

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46392; File No. SR-Phlx-2002-45]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Fees for Remote Competing Specialists

August 21, 2002.

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 August 6, 2002, 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. 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 schedule of dues, fees and charges to adopt a number of new fees applicable to members and member organizations in connection with their remote competing specialist operations, and to amend the existing exemption of certain member organizations operating on the Exchange's trading floor from the Exchange's Examinations Fee in light of the commencement of the remote competing specialist program.³

In order to be a remote competing specialist, a member organization will require PACE terminals ("Remote Workstations") and related equipment which are furnished and installed by the Exchange.⁴ The following new fees and charges relate to Remote Workstations and related equipment, as well as communications requirements.

Remote Specialist Equipment Installation Fee. The Exchange is proposing to charge a one-time fee of \$500 to install Remote Workstations at a remote competing specialist facility. This fee will be billed upon the

completion of the installation and is not variable based upon the number of Remote Workstations installed at that facility.

Remote Specialist Equipment Rental Fee. The Exchange is proposing to charge a fee of \$355 per month for the first two Remote Workstations at any one remote facility, and an additional fee of \$144 per month for each Remote Workstation in excess of two at any one remote facility.⁵ For example, the fee for two Remote Workstations at two different sites would be \$710 per month. This fee will be assessed for each month in which a Remote Workstation is available for use at a remote competing specialist facility one or more days of the month, regardless of the extent to which it is actually used in trading that month and regardless of the date of installation or removal of the equipment.

Remote Specialist System Fee. The Exchange is proposing to establish a Remote Specialist System Fee in the amount of \$250 per month per Remote Workstation.⁶ This fee will also be assessed for each month in which a Remote Workstation is available for use at a remote competing specialist facility one or more days of that month, regardless of the extent to which it is actually used in trading that month and regardless of the date of installation or removal of the Remote Workstation.

Remote Specialist Security Routing Fee. The Exchange is proposing to establish a Security Routing Fee in the amount of \$250 per month per individual registered specialist trading for any part of the month from a remote facility.

Remote Specialist Telecommunications Installation Fee. The Exchange proposes to establish a fee for remote competing specialists electing to use the Phlx wide area network (the "Phlx WAN"), as described below. The cost of establishing initial connectivity to the Phlx WAN will be rebilled at Phlx's cost paid to a vendor. This fee will be billed upon the completion of the installation.

Remote Specialist Telecommunications Fee. Remote competing specialists will be able to connect to the Phlx in one of two ways, both of which require a TCP/IP line with 256kbs bandwidth per workstation. First, remote competing specialists may connect through a Member Firm Interface (MFI). Alternatively, remote competing specialists may elect to be

connected to the Phlx WAN. This Phlx WAN connection is made through a third party with whom the Phlx has contracted. For each remote competing specialist connecting to the Phlx WAN (rather than connecting through a MFI), Phlx will charge a Remote Specialist Telecommunications Fee. This fee will vary based upon the number of Remote Workstations provided at a particular remote facility, as follows:⁷

Number of Workstations	Monthly Charge
2	\$2,800
3	\$3,600
4	\$4,000
5	\$4,700
6	\$5,100
7	\$5,875
8	\$6,275
9	\$7,535
10	\$7,935
11	\$8,335
12	\$8,735

This fee will be assessed for each month in which a Phlx WAN connection is available for use at a remote competing specialist facility one or more days of that month, regardless of the extent to which it is actually used in trading that month and regardless of the date of installation or removal of the Phlx WAN connection.

