

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42654; File No. SR-Phlx-00-24]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Extending the Pilot Program To Impose Fees for Computer Equipment Services, Repairs or Replacements and Relocation of Computer Equipment

April 10, 2000.

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 March 14, 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. On March 29, 2000, the Exchange filed Amendment No. 1 to the proposed rule change with the Commission.<sup>3</sup> 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, pursuant to Rule 19b-4 of the Act, proposes to extend for a further three months its pilot program that requires all members on the options and equity trading floors to pay a fee for computer equipment services, repairs or replacements and a fee for member-requested relocation of computer equipment.<sup>4</sup> The Exchange proposes to extend the current pilot program, which expired on March 31, 2000, through June 30, 2000.<sup>5</sup>

#### 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 Exchange included statements concerning the purpose of and basis for the proposed 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 Exchange 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 Phlx has requested an extension through June 30, 2000 of a pilot program that amends the Exchange's fee schedule in two ways. First, pursuant to the current pilot program, the Phlx's schedule of dues, fees and charges was amended to impose a fee on all members on the options and equity floors for computer equipment services, repairs or replacements on the trading floors. Specifically, Phlx charges \$100 for every service calls plus \$75 an hour, with a minimum of two hours charged per service calls.<sup>6</sup> The Exchange anticipates that the majority of computer services, repairs or replacements will continue to be completed within two hours. Members are not billed for computer equipment services, repairs or replacements when new or refurbished, equipment fails in the normal and customary manner of usage within 30 days of installation.

The Exchange represents that these charges are intended to defray the cost of servicing, repairing or replacing computer equipment on the options and equity floors, as well as to encourage care in using the computer equipment.<sup>7</sup> The Exchange represents that the bulk of calls that are routinely received by its Financial Automation Department are requests to repair, replace or otherwise service computer equipment at options or equity floor members' work stations.<sup>8</sup>

Second, the Exchange has amended its schedule of dues, fees, and charges to also impose a fee for member-

requested relocation of a member's work station or any piece of their computer equipment on the options or equity trading floor. Under the current pilot program, the Exchange imposes a \$100 service fee plus \$75 per hour per person moving the equipment, with a minimum of two hours charged for each relocation request.<sup>9</sup> Members will continue to be billed on a monthly basis for computer equipment services, repairs or replacements and for member-requested relocations of computer equipment.

The Exchange represents that the post/equipment relocation fee will assist Phlx in defraying the costs associated with the moving of computer equipment. The relocations on the options and equity floors can be very time-consuming and costly since nearly all relocations take place after hours or on the weekends.

Under the current pilot program, Exchange staff and trading floor members complete a preprinted form prior to requesting repair or relocation service. A Notice to Members describing the equipment repair and relocation request procedures was sent to all floor members prior to the implementation of the current three-month pilot program that was in effect from January 1, 2000 through March 31, 2000. The procedures include instructions to members and Exchange staff as to where the service request forms are located, directions as to how to complete the form, and which department is required to forward the forms to the accounting department.

The Exchange proposes to extend the pilot program for an additional three months, through June 30, 2000. The Exchange asserts that an extension would allow it to fully review the fees and procedures that were implemented on January 1, 2000. The Exchange would have an opportunity to determine whether the fees for computer equipment services, repairs or replacements and member-requested relocation of computer equipment that are charged to members are appropriate and reflect the costs for these services that are incurred by the Exchange. An extension of the pilot program would further enable the Exchange to determine whether the fees relating to computer equipment services, repairs or replacements and member-requested relocation of computer equipment should be applied to similar situations to foreign currency options participants

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

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

<sup>3</sup> Amendment No. 1 to the proposed rule change made technical corrections to the Phlx's fee schedule. See letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 29, 2000 ("Amendment No. 1").

<sup>4</sup> A fee is not charged for new installation of computer equipment. Fees also are not charged to participants on the foreign currency options trading floor.

<sup>5</sup> The Commission first approved the pilot program on December 23, 1999. See Securities Exchange Act Release No. 42271 (December 23, 1999), 65 FR 154 (January 3, 2000) (File No. SR-Phlx-99-45).

<sup>6</sup> Some component of this amount may reflect Pennsylvania sales tax.

<sup>7</sup> This proposed fee will apply to all such requests with no distinction between intentional abuse and normal wear and tear due to the difficulties associated with categorizing the types of repairs.

<sup>8</sup> Telephone conversation between John Dayton, Assistant Secretary and Counsel, Phlx, and Susie Cho, Attorney, Division, Commission, March 30, 2000.

<sup>9</sup> For example, if two individuals take two hours to relocate a work station, the member will be charged \$100 for the service call, plus \$300 for moving the equipment (i.e., \$75 × 4 (2 people × 2 hours)). Again, some component of this amount may reflect Pennsylvania sales tax.

on the foreign currency options trading floor. I would also give the Board of Governors the opportunity to decide whether this pilot program should be implemented on a permanent basis.

## 2. Statutory Basis

The Exchange believes that the proposed rule is consistent with Section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>11</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

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

The Exchange represents that the proposed rule change will impose no 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 solicited or received with respect to the proposed rule change.

## 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 Act<sup>12</sup> and Rule 19b-4(f)(2) thereunder<sup>13</sup> because it involves a due, fee, or other charge. 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.<sup>14</sup> Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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-Phlx-00-24 and should be submitted by May 8, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42655; File No. SR-Phlx-00-25]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Eliminating the Restriction on Exercise Prices for FLEX Equity Call Options to Those Prices That Apply to Standardized Equity Call Options**

April 10, 2000.

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 March 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change.

#### **1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Phlx proposes to delete the provision in Exchange Rule 1079(a)(3) that limits exercise prices for FLEX

equity call options to those that apply to standardized equity call options.<sup>3</sup>

## **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 Exchange 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. The Exchange 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 Exchange proposes to amend Phlx Rule 1079(a)(3) to eliminate the limitation of the exercise prices available for FLEX equity call options to those prices that are available for standardized equity call options. Under Phlx Rule 1079, FLEX call options allow certain terms to be customized, such as the underlying security, the type of option, the exercise price, the exercise style, and the expiration date. The Exchange, however, restricted the strike prices for FLEX equity call options to those prices that are available for standardized equity call options because of a concern that the flexible strike price feature could result in an available standardized equity call option that would not be classified as a "qualified" covered call under the Internal Revenue Code ("Code"). The Exchange represents that this would jeopardize the modest tax treatment enjoyed by writers of standardized equity call options.

Currently under Section 1092(c)(4)(B) of the Code, writers of such qualified covered short positions in equity call options receive advantageous tax treatment if the options are exchange-traded and not "deep-in-the-money." An option is "deep-in-the-money" if the strike price of the option is lower than the lowest qualified benchmark price for stock.<sup>4</sup> The Code defines this benchmark price as generally the highest strike price available for trading

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

<sup>14</sup> In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> The Commission notes that the proposed rule change would also eliminate the requirement that FLEX equity call options follow the exercise price intervals set out for standardized options in Phlx Rule 1012.

<sup>4</sup> Section 1092(c)(4)(C) of the Code.