at least 50 percent of the current volume threshold, should encourage specialists to continue to compete for market share in the Top 120 Options, while reducing the economic burden on specialists and eliminating a potential significant liability provided certain lower volume thresholds are achieved.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,¹² in general, and furthers the objectives of section 6(b)(4) of the Act,¹³ in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members.

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

No written comments were either solicited or received.

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act¹⁴ and subparagraph (f)(2) of Rule 19b-4¹⁵ thereunder. At any time within 60 days of 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.

⁶ See Securities Exchange Act Release No. 45322 (January 22, 2002), 67 FR 3927 (January 28, 2002) (SR-Phlx-2001-115).

⁷ The Exchange recently submitted a proposed rule change to the Securities and Exchange Commission to lower the volume threshold from the current rate of 14 percent to 12 percent, effective for transactions settling on or after July 1, 2003. See SR-Phlx-2003-45.

⁸ Pursuant to the Exchange's current shortfall fee program, the shortfall fee is imposed in stages for newly listed options, such that the requisite volume threshold is three percent for the first full calendar month of trading and six percent for the second full calendar month of trading. Under the current proposal, the requisite volume threshold of three percent and six percent would remain unchanged, however, the \$10,000 limit would apply if at least 1.5 percent of the total national monthly contract volume was reached in the first calendar month of trading and at least three percent of the total national monthly contract volume was reached in

the second full calendar month of trading. See Securities Exchange Act Release No. 43201 (August 23, 2000), 65 FR 52465 (August 29, 2000) (SR-Phlx-00-71).

⁹ For example, the detailed figures for scenario number one are as follows: with a hypothetical total volume of 1,886,569 contracts and total Phlx volume of 172,172 contracts, Phlx target of 12 percent of total national would equal 226,388 contracts (1,886,569 × 12 percent). The volume shortfall in contracts is 54,216 (226,388 - 172,172). Therefore, the shortfall fee totals \$18,976 (54,216 × \$.35). However, the shortfall fee owed to the Exchange by the specialist, pursuant to this proposal, would be limited to \$10,000 because the specialist reached 9.1 percent, which is at least 50 percent (i.e. greater than 6 percent) of the total volume threshold of 12 percent.

¹⁰ 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.

¹¹ 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.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁵ 17 CFR 240.19b-4(f)(2).