

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49751; File No. SR-Phlx-2004-25)

May 21, 2004

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 30, 2004, the Philadelphia Stock Exchange, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. On May 13, 2004, the Exchange submitted Amendment No. 1 to the proposal.³ The proposed rule change, as amended, has been filed by the Phlx as establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act⁴ and Rule 19b-4(f)(2) thereunder,⁵ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Mark I. Salvacion, Director & Counsel, Phlx, to Nathan H. Saunders, Attorney, Division of Market Regulation, Commission, dated May 12, 2004 (“Amendment No. 1”). In Amendment No. 1, the Exchange revised the filing to clarify the purpose of the proposed rule change and to correct a typographical error in the text of the proposed rule change.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

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 increase certain broker-dealer equity option transaction charges for orders delivered through the Philadelphia Stock Exchange Automated Options Market ("AUTOM") System⁶ to \$.45 per contract, without regard to whether such contracts are executed automatically or manually. The Exchange has implemented this fee on transactions settling on or after May 1, 2004. All other equity option transaction charges remain unchanged. Below is the text of the proposed rule change, as amended. Proposed new language is in italics; language to be deleted is in brackets.

SUMMARY OF EQUITY OPTION CHARGES

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OPTION TRANSACTION CHARGE

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Broker/Dealer¹¹ (AUTOM-delivered) \$.45 per contract

Broker/Dealer^{11,12} (non-[AUTO-X]AUTOM-delivered) and Linkage "P" Orders^{12,13}

Up to 2,000 contracts \$.35 per contract

Between 2,001 and 3,000 contracts \$.25 per contract (for all contracts)

Residual above 3,000 contracts \$.20 per contract above 3,000 contracts

⁶ AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. See Exchange Rule 1080.

(with the first 3,000 contracts charged

\$.25 per contract)

[Broker/Dealer¹³ (AUTO-X)

\$.45 per contract]

* * * * *

¹¹ For the purpose of this Summary of Equity Option Charges, this charge applies to members for transactions, received from other than the floor of the Exchange, for any account (i) in which the holder of beneficial interest is a member or non-member broker-dealer or (ii) in which the holder of beneficial interest is a person associated with or employed by a member or non-member broker-dealer. This includes transactions for the account of an ROT entered from off-floor.

¹² See footnote 11. [Fees for linkage “P” Orders are subject to a pilot program scheduled to expire July 31, 2004.]

¹³ [See footnote 11.] Fees for linkage “P” Orders are subject to a pilot program scheduled to expire July 31, 2004.

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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

The purpose of the proposed rule change is to establish a uniform charge for all broker-dealer orders delivered via AUTOM, regardless of whether those orders are executed automatically or manually. Currently, the Exchange charges fees for broker-dealer orders based on the method of execution: transactions that are executed automatically are charged \$.45 per contract⁷ and transactions that are executed manually are charged up to \$.35 per contract.⁸ Under the current proposal, broker-dealer orders will be charged based on the method of delivery. Orders delivered via AUTOM will be charged \$.45 per contract, regardless of whether they receive automatic or manual execution. Non-AUTOM delivered orders, consisting of manually delivered floor broker orders, including orders transmitted by the Floor Broker Management System ("FBMS"),⁹ and Linkage "P" orders,¹⁰ will continue to be charged up to \$.35 per contract, depending on the size of the order.

⁷ See Securities Exchange Act Release No. 47109 (December 30, 2002), 68 FR 841 (January 7, 2003)(SR-Phlx-2002-78).

⁸ See Securities Exchange Act Release No. 47715 (April 22, 2003), 68 FR 22446 (April 28, 2003)(SR-Phlx-2003-26).

⁹ See Exchange Rule 1063(e) and Exchange Rule 1080, Commentary .06.

¹⁰ See Securities Exchange Act Release No. 47953 (May 30, 2003), 68 FR 34027 (June 6, 2003)(SR-Phlx-2003-16). Fees for linkage "P" orders are subject to a pilot program scheduled to expire on July 31, 2004.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹² in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members relating to the automatic delivery of off-floor broker-dealer orders. The Exchange believes the proposal is reasonable and equitable because it equalizes transaction costs for broker-dealers delivering orders to the Exchange via AUTOM, without regard to the manner in which they are executed.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act¹³ and Rule 19b-4(f)(2) thereunder,¹⁴ because it changes a fee imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 240.19b-4(f)(2).

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.¹⁵

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. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2004-25 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-Phlx-2004-25. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

¹⁵ For purposes of calculating the 60 day abrogation period, the Commission considers the period to have begun on May 13, 2004, the date on which the Phlx submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2004-25 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).