

with respect to the rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at NSCC's principal office. All submissions should refer to File No. SR-NSCC-2002-10 and should be submitted by February 21, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47245; File No. SR-Phlx-2002-88]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Equity Transaction Charge

January 24, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),<sup>1</sup> and rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 31, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 Exchange proposes to amend its schedule of dues, fees and charges to clarify the definition of a trade that utilizes the Phlx's Automated Communication and Execution System ("PACE") as it relates to the imposition of the Exchange's equity transaction

value charge.<sup>3</sup> Currently, the Exchange's equity transaction value charge is assessed based on total shares per transaction,<sup>4</sup> with the exception of specialist trades and PACE trades.<sup>5</sup> The Exchange proposes to define with greater specificity a PACE trade in order to clarify the imposition of the equity transaction value charge, as it relates to PACE trades only.

First, the Exchange proposes to clarify that the equity transaction value charge applies in situations where an order, after being delivered to the Exchange by the PACE system, is executed by way of an outbound Intermarket Trading System ("ITS") commitment,<sup>6</sup> when such outbound ITS commitment reflects the PACE order's clearing information (and not the specialist's clearing information).<sup>7</sup> In this situation, the trade is not considered to be a PACE trade for purposes of the equity transaction value charge and thus, becomes subject to this charge.

Secondly, the Exchange proposes to clarify that the equity transaction value charge does not apply where a PACE trade was executed against an inbound ITS commitment. The execution (on the Phlx) against an inbound ITS commitment is considered a PACE trade and therefore, the equity transaction value charge does not apply to these transactions.

Thirdly, the Exchange proposes to rebate to any members who were charged an equity transaction value charge for PACE trades that were executed against an inbound ITS commitment for the months of September, October, November and December 2002.

Lastly, the Exchange proposes to rename the title of the "equity transaction value charge" to the "equity transaction charge," (hereinafter referred to as "equity transaction charge") because it is now a share-based charge and not a value-based charge.

<sup>3</sup> PACE is the Exchange's order routing, delivery, execution, and reporting system for its equity-trading floor. See Exchange rules 229, Philadelphia Stock Exchange Automated Communication and Execution System, and 229A, Operation of PACE System When Competing Specialists Are Trading.

<sup>4</sup> See Securities Exchange Act Release No. 46874 (November 21, 2002), 67 FR 71226 (November 29, 2002).

<sup>5</sup> See Securities Exchange Act Release No. 44381 (June 1, 2001), 66 FR 31264 (June 11, 2001).

<sup>6</sup> The ITS means the application of the System that permits intra-day trading in Eligible Listed Securities between Participant markets as set forth in the ITS Plan. See Exchange rule 2001, Intermarket Trading System.

<sup>7</sup> If the outbound ITS commitment reflects the specialist's clearing information, the equity transaction value charge does not apply because it does not apply to specialist trades.

The text of the proposed rule change is available at the principal offices of the Phlx and at 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 Exchange included statements concerning the purpose of, and the 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 Exchange 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 clarify the Exchange's Summary of Equity Charges as it relates to the Exchange's equity transaction charge. The Exchange believes that not charging members the equity transaction charge for PACE trades that are executed against an inbound ITS commitment should encourage greater use of the PACE system, which in turn should promote a more active and liquid equities market. Also, this clarification should help to avoid any member confusion.

The Exchange believes that, for the purposes of this fee, a PACE trade executed by way of an outbound ITS commitment, when such ITS commitment reflects the PACE order's clearing information, does not receive a PACE execution, and therefore the equity transaction charge should apply.<sup>8</sup>

Previously, the Exchange's billing system charged an equity transaction value charge for PACE trades executed against an inbound ITS commitment due to the difficulties in identifying executions of orders in this manner. Due to advances in billing, the Exchange can now more readily identify PACE trades that are executed against inbound ITS commitments. The Exchange believes that by not charging an equity transaction value charge and by providing a rebate, as described above, for the months of September through

<sup>8</sup> Charging an equity transaction charge for PACE orders sent over ITS with the PACE order's clearing information attached is consistent with the Exchange's Outbound ITS Fee. See Securities Exchange Act Release No. 45388 (February 4, 2002), 67 FR 6310 (February 11, 2002).

<sup>10</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.