

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 provide that fees, dues, discounts, credits and charges that apply to Phlx remote competing specialists will also be applicable to Phlx remote primary specialists.³ The text of the proposed rule change is available at the Office of the Secretary, 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 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

On August 6, 2002, in connection with the planned commencement of the Exchange's remote competing specialist program, the Exchange amended its fee schedule to specify fees, dues, discounts, credits and charges applicable to Phlx remote competing specialists.⁴ Because at that time the

Exchange's remote specialist program was to be limited to remote competing (as opposed to primary) specialists, that proposed rule change applied only to remote competing specialists.⁵

The Commission recently approved a proposed rule change to expand Phlx's remote specialist program to include remote primary specialists in addition to remote competing specialists.⁶ The purpose of this proposed rule change is to extend the same fees, dues, discounts, credits and charges applicable to remote competing specialists to remote primary specialists.⁷ According to the Exchange, the revenue generated by these fees will enhance the Exchange's ability to provide a marketplace for its remote primary and competing specialists and other members. Accordingly, the text of Appendix A of the Exchange's fee schedule is amended by the deletion of the word "competing" in footnote 22. Also, the term "RS" (for "Remote Specialist") is substituted for the term "RCS" (for "Remote Competing Specialist") in the reference to the "Regular ETP RCS Fee."⁸ All existing references to "Remote Specialists" on Appendix A will now be construed to

commencement of the remote competing specialist program. The Exchange noted in that filing that certain of its current dues, fees and charges are assessed for privileges the Exchange extends with respect to, and services it provides on, the physical equity trading floor. These fees include the Trading Post/Booth Fee; Trading Post with Kiosk Fee; the Kiosk Construction Fee; the Contoller Space Fee; the Floor Facility Fees; the Direct Wire to the Floor Fee; the Telephone System Line Extensions Fee; the Quotron Equipment Fee; the Instinet, Reuters Equipment Fee; the Trading Floor Personnel Registration Fee; the Computer Equipment Services, Repairs or Replacements Fee and the Computer Relocation Requests Fee. The Exchange represents that it does not charge these fees to remote specialists.

⁵ See Phlx Rule 461, PACE Remote Specialist, and Securities Exchange Act Release No. 45184 (December 21, 2001), 67 FR 622 (January 4, 2002) (order approving File No. SR-Phlx-2001-98).

⁶ See Securities Exchange Act Release No. 48816 (November 20, 2003), 68 FR 66912 (November 28, 2003) (order approving File No. SR-Phlx-2003-10). In SR-Phlx-2003-10, the Exchange proposed to amend its rules to permit "primary specialists" to trade away from the Phlx floor, on a remote basis, in limited circumstances. That filing was approved by the Commission on November 20, 2003.

⁷ A related proposed rule change has been filed by Stock Clearing Corporation of Philadelphia with the Commission to amend its schedule of dues, fees and charges as it relates to remote specialists. See File No. SR-SCCP-2003-06.

⁸ Currently, the Regular ETP RCS Fee of \$1,000.00 per month is charged in lieu of the Regular ETP Fee for equity trading permit holders whose Exchange business is limited to operating as a remote competing specialist. The Exchange now proposes to charge that fee in lieu of the Regular ETP Fee for equity trading permit holders whose Exchange business is limited to operating as a remote competing or remote primary specialist or both, and to change the name of the fee accordingly to the "Regular ETP RS Fee."

include both remote primary specialists and remote competing specialists.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with section 6(b) of the Act⁹ in general, and furthers the objectives of section 6(b)(4) of the Act¹⁰ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members. The Exchange represents that the proposal is designed to enable it to provide a competitive marketplace for its members.

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

No written comments were either solicited or received.

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 Act¹¹ and Rule 19b-4(f)(2)¹² thereunder. Accordingly, the proposal will take effect upon filing with the Commission. 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.

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. All comment letters should refer to File No.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78(s)(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

³ Subsection (b)(5) of Phlx Rule 229A, Operation of PACE System when Competing Specialists are Trading, provides in part that "Primary Specialist" shall mean the primary specialist identified as such by the Equity Allocation, Evaluation and Securities Committee. Subsection (b)(6) of Phlx Rule 229A provides in part that "Competing Specialist" shall mean any competing specialist identified as such by the Equity Allocation, Evaluation and Securities Committee pursuant to Phlx Rule 460. Phlx Rule 460, Procedures for Competing Specialists, sets forth procedures for applying to become a competing specialist as well as competing specialists' obligations.

⁴ See Securities Exchange Act Release No. 46392 (August 21, 2002), 67 FR 55294 (August 28, 2002) (File No. SR-Phlx-2002-45) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Fees for Remote Competing Specialists). In that filing, the Exchange adopted a number of new fees applicable to members and member organizations in connection with their remote competing specialist operations, and amended the existing exemption of certain member organizations operating on the Exchange's trading floor from the Exchange's Examinations Fee in light of the