

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

Securities Exchange Act of 1934
Release No. 50420 / September 22, 2004

In the Matter of:)
The Philadelphia Stock)
Exchange, Inc.)
(File Nos. SR-Phlx-2004-50 and)
SR-Phlx-2004-56))

)

ORDER
OF
SUMMARY
ABROGATION

Notice is hereby given that the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(3)(C) of the Securities Exchange Act of 1934 (“Act”),¹ is summarily abrogating certain proposed rule changes of the Philadelphia Stock Exchange, Inc. (“Phlx”).

On July 29, 2004, the Phlx filed SR-Phlx-2004-50. On August 16, 2004, the Phlx submitted Amendment No. 1 to the proposed rule change.² On August 18, 2004, the Phlx submitted Amendment No. 2 to the proposed rule change.³ The proposed rule change, as

¹ 15 U.S.C. 78s(b)(3)(C).

² See letter from Cynthia K. Hoekstra, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (“Division”), Commission, dated August 13, 2004 (“Amendment No. 1”). Amendment No. 1 replaced the original proposed rule change in its entirety.

³ See letter from Richard S. Rudolph, Director and Counsel, Phlx, to David Liu, Attorney, Division, Commission, dated August 18, 2004 (“Amendment No. 2”). Amendment No. 2 deleted all references to the proposed \$0.05 per contract charge

amended, modified the Phlx's schedule of dues, fees, and charges to revise its equity option payment for order flow program by (1) charging a \$0.35 per contract (for all equity options other than options on the QQQ) or a \$1.00 per contract (for options on the QQQ) equity option payment for order flow fee on transactions by Phlx's Registered Options Traders ("ROTs") when they trade with a customer; (2) permitting specialists to opt in or out of the program by notifying the Exchange in writing at least five business days prior to the start of the month; and (3) combining the payment for order flow fees collected from ROTs in one account to form a "pool" from which specialists may request reimbursement for the amounts that they pay to order flow providers to send order flow to the Exchange. The filing was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.⁴

On August 16, 2004, the Phlx filed SR-Phlx-2004-56. The proposed rule change amended the Phlx's schedule of dues, fees, and charges to revise its equity option payment for order flow program by (1) requiring a specialist unit to pay equity option payment for order flow fees in a given month at the same rate as ROTs if the specialist unit elects to participate in the program and does not pay a specified percentage of the total amount of equity option payment for order flow funds collected from ROTs in the options for which that specialist unit is acting as the specialist, and (2) providing that specialist units may opt out of the equity option payment for order flow program, as long as they notify the Exchange in writing by the 15th day of the month. The filing was

for broker-dealer (AUTOM-delivered) transactions and replaced the proposed rule text contained in Amendment No. 1 in its entirety.

⁴ 15 U.S.C. 78s(b)(3)(A).

immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.⁵

Pursuant to Section 19(b)(3)(C) of the Act,⁶ at any time within 60 days of the date of filing a proposed rule change pursuant to Section 19(b)(1) of the Act,⁷ the Commission may summarily abrogate the change in the rules of the self-regulatory organization and require that the proposed rule change be re-filed in accordance with the provisions of Section 19(b)(1) of the Act⁸ and reviewed in accordance with Section 19(b)(2) of the Act,⁹ 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 Commission believes that the above-referenced proposed rule changes raise serious questions as to whether they are consistent with the Act and with the protection of investors. Specifically, the proposed rule changes appear to raise serious questions as to whether they provide for the equitable allocation of reasonable dues, fees, and other charges among the Phlx's members and issuers and other persons using its facilities.¹⁰

Accordingly, the Commission believes that the procedures provided by Section 19(b)(2) of the Act¹¹ will provide a more appropriate mechanism for determining whether the proposed rule changes are consistent with the Act. Therefore, the

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 15 U.S.C. 78s(b)(3)(C).

⁷ 15 U.S.C. 78s(b)(1).

⁸ 15 U.S.C. 78s(b)(1).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78s(b)(2).

Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to abrogate the proposed rule changes.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(3)(C) of the Act,¹² that File Nos. SR-Phlx-2004-50 and SR-Phlx-2004-56 be, and they hereby are, summarily abrogated. If the Phlx chooses to re-file the proposed rule changes, it must do so pursuant to Sections 19(b)(1)¹³ and 19(b)(2) of the Act.¹⁴

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland
Deputy Secretary

¹² 15 U.S.C. 78s(b)(3)(C).

¹³ 15 U.S.C. 78s(b)(1).

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(58).