

Commentary .01 to Amex Rule 1000 which, under similar circumstances, requires delivery of a product description to purchasers of PDRs and was approved by the Commission in December 1992.²⁹ The Commission believes it is appropriate to approve this proposed provision at the same time as approving the generic standards because it establishes an important parallel requirement for Index Fund Shares that apply for listing under the proposed generic standards to that of PDRs. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act, to approve Amendment No. 1 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether this amendment 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 will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-00-14 and should be submitted by June 14, 2000.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,³⁰ that the proposed rule change (SR-Amex-00-14), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-13004 Filed 5-23-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42792; File No. SR-NASD-00-11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Amending Its Mediation Fee Structure

May 17, 2000.

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 March 9, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), 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 NASD Regulation. 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

NASD Regulation proposes to amend the Code of Arbitration Procedure ("Code") of the NASD to encourage the use of mediation, increase revenue by adjusting mediation fee schedules, and permit parties to agree to stay arbitrations in order to mediate their claims. The text of the proposed rule change follows. Proposed new language appears in *italics*; proposed deletions appear in *brackets*.

* * * * *

Rule 10205. Schedule of Fees for Industry and Clearing Controversies

(a)-(i) No change.

[(j) Each party to a matter submitted to a mediation administered by the Association where there is no Association arbitration proceeding pending shall pay an administrative fee of \$250. The parties to a mediation administered by the Association shall pay all of the mediator's charges, including the mediator's travel and other expenses. The charges shall be specified in the Submission Agreement and shall be apportioned equally among the parties unless they agree otherwise. Each party shall deposit with the Association their proportional share of the anticipated mediator charges and expenses, as determined by the Director

of Mediation, prior to the first mediation session. Mediator charges, except travel and other expenses, are as follows:

(1) Initial Mediation Session: \$600 or four (4) times the mediator's hourly rate agreed by the parties and the mediator; and

(2) Additional Mediation Sessions: \$150 per hour, or such other hourly rate agreed by the parties and the mediator.]

* * * * *

Rule 10332. Schedule of Fees for Customer Disputes

(a)-(h) No change.

[(i) Each party to a matter submitted to a mediation administered by the Association where there is no Association arbitration proceeding pending shall pay an administrative fee of \$150.]

[(j) The parties to a mediation administered by the Association shall pay all of the mediator's charges, including the mediator's travel and other expenses. The charges shall be specified in the Submission Agreement and shall be apportioned equally among the parties unless they agree otherwise. Each party shall deposit with the Association their proportional share of the anticipated mediator charges and expenses, as determined by the Director of Mediation, prior to the first mediation session. Mediator charges, except travel and other expenses, are as follows:

(1) Initial Mediation Session: \$600 or four (4) times the mediator's hourly rate agreed to by the parties and the mediator; and

(2) Additional Mediation Sessions: \$150 per hour, or such other hourly rate agreed to by the parties and the mediator.]

* * * * *

Rule 10403. Arbitration Proceedings

(a) Unless the parties agree otherwise, the submission of a matter for mediation shall not stay or otherwise delay the arbitration of a matter pending under this Code. *When the parties agree to stay the arbitration in order to mediate the claim, the arbitration proceeding shall be stayed, notwithstanding any provision to the contrary in this Code.*

(b) *If mediation is conducted through NASD Regulation, no adjournment fees will be charged for staying the arbitration proceeding in order to mediate.*³

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³ Note: the reference to NASD Regulation will be changed to NASD Dispute Resolution, Inc., when such new subsidiary becomes operational.

²⁹ See *supra*, note 15.

³⁰ 15 U.S.C. 78s(b)(2).

³¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Rule 10407. Mediation Fees

(a) *Filing Fees: Cases Filed Directly in Mediation.*

Each party to a matter submitted directly to a mediation administered by the Association shall pay an administrative fee to the Association in

the amounts indicated in the schedule below, unless such fee is specifically waived by the Director of Mediation.

