

("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 30, 2003, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which the CHX has prepared. On August 22, 2003, the CHX filed Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended, has been filed by Phlx under Rule 19b-4(f)(2) under the Act.⁴ The Commission is publishing this notice to solicit comments on the

proposed rule change, as amended, from interested persons.

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

The CHX proposes to amend its membership dues and fees schedule (the "Fee Schedule"), effective August 1, 2003, to (1) modify the Fee Schedule by reducing transaction fees for executions through floor brokers (and market makers) that exceed specific thresholds, while eliminating the caps previously associated with those transaction fees;

(2) re-bill fees associated with the use of the NYFIX system⁵ that exceed \$15,000 each month to floor brokers, based on their use of the system; and (3) modify the floor broker earned credit program to permit floor brokers to receive additional earned credits if certain events occur.

The text of the proposed rule change is below. Proposed additions are in *italics* and proposed deletions are in [brackets].

MEMBERSHIP DUES AND FEES

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F. Transaction and Order Processing Fees

1.-3.(No change to text)

4. Transaction Fees

a.-d.(No change to text).

e. In Nasdaq/NM securities, agency executions executed through a floor broker and market maker executions. \$.0025 per share (up to a maximum of \$100 per side), *subject to the fee reduction described in (i), below.*

f. In Dual Trading System issues, agency executions executed through a floor broker and market maker executions. \$.0035 per share (up to a maximum of \$100 per side), *subject to the fee reduction described in (i), below.*

g. (No change to text)

h. [Effective January 1, 2003,] The monthly maximum[s] for transaction fees for orders sent via MAX is \$10,000 or, if less, \$.40 per 100 average monthly gross round lot shares.

[(1) Maximum monthly transaction fees for orders via MAX]

[\$10,000]

[(2) Maximum monthly transaction fee for transactions in NASDAQ/NMS Securities (other than transactions included in (1) above)]

[\$110,000]

[(3) Maximum monthly transaction fee for transactions in Dual Trading System Securities (other than transactions included in (1) above)]

[\$110,000]

[(4) Maximum monthly transaction fees shall not exceed the lesser of that specified in (1), (2) or (3) above, or \$.40 per 100 average monthly gross round lot shares.]

i. *Effective August 1, 2003, the per-share fees described in (e) and (f) above will be reduced on shares traded above a total monthly charge of \$150,000 (within each section) as follows:*

Fees are reduced by 25% on additional shares traded that would otherwise generate a total monthly charge above \$150,000 and below \$200,000;

Fees are reduced by 50% on additional shares traded that would otherwise generate a total monthly charge at or above \$200,000 and below \$250,000; and

Fees are reduced by 75% on additional shares traded that would otherwise generate a total monthly charge at or above \$250,000.

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H. EQUIPMENT, INFORMATION SERVICES AND TECHNOLOGY CHARGES

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NYFIX Network and Connection Charges All NYFIX charges above \$15,000 per month will be re-billed monthly to member firms that access the NYFIX network, based on the proportion of each firm's use of the network during the month.

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M. Credits

1. (No change to text)

2. Floor Broker Credits

a. **Earned Credits.** Total monthly fees owed by a floor broker to the Exchange will be reduced by the application of the following Earned Credit (and floor brokers will be paid each month for any unused credits):

Earned Credit—Average Daily Billable Shares × Average Rate per Billable Share × Credit Percentage × 8.

In calculating the above Earned Credit, the following definitions shall apply:

"Average Daily Billable Shares" means, for a given month, (i) Total Billable Shares in Month divided by (ii) Total Trading Days in Month.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Ellen J. Neely, Senior Vice President and General Counsel, CHX to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 20, 2003 ("Amendment No. 1"). In Amendment No. 1, the

CHX submitted a new Form 19b-4, which replaced the original filing in its entirety.

⁴ 17 CFR 240.19b-4(f)(2). For purposes of calculating the sixty-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on

August 22, 2003, the date CHX filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

⁵ NYFIX USA, LLC provides equipment, software and network services that route orders among subscribers to the system and that help subscribers manage the orders they receive.