

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50832; File No. SR-Phlx-2004-62)

December 9, 2004

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change To Waive the Options Specialist Shortfall Fee for One Specialist Unit That Did Not Have a Specialized Quote Feed in Place

On September 23, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to waive the options specialist shortfall fee for the period May 2004 through August 2004 for one specialist unit that did not have a specialized quoted feed in place that could price an option accurately for any option where the primary volume in the underlying security shifted to another market. The proposed rule change was published for comment in the Federal Register on November 1, 2004.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 50591 (October 26, 2004), 69 FR 63427.

securities exchange⁴ and, in particular, the requirements of Section 6 of the Act⁵ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁶ which requires that the rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Commission believes that failure to grant the proposed waiver would result in an inequitable application of the Exchange's options specialist shortfall fee for one particular specialist that, because of a unique situation, did not have a specialized quote feed in place for the period from May 1, 2004 through August 31, 2004. The Commission's decision to approve this waiver from the Phlx specialist shortfall fee is limited in scope to this particular specialist at this time.⁷

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act⁸, that the

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

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(4).

⁷ The waiver of the options specialist shortfall fee in this instance is fact-specific. Future requests for similar waivers, should any arise, must be filed for notice and comment pursuant to Section 19(b) of the Act. 15 U.S.C. 78s(b). See also, March 27, 2003 letter from Annette L. Nazareth, Director, Division of Market Regulation, Commission, to T. Grant Callery, Executive Vice President and General Counsel, National Association of Securities Dealers.

⁸ 15 U.S.C. 78s(b)(2).

proposed rule change (SR-Phlx-2004-62) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

J. Lynn Taylor
Assistant Secretary

⁹ 17 CFR 200.30-3(a)(12).