<i>Amount in controversy</i>	<i>Customer and associated person fee</i>	<i>Member fee</i>	<i>Total fees</i>
<i>\$.01–\$25,000</i>	<i>\$50</i>	<i>\$150</i>	<i>\$200</i>
<i>\$25,000.01–\$100,000</i>	<i>150</i>	<i>300</i>	<i>450</i>
<i>Over \$100,000</i>	<i>300</i>	<i>500</i>	<i>800</i>

(b) *Filing Fees: Cases Initially Filed in Arbitration.*

When a matter is initially filed an arbitration and subsequently submitted

to a mediation administered by the Association, each party shall pay an administrative fee to the Association in

the amounts indicated in the schedule below, unless such fee is specifically waived by the Director of Mediation.

<i>Amount in controversy</i>	<i>Customer and associated person fee</i>	<i>Member fee</i>	<i>Total fees</i>
<i>\$.01–\$25,000</i>	<i>\$0</i>	<i>\$0</i>	<i>\$0</i>
<i>\$25,000.01–\$100,000</i>	<i>100</i>	<i>150</i>	<i>250</i>
<i>Over \$100,000</i>	<i>250</i>	<i>500</i>	<i>750</i>

(c) *Mediator Fees and Expenses.*

The parties to a mediation administered by the Association shall pay all of the mediator's charges, including the mediator's travel and other expenses. The charges shall be specified in the Submission Agreement and shall be apportioned equally among the parties unless they agree otherwise. Each party shall deposit with the Association its proportional share of the anticipated mediator charges and expenses, as determined by the Director of Mediation, prior to the first mediation session.

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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, NASD Regulation 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. NASD Regulation 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 proposed rule change is designed to encourage the use of mediation, especially in smaller cases, and to adjust mediation fee schedules. This proposed adjustment would be a first step toward making the NASD Regulation Mediation Program ("Mediation Program") financially self-sustaining. The proposed rule change would also permit parties to stay arbitrations by agreement in order to mediate the claim, and would eliminate the adjournment fees when parties conduct their mediation through NASD Regulation.

The NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Notice to Members announcing Commission approval.

Background. In 1995, NASD Regulation initiated a mediation program to provide an additional dispute resolution option for parties.⁴ Mediation is an informal, non-binding, voluntary process in which an impartial person, trained in facilitation and

negotiation techniques, helps the parties reach a mutually acceptable resolution. What distinguishes mediation from other forms of dispute resolution—principally, arbitration and litigation—is that the mediator does not impose a resolution on the parties, but rather works with the parties to create their own resolution. The settlement resulting from mediation, rather than arbitration or litigation, often saves the parties substantial time and expense.

The goal of the Mediation Program is to provide public customers, member firms, and associated persons with an alternative and effective means for resolving their disputes. Since its inception in 1995, over 3,500 cases have been submitted to the Mediation Program. By 1999, parties in twenty percent of all arbitration cases filed with NASD Regulation used mediation to help resolve their disputes.

The Mediation Program has been extremely successful, in terms of both settlement rates and customer satisfaction. Approximately eighty percent of the mediations settle within 60 to 90 days of the parties' formal agreement to mediate. Parties that used the Mediation program consistently express satisfaction with their experience, including those who have not ultimately reached full agreement. Sometimes parts of a dispute are resolved in mediation, leaving fewer issues to be resolved in arbitration. During the mediation, leaving fewer

⁴ See Securities Exchange Act Release No. 35990 (July 19, 1995), 60 FR 38384 (July 26, 1995), (SR–NASD–95–25).

issues to be resolved in arbitration. During the mediation process, the parties and their representatives gain a better understanding of their case. Improved lines of communication often place the parties in a better position to settle the case at a later stage.

