

Section 6(b)(5) of the Act<sup>8</sup> in that it is designed to promote just and equitable principles of trade, to remove impediments to, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

#### *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**

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> 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.

The Exchange has requested that the Commission waive both the 5-day notice and the 30-day operative delay. The Commission believes waiving the 5-day notice and 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through May 31, 2003, and allow the Commission to further study the trading of Nasdaq/NM securities in subpenny increments. For these reasons, the Commission designates the proposal to be effective

and operative upon filing with the Commission.<sup>11</sup>

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 CHX. All submissions should refer to file number SR-CHX-2003-02 and should be submitted by March 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-47383; File No. SR-Phlx-2002-79]**

#### **Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Application Fee and the ETP Application Fee**

February 20, 2003.

On December 17, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and rule 19b-4 thereunder,<sup>2</sup> a

<sup>11</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>12</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.

proposed rule change relating to its Application and ETP Application Fees. Notice of the proposed rule change was published for comment in the **Federal Register** on January 17, 2003.<sup>3</sup> No comments were received on the proposed rule change.

In order to generate additional revenue, the Exchange has proposed to amend its schedule of dues, fees and charges to increase its current Application Fee from \$200 to \$350. The Exchange also proposes to delete a separate reference to the ETP Application Fee in order to prevent confusion.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>4</sup> Specifically, the Commission believes that the proposal is consistent with section 6(b)(4) of the Act,<sup>5</sup> in that it equitably allocates reasonable dues, fees, and other charges among Exchange members and issuers and other persons using its facilities, and that it fairly allocates costs associated with application processing to those individuals and firms making such applications.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>6</sup> that the proposed rule change (File No. SR-Phlx-2002-79) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### **DEPARTMENT OF TRANSPORTATION**

#### **Research and Special Programs Administration**

#### **Office of Hazardous Materials Safety; Notice of Application for Modification of Exemption**

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of Applications for Modification of Exemptions.

<sup>3</sup> See Securities Exchange Act Release No. 47148 (January 9, 2003), 68 FR 2614.

<sup>4</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).