

SECURITIES AND EXCHANGE COMMISSION
(Release No. 50679; File No. SR-Phlx-2004-69)

November 16, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Amendments to the Summary of Index Option and FXI Options Charges Fee Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on October 29, 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 and II below, which Items have been prepared by Phlx. On November 16, 2004, Phlx filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to 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

Phlx proposes to amend its Summary of Index Option and FXI Options Charges fee schedule to: 1) increase the firm option transaction charge from \$.15 per contract to \$.20 per contract and more clearly identify the types of firm option transaction charges; 2) assess a \$.40 per contract option transaction charge for customer executions (regardless of the premium); 3) eliminate the block transaction discount for customer executions; and 4) make minor

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4

³ Amendment No. 1 made clarifying and technical corrections to the proposed changes to the Summary of Index Option and FXI Options Charges fee schedule. See infra, note 4.

amendments to the Exchange's Summary of Index Option and FXI Options Charges fee schedule to more accurately reflect current Exchange charges.

Specifically, the Exchange will increase the current firm option transaction charge from \$.15 per contract to \$.20 per contract. The Exchange also proposes to separate the reference to the firm option transaction charge into "firm/proprietary" and "firm/proprietary facilitation" charges (collectively "firm-related transaction charges") in order to more clearly delineate the specific types of firm-related transaction charges.⁴

The Exchange also proposes to amend the index option transaction charges for customer executions. Currently, the Exchange charges an index option transaction charge for customer executions at two rates: \$.20 per contract when the premium⁵ is less than \$1.00, and \$.40 per contract when the premium is \$1.00 or over. The Exchange proposes to charge an index option transaction charge of \$.40 per contract for all customer executions, regardless of the premium. In addition, the Exchange proposes to eliminate the related block transaction discounts of 15 percent and 25 percent for customer executions of 500 to 999 contracts and 1000 contracts, respectively.⁶

⁴ No new types of transactions are being added to the firm-related transaction charges. In Amendment No. 1, Phlx corrected the proposed rule text to include a "+" symbol after the Firm/Proprietary Facilitation option transaction charge to indicate that the associated footnote regarding a maximum fee of \$50,000 relates to both firm/proprietary and firm/proprietary facilitation option transaction charges. Amendment No. 1 also made technical corrections to the footnote.

⁵ The premium appears on the Exchange's Summary of Index Option and FXI Options Charges fee schedule as "market value."

⁶ The block transaction discounts are available to Phlx members upon submission to the Exchange of a customer option block discount request form with supporting documentation within thirty days of the monthly billing date.

In addition, the Exchange proposes to make minor, technical amendments to its Summary of Index Option and FXI Options Charges fee schedule.

The proposal would become effective for transactions settling on or after November 1, 2004. The text of the proposed rule change is available at 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, 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. 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 increase the index option transaction charges as outlined in this proposal, which should, in turn, generate additional revenue for the Exchange. Also, increasing the firm-related transaction charges as described above will make Phlx charges more in line with similar charges imposed by other exchanges.⁷ The Exchange proposes to eliminate the block transaction discount as this discount is seldom used by members and has not had the desired effect of promoting and encouraging additional customer market participation. In addition, the purpose of making minor, technical amendments to the Summary

⁷ See Securities Exchange Act Release No. 42675 (April 13, 2000), 65 FR 21223 (April 20, 2000) (File No. SR-Amex-00-15), and Chicago Board Options Exchange, Inc. Index Options fee schedule dated October 1, 2004, located at www.cboe.com.

of Index Option and FXI Options Charges fee schedule is to more accurately describe the fees that are charged by the Exchange.⁸

2. Basis

The Exchange believes the proposed rule change is consistent with Section 6 of the Act,⁹ in general, and with Section 6(b)(4) of the Act,¹⁰ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange 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 become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹¹ and subparagraph (f)(2) of Rule 19b-4¹² thereunder, because it establishes or changes a due, fee, or other charge.

⁸ In addition, separating the current firm option transaction charges into two categories of "firm/proprietary" and "firm/proprietary facilitation transaction" fee will correspond to the firm-related transaction charges that appear on the Exchange's Summary of Equity Option Charges.

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

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.¹³

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-2004-69 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-2004-69. 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

¹³ See 15 U.S.C. 78s(b)(3)(C).

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 the filing also will be available for inspection and copying at the principal office of Phlx.

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-2004-69 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.¹⁴

Margaret H. McFarland
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).