The features that have contributed to the success of the Mediation Program include:

- The mediators on the roster are highly qualified and experienced. Prior to admission to the roster, mediators are carefully screened by NASD Regulation staff and by members of the National Arbitration and Mediation Committee. Formal multi-day mediator training and experience as a mediator are requirements of service. NASD Regulation's 850 mediators represent a cross-section of people from diverse cultures, professions, and backgrounds. Many have extensive knowledge of securities law and industry practices, and many are also arbitrators with training and experience in resolving securities matters.

- The NASD Regulation staff in the Office of Dispute Resolution ("ODR") performs a number of administrative services to facilitate the mediation. The staff works diligently to educate parties on the mediation process, to encourage them to mediate, to assist them in finding the best mediator for their case, and to ensure that the process runs smoothly. When one party expresses an interest in mediation, the ODR will contact the other party or parties, explain the mediation process, and answer any questions that arise. The ODR staff are trained to explain the benefits of mediation and to help bring all parties to the table. After conferring with the parties, the ODR will propose a list of several neutrals from its roster of experienced mediators who seem consistent with the parties' needs. The list is accompanied by a complete profile of each mediator. The parties may select their mediator from that list or ask for additional lists. The parties may also choose another mediator not on the list or from outside the Mediation Program roster. The staff works with the mediator and the parties to select a mutually convenient date and location for the mediation.

- Participation in the Mediation Program is voluntary. Parties choose whether, and at what point in the course of their case, to enter mediation.

- The Mediation Program is flexible and controlled by the engaged parties, who control the process, schedule, and outcome of the dispute. Parties may mediate before filing a formal claim or pleading in arbitration, or at any stage of the arbitration process. They may

submit all or some of the issues in dispute to mediation, including selected substantive or procedural issues such as the extent, nature, and schedule of discovery. The first session can be scheduled in a matter of days or weeks. Meetings can be conducted in person in over 50 cities in the United States and abroad, by telephone, video conference, or by any other method to which the parties and the mediator agree.

- Mediating through NASD Regulation is cost-effective. Most mediations are successfully concluded in less than a single day, resulting in lower attorney fees for the parties. Parties that choose to mediate may also avoid the fees for an arbitration hearing if they can settle before proceeding to a hearing. Finally, parties in mediation benefit by avoiding the discovery costs typically associated with other forms of dispute resolution.

Operating the Mediation Program. The Mediation Program is currently subsidized. There are fifteen employees, located in five offices, in ODR's mediation department. For 1999, the total direct expenses for the Mediation Program were approximately \$960,000, compared to \$100,000 in direct revenues, resulting in an annual program deficit of \$860,000. Because the Mediation Program has continued to grow steadily since its inception, NASD Regulation believes that this is an appropriate time to change the mediation fee structure.

The objective of the proposed rule change is to take preliminary steps toward making the Mediation Program financially self-sustaining while still keeping mediation as a cost-effective alternative to arbitration for parties with claims of any dollar value. NASD Regulation estimates that the proposed mediation fee package would generate income of \$640,000 on an annual basis, assuming a level number of case filings. These funds would be used to help offset the operational costs of the Mediation Program and to ensure the continuation of this valuable service. In addition, the fee adjustments should add incentives for parties to mediate smaller cases.

In addition to filing this proposed rule change, NASD Regulation has recently instituted another revenue-increasing measure which did not require a change to the Code. Mediators on the roster of the Mediation Program individually set the fees they charge parties on each case. The rates are usually hourly and vary depending upon a given mediator's background, experience, and reputation. NASD Regulation then assesses a fee for each hour that the mediator bills the parties. This fee defrays a part of the

costs the ODR incurs in providing services to mediators to administer the case.