The Exchange also proposes to modify the application of its Examination Fee to organizations that are remote competing specialists as follows:

Amendment to Examinations Fee. The Exchange proposes to amend the existing Examinations Fee by extending an exemption to the fee which is currently in place. Specifically, member organizations would be exempt from the fee if they operate from the PHLX trading floor or as remote competing specialists and have demonstrated that at least 25% of their income as reflected on the most recently submitted FOCUS Report was derived from floor activities or remote competing specialist activities.⁸

⁷ *Id.*

⁸ The Exchange notes that for most purposes under its rules a remote competing specialist is considered to be transacting business on the floor. For example, Rule 461(f) provides that "All rule, by-law and Certificate of Incorporation references pertaining to the trading floor of the Exchange shall be deemed to include any bids, offers, orders and trading done remotely, and all such bids, offers, orders and trades shall be deemed to be Phlx bids, offers, orders and executions on the Exchange." In addition, Phlx represents that Remote Specialists will be subject to the jurisdiction of the Floor Procedure Committee in the same manner they would if their operations were conducted on the physical trading floor, and that Remote Specialists will be eligible to serve on the Board of Governors and in committee positions reserved for persons associated with member organizations primarily

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Phlx Rule 461, PACE Remote Specialist, and Securities Exchange Act Release No. 45184 (December 21, 2001), 67 FR 622 (January 4, 2002) (approving SR-Phlx-2001-98).

⁴ PACE is the electronic order routing, delivery execution and reporting system used to access the Phlx Equity Floor. See Phlx Rules 229, Philadelphia Stock Exchange Automated Communication and Execution System (PACE) and 229A, Operation of PACE System When Competing Specialists are Trading.

⁵ Payment for a minimum of two Remote Workstations will be required for each remote location.

⁶ *Id.*

The Exchange designates the Remote Specialist System Fee and the Remote Specialist Security Routing Fee (but not the other new fees described in this filing) as eligible for the Monthly Member Credit.⁹

A copy of Appendix A to the Exchange's Schedule of Dues, Fees and Charges, as proposed to be amended, is available at the principal office of the Exchange and at the Commission's Public Reference Room as described in Item III below.

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

On December 21, 2001, the Commission approved a proposed rule change relating to the Exchange's plans to implement a remote competing specialist program.¹⁰ Competing specialists have been operating on the Exchange's physical trading floor since February 2002. Under the remote competing specialist program as currently in effect, competing specialists (but not primary specialists) will be eligible to trade as specialists from locations other than the Phlx equity floor. The Exchange anticipates commencing its remote competing specialist program in the near future.

The purpose of the proposed rule change is to generate revenue for the Exchange, based upon the specialist trading activities of remote competing specialists, which will enhance the Exchange's ability to provide a

marketplace for its remote competing specialists and other members. The Exchange notes that certain of its current dues, fees and charges are assessed for privileges the Exchange extends with respect to, and services it provides on, the physical equity trading floor. These fees include the Trading Post/Booth Fee; Trading Post with Kiosk Fee; the Kiosk Construction Fee; the Contoller Space Fee; the Floor Facility Fees; the Direct Wire to the Floor Fee; the Telephone System Line Extensions Fee; the Quotron Equipment Fee; the Instinet, Reuters Equipment Fee; the Trading Floor Personnel Registration Fee; the Computer Equipment Services, Repairs or Replacements Fee and the Computer Relocation Requests Fee.¹¹ Because the Exchange will not charge these fees to remote competing specialists, the Exchange believes the new fees proposed herein to be paid by members and member organizations based on their remote competing specialist trading activity are a reasonable and equitable way for the Exchange to raise revenues to defray costs of providing a marketplace for its specialists and other members, whether floor-based or remote. Additionally, the Exchange believes that by amending the exemption to the Examinations Fee, it preserves one of the original purposes of the Examinations Fee, which was to compensate for the extensive staff time and costs associated with examining off-floor firms who are not active participants in Phlx markets.¹² Although they will operate remotely, the Exchange anticipates that remote competing specialists will be active participants in Phlx markets.¹³

¹¹ The Exchange notes that the Remote Information Access Fee does not apply to information provided to a remote competing specialist on his or her Remote Workstation. However, the fee could apply to a firm that wishes to use the Remote Information Access service at a different site than that from which the remote competing specialists are trading to obtain information from the Exchange on the remote competing specialists' trading activities. If a member organization wishes to use this service to access trading information concerning both floor-based and remote competing specialists, it will be charged a single fee to access information from both sources. Except as described herein, all fees, dues, discounts, credits and charges applicable to Phlx floor-based competing specialists (including the PACE Specialist Charge of \$.20 per trade against PACE executions excluding PACE trades on the opening) will also apply to Phlx remote competing specialists.

