

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 eliminate the Exchange's shortfall credit due to recent revisions to the Exchange's Specialist Deficit (Shortfall) fee program.<sup>6</sup> The Exchange no longer wishes to allow for a shortfall credit due to these recent changes. However, the Exchange also seeks to clarify the application of the shortfall credit during the time period during which it was in effect in order to minimize member confusion.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of section 6(b)(4) of the Act,<sup>8</sup> 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 Phlx 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 rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and

<sup>6</sup> See SR-Phlx-2003-45, submitted on June 25, 2003 and SR-Phlx-2003-47, submitted on June 27, 2003. These filings revised the shortfall fee by decreasing the total national monthly contract volume threshold from 14 percent to 12 percent for specialists trading any Top 120 Option and imposed a limit of \$10,000 to the specialist on the monthly amount of the shortfall fee for any Top 120 Option, provided certain conditions are met.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

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

subparagraph (f)(2) of Rule 19b-4<sup>10</sup> thereunder. 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.

**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. 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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-2003-48 and should be submitted by August 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-48205; File No. SR-Phlx-2003-50]**

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Payment for Order Flow Fees for the Top 120 Options**

July 22, 2003.

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> notice is hereby given that on July 11, 2003, 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 the Phlx has prepared. 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**

The Phlx proposes to establish its options payment for order flow fees imposed on the transactions of Phlx Registered Options Traders ("ROTs") for the period from August through October 2003 for the top 120 options based on volume statistics from April, May, and June 2003,<sup>3</sup> as set forth in the ROT Equity Option Payment for Order Flow Charges Schedule<sup>4</sup> and subject to certain exceptions listed below. The Phlx intends to implement the payment for order flow fees for trades settling on or after August 1, 2003 through October 31, 2003. The rate levels would not change: The top-ranked equity option would be charged a fee of \$1.00 per contract; the next 49 equity options would be charged a fee of \$.40 per contract;<sup>5</sup> and no fee would be imposed for the remaining equity options in the top 120. The ROT Equity Option Payment for Order Flow Charges Schedule is available at the Phlx and at the Commission.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Exchange's payment for order flow fee is imposed on transactions in the top 120 most actively traded equity options in terms of the total number of contracts that are traded nationally, based on volume statistics provided by the Options Clearing Corporation. The measuring period for the top 120 options encompasses three months, and the Phlx files a separate proposed rule change for each three-month trading period. With respect to the payment for order flow fees imposed on trades settling on or after May 1, 2003 through July 31, 2003, for example, the measuring period for the top 120 options was based on volume statistics from January, February, and March 2003. See Securities Exchange Act Release No. 47805 (May 6, 2003), 68 FR 25669 (May 13, 2003) (SR-Phlx-2003-34). For the payment for order flow fees imposed on trades settling on or after August 1, 2003 through October 31, 2003, as set forth in this proposal, the measuring period for the top 120 options is based on volume statistics from April, May, and June 2003.

<sup>4</sup> To avoid confusion, the ROT Equity Option Payment for Order Flow Charges Schedule reflects only those options being charged more than \$0.00.

<sup>5</sup> The fees for the equity options ranked from two through fifty recently decreased from \$0.50 per contract to \$0.40 per contract. See Securities Exchange Act Release No. 48032 (June 13, 2003), 68 FR 37194 (June 23, 2003) (SR-Phlx-2003-42).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

## 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 had 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 the statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Phlx recently reinstated its payment for order flow program.<sup>6</sup> Under the program, the Phlx charges ROTs a per-contract fee with respect to their transactions in the top 120 most actively traded equity options issues, subject to certain exceptions.<sup>7</sup> The fees are set forth in the Phlx's ROT Equity Option Payment for Order Flow Charges Schedule.

#### 1. Purpose

The purpose of the proposed rule change is to establish the applicable payment for order flow fees for the top 120 options for trades settling on or after August 1, 2003 through October 31, 2003. The Phlx will file with the Commission a proposed rule change to address changes to the fee schedule for subsequent time periods. The Phlx is not making any other changes to its payment for order flow program at this time.

#### 2. Statutory Basis

The Exchange believes that this proposal to amend its schedule of dues, fees and charges would be an equitable allocation of reasonable fees among Phlx members, and that the proposal is consistent with section 6(b) of the Act<sup>8</sup> and furthers the objectives of section 6(b)(4) of the Act.<sup>9</sup>

<sup>6</sup> See Securities Exchange Act Release No. 47090 (December 23, 2002), 68 FR 141 (January 2, 2003) (SR-Phlx-2002-75).

<sup>7</sup> The payment for order flow fee does not apply to specialist transactions or to transactions between: (1) A ROT and a specialist; (2) a ROT and a ROT; (3) a ROT and a firm; and (4) a ROT and a broker-dealer. According to the Phlx, the fee is not imposed with respect to the above-specified transactions because the primary focus of the payment for order flow program is to attract order flow from customers. The payment for order flow fee also does not apply to index or foreign currency options.

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

<sup>9</sup> 15 U.S.C. 78f(b)(4).

### 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

The Phlx neither solicited nor received written comments on this proposal.

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

The foregoing proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and Rule 19b-4(f)(2) thereunder.<sup>11</sup> Accordingly, the proposal has taken effect upon filing with the Commission. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the 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.

## 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. 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 Phlx. All submissions should refer to File No. SR-Phlx-2003-50 and should be submitted by August 19, 2003.

<sup>10</sup> 15 U.S.C. 78(s)(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

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

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48207; File No. SR-Phlx-2003-47]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Equity Option Specialist Deficit (Shortfall) Fee

July 22, 2003.

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> notice is hereby given that on June 27, 2003, 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 Exchange. 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

The Phlx proposes to amend its schedule of dues, fees and charges to amend the Equity Option Specialist Deficit (Shortfall) fee ("shortfall fee") to impose a limit of \$10,000 to the specialist<sup>3</sup> on the monthly amount of the shortfall fee for any Top 120 Equity Option,<sup>4</sup> provided that the market share effected on the Phlx for a Top 120 Option is equal to or greater than 50 percent of the current total national monthly contract volume threshold ("volume threshold") in effect. As of July 1, 2003, the volume threshold is 12 percent in most cases.<sup>5</sup>

<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.

<sup>3</sup> The Exchange uses the terms "specialist" and "specialist unit" interchangeably herein.

<sup>4</sup> A Top 120 Option is defined as one of the 120 most actively traded equity options in terms of the total number of contracts in that option that were traded nationally for a specified month, based on volume reflected by OCC.

<sup>5</sup> An exception to the volume threshold amount relates to a transition period for newly listed options, which is described in Footnote 9.