Formerly, NASD Regulation charged mediators a fee of \$25 for each hour the mediator billed the parties. This fee was significantly less than the charges of other dispute resolution providers, including those of the American Arbitration Association and JAMS, and will remain significantly less even with the enhanced fees. Effective April 3, 2000, NASD Regulation has eliminated the flat rate in favor of a sliding rate tied to the mediator's hourly compensation. This fee schedule, in addition to other changes, is designed to encourage mediators to charge lower rates for small claims and to agree to handle some cases *pro bono*. The new rates are as follows:

Mediator's hourly rate	NASD regulation fee
<i>Pro Bono</i>	None.
Up to \$99.99	\$25.
\$100 to \$199.99	\$35.
\$200 and over	\$50.

Reduced Fees for Smaller Claims. NASD Regulation is committed to making mediation attractive to customers with smaller claims, that is, claims with less than \$25,000 in dispute. Mediation is especially well-suited to resolving small disputes. However, with most mediators' hourly rates at \$150 or more, mediation costs may exceed the parties' cost (exclusive of attorneys' fees) to arbitrate smaller claims. During 1997 and 1998, fewer than ten percent of all mediations involved claims of less than \$25,000.

NASD Regulation has recently asked its mediators to help reduce the cost of mediation for small cases by agreeing to charge reduced rates to mediate cases involving claims of \$25,000 or less. Specifically, it has suggested that mediators agree to charge \$50 an hour for mediations where the amount in dispute is less than \$25,000.

Mediators may set a limit on the number of reduced fee mediations they will conduct during a year. After a mediator serves the designated number of times, ODR staff will not propose his or her name for mediation of small claims for the remainder of the year, unless the mediator is willing to serve on more cases at the reduced rate.

Summary of Proposed Rule Change. The rules setting mediation filing fees are currently contained in Rules 10205 and 10332 of the Code, which primarily address intra-industry and customer arbitration fees, respectively. NASD Regulation proposes to delete the provisions relating to mediation fees

from the arbitration sections of the Code, and to include them in the Rule 10400 Series that pertains to mediation. Specifically, NASD Regulation would create a new rule, Rule 10407, entitled "Mediation Fees."

The proposed rule change includes three components. First, new Rule 10407(a) would replace the current flat fee with a sliding-scale schedule of fees for cases filed directly in mediation. Second, new Rule 10407(b) would require parties to pay a mediation case filing fee when they choose to use the Mediation Program after having initiated arbitration. Third, Rule 10403(a) would be changed to make clear that the parties in arbitration can agree to stay the proceeding in order to mediate their claims, and new Rule 10403(b) would be added to provide an incentive to use the Mediation Program rather than an alternative forum when mediation takes place after an arbitration has been filed.

Mediation Case Filing Fees for Cases Filed Directly in Mediation: Rule 10407(a). About fifteen percent of the 850 mediation cases filed annually are filed directly in mediation and result in a mediation administrative fee charged to parties. NASD Regulation currently charges \$150 per party for customer cases and \$250 per party for intra-industry cases, irrespective of the amount in dispute. These fees are currently found in Rules 10205(j) and 10332(i).

NASD Regulation proposes to replace the flat fee with a sliding scale fee schedule in new Rule 10407(a). The schedule has one column of filing fees for customers and associated persons, and another column for member firms. The filing fees are lowest for the smallest claims but increase as the amount in controversy increases.⁵

Customers in mediation whose cases involve up to \$25,000 in controversy would be charged only \$50, rather than the present filing fee of \$150. This is another measure that is intended to encourage the use of mediation for smaller claims. For claims between \$25,000 and \$100,000, customers would pay a filing fee of \$150, the same as in the current model. However, when the claim exceeds \$100,000, customers would pay a \$300 filing fee. As noted, this same schedule also applies to claims made by associated persons.

Fees also are adjusted for members. Under the proposed rule, for cases up to \$25,000 in controversy, members would continue to pay \$150, which is the

current flat rate for a customer dispute, but is lower than the current \$250 flat rate for intra-industry disputes. For claims between \$25,000 and \$100,000, the charge for members would increase to \$300, slightly higher than the current intra-industry rate under the flat fee schedule. For claims exceeding \$100,000, the member fee would increase to \$500. For all claims, regardless of the amount in dispute, customers and members would pay less under the proposal than the corresponding filing fees for arbitration.