¹² See Securities Exchange Act Release No. 35091 (December 12, 1994), 59 FR 65558 (December 20, 1994).

¹³ See *supra* note 8. The Exchange also notes that Phlx remote competing specialists are considered specialists as envisioned by Section 11 of the Act and are subject to a number of obligations as such under Section 11(b) of the Act and Exchange rules.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,¹⁴ in general and furthers the objectives of section 6(b)(4) of the Act,¹⁵ in particular, by providing for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes that the application of the fees, dues and charges proposed herein is consistent with the requirement of section 6(b)(5) of the Act,¹⁶ which requires that the rules of the Exchange not be designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Exchange represents that the proposal is designed to raise revenue to enable the Exchange to provide a competitive marketplace for its members. Additionally, the Exchange believes that the new fees proposed herein are fair and equitable because the members and member organizations which will pay the new fees will have the benefits of trading as competing specialists from remote locations.

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

The foregoing proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act¹⁷ and Rule 19b-4(f)(2) thereunder.¹⁸ Accordingly, the proposal will take effect upon filing with the Commission. 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.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁸ 17 CFR 240.19b-4(f)(2).

engaged in business on the Exchange's Equity Floor. Telephone call between Carla Behnfeldt, Director, Legal Department New Product Development Group, Phlx, and Jennifer Lewis, Attorney, Division of Market Regulation, Commission, on August 20, 2002.

⁹ See Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (approving SR-Phlx-2001-49). The Monthly Member Credit allows Exchange members to receive a monthly credit of up to \$1,000 to be applied against fees, dues, charges and other such amounts.

¹⁰ See *supra* note 3.

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-2002-45 and should be submitted by September 28, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,

Deputy Secretary.

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DEPARTMENT OF STATE

Bureau of Educational and Cultural Affairs (ECA/EC/ECD)

[Public Notice 4111]

60-Day Notice of Proposed Information Collection: Form DS-3097, Annual Report by Sponsors of Exchange Visitor Programs; OMB Control Number 1405-xxxx

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

Type of Request: New collection.

Originating Office: Bureau of Educational and Cultural Affairs, Office of Exchange Coordination and Designation (ECA/EC/ECD).

Title of Information Collection: Annual Report by Sponsors of Exchange Visitor Programs.

Frequency: Annually.

Form Number: DS-3097.

Respondents: The respondents are United States Government agencies and public and private organizations designated by the Department to administer the Exchange Visitor Program.

Estimated Number of Respondents: 1450 program sponsors.

Average Hours Per Response: One hour per response.

Total Estimated Burden: 1450 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT:

Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Stanley S. Colvin, Acting Director, Office of Exchange Coordination and Designation, U.S. Department of State, 301 Fourth Street, SW., Room 852, Washington, DC 20547, who may be reached on 202-401-9810 or by fax at 202-401-9809.

Dated: August 15, 2002.

Patricia S. Harrison,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

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DEPARTMENT OF STATE

Office of Overseas Schools (A/OPR/OS)

[Public Notice 4110]

30-Day Notice of Proposed Information Collection: Form DS-2061, Approval of Funding to Support Special Educational Programs; OMB Control Number 1405-0031

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement.

Originating Office: Bureau of Administration, A/OPR/OS.

Title of Information Collection: Approval of Funding to Support Special Educational Programs.

Frequency: Annual.

Form Number: DS-2061 (Formerly JF-45).

Respondents: Participants in the consolidated overseas schools assistance program.

Estimated Number of Respondents: 89.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 44.50 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT:

Copies of the proposed information collection and supporting documents may be obtained from Keith D. Miller, Office of Overseas Schools, U.S. Department of State, Washington, DC

¹⁹ 17 CFR 200.30-3(a)(12).