Mediation Case Filing Fees for Cases Initially Filed in Arbitration: Rule 10407(b). For cases first filed in arbitration that later go to mediation—which amount to about eighty-five percent of all the NASD Regulation mediations—NASD Regulation currently waives all mediation case filing fees for the parties, as stated in Rules 10205(j) and 10332(i). NASD Regulation proposes to eliminate the fee waiver for all cases over \$25,000 and to charge mediation filing fees to parties choosing mediation after the arbitration case is already filed.

The ORD's mediation staff incurs expenses that are distinct from those incurred by its arbitration staff. For cases filed in arbitration first, the mediation staff expends a great deal of time educating the parties about the mediation alternative and attempting to encourage the parties to agree to mediate. NASD Regulation staff expends these efforts to encourage parties to mediate because mediation generally saves the parties costs and time. Settlement rates for mediation have been consistently high and parties have reported a high level of satisfaction with the process.

Arbitration fees currently cover arbitration case administrative tasks, but they do not cover the expenses of the mediation staff. Eliminating the fee waiver would recover some of the resources expended by the mediation staff in attempting to move cases from arbitration to mediation.

Consistent with its other efforts to increase the incentives for parties to mediate claims under \$25,000, NASD Regulation would not impose any filing fee for converted small cases under the new Rule 10407(b). NASD Regulation believes it is beneficial to resolve these claims through mediation because of the cost savings to the parties involved.

NASD Regulation proposes to reduce the mediation filing fee for cases between \$25,000 and \$100,000 in order to induce members and investors to choose mediation. Members' filing fees for converted cases, found in Rule 10407(b), would be fifty percent less than for a case that is first filed in

mediation, found in Rule 10407(a). Similarly, fees for customers would be reduced by \$50.

In matters involving more than \$100,000 in dispute, the proposed mediation filing fee for members is equal to the fee for a case that is first filed in mediation. Investors would get the benefit of a small reduction in fees for cases converted to mediation from the arbitration docket.

Mediator Fees and Expense: Rule 10407(c). The rule language regarding mediator fees and expenses contained in Rules 10205(j) and 10332(j) would be moved to Rule 10407(c). The rule language would remain unchanged, with one exception. NASD Regulation proposes to delete the final sentence in Rules 10205(j) and 10332(j), respectively, specifying mediator charges. NASD Regulation has found that mediators do not charge the parties fees for "mediation sessions," as indicated in the rule. Rather, mediators charge for the actual hours of services they provide. Therefore, NASD Regulation proposed to delete the final sentence in Rules 10205(j) and 10332(j) when it moves the other relevant language to new Rule 10407(c).

Proposed Changes to Rule 10403. NASD Regulation proposes to amend Rule 10403 of the Code in two ways. First, by adding language to Rule 10403(a) to make it clear that parties who agree to submit a matter for mediation can also agree to stay the arbitration. The parties can do so notwithstanding Rule 10319, the rule that gives arbitrators discretion whether to stay an arbitration proceeding. This rule change would benefit the parties to a proceeding by saving them time and money and by relieving them of the problems of proceeding in two arenas at the same time. Moreover, this change is consistent with the approach of other alternative dispute resolution providers.

Second, NASD Regulation proposes to add a new provision, Rule 10403(b), that encourages the use of the NASD Regulation Mediation Program. Whenever the mediation is conducted through NASD Regulation, the parties would avoid payment of arbitration adjournment fees.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD

⁵ NASD Regulation currently has a sliding scale schedule in place for arbitration fees. See NASD Rules 10205 and 10332.

Regulation believes that the proposed rule change is in the public interest because it will encourage the use of mediation, especially for small claims.

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

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer periods to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

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 NASD. All submissions should refer to file number SR-NASD-00-11 and should be submitted by June 14, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-13068 Filed 5-23-00; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42791; File No. SR-Phlx-00-44]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Adopting a Pilot Program To Assess a Monthly Credit of Up to \$1,000 to Qualified Members

May 16, 2000.

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 May 15, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. Today the Phlx filed an amendment to the proposed rule change ("Amendment No. 1").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

The Phlx proposes to amend its schedule of fees, dues, and charges to allow for a monthly credit of up to \$1,000 to be applied against all fees, dues, charges, and other amounts as may from time to time be owed to the Exchange that month, except fines, late fees, out-of-pocket expenses,⁴ pass-

through costs,⁵ capital funding fees,⁶ and any fees paid by equity trading permit holders in respect of any trading permits the Exchange may issue ("credit-eligible fees")⁷ by members who own the membership by which they are a member ("member-owners") and certain other categories of members described below.⁸ This credit is proposed as a six month pilot program.

In addition to member-owners, a monthly credit of up to \$1,000 may be applied against credit-eligible fees incurred by the following persons, who are so closely connected to the owners that the Exchange believes they should be treated as member-owners: (1) All members who are a party to an A-B-C Agreement⁹ with a member organization who owns that membership; or (2) all members who are lessees if: (a) the member is also an owner of a different membership; (b) the member is an immediate family member of the owner of that membership;¹⁰ (c) the member is associated with a member organization in which the owner has an interest of at least ten percent; (d) the member leases from an owner or a

⁵ Pass-through costs include charges for member health insurance and parcel delivery services.

⁶ Capital funding fees are fees assessed on owners to provide funding for technological improvements and other capital needs. The Commission approved the capital funding fee for a pilot period extending to July 6, 2000. See Securities Exchange Act Release No. 42405 (February 8, 2000) 65 FR 8226 (February 17, 2000) (SR-Phlx-99-51); and Securities Exchange Act Release No. 42714 (April 24, 2000), 65 FR 25782 (May 3, 2000) (SR-Phlx-00-29). The proposal to adopt the capital funding fee on a permanent basis is pending with the Commission. See Securities Exchange Act Release No. 42318 (January 5, 2000), 65 FR 2216 (January 13, 2000) (SR-Phlx-99-49).

⁷ The credit-eligible fees are fees assessed on members and include transaction as well as trading floor fees. Transaction fees include equity transaction value charges, equity floor brokerage transaction fees, option comparison charges, and option transaction charges. Trading floor fees include charges for trading post/booth, controller space, shelf space, transmission, execution/communication charge, and floor facility fees. Fees assessed on foreign currency options participants are not considered credit-eligible fees.

⁸ This proposed rule change is intended to replace SR-Phlx-99-54, which was filed with the Commission on December 22, 1999 and withdrawn by letter dated May 13, 2000.

⁹ Pursuant to Phlx Rule 940, the parties to an A-B-C Agreement are an employee, general partner, or officer, and the member organization with which such person is associated. The member organization provides all or part of the funds for the purchase of a membership of which the legal title is placed in the member and the equitable title is placed in the member organization.

¹⁰ Immediate family member is defined as a member's spouse, parents, stepmother, stepfather, mother-in-law, father-in-law, brothers, brothers-in-law, stepbrothers, sisters, sisters-in-law, stepsisters, children, stepchildren, and any other person living with the member for whom the member provides at least 50 percent of his/her financial support per year.

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Edith Hallahan, Deputy General Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 15, 2000. Amendment No. 1 summarizes the two comment letters the Exchange received in response to this proposal and clarifies who is eligible for this credit. Due to the substantive nature of Amendment No. 1, this proposed rule change is deemed filed and immediately effective as of today.

⁴ Out-of-pocket expenses include charges for wireless telephone services, postage, ILX machines and Dow Jones News Service.