

thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act.<sup>7</sup> Section 6(b)(4) of the Act requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The proposal is consistent with Section 6(b)(4) because it will permit the Phlx Board to more equitably allocate dues, fees, and other charges among the Exchange's various constituents, thereby helping to ensure appropriate distribution of costs necessary to maintain and enhance the competitive operations of the Exchange.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. The Phlx has represented that to compete in the current capital market environment the Board must have specific authority to assess fees, dues, and other charges upon members, lessors and lessees of memberships, and holders of permits if and when such permits are proposed by the Phlx and approved by the Commission.<sup>8</sup> Article Twentieth provides that authority. In the context of heightened competition in the options markets the Commission believes it is important for the Phlx to have the necessary authority to respond quickly to competitive pressures. Therefore, the Commission finds good cause for approving the proposed rule change on an accelerated basis.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-Phlx-99-48) is hereby approved on an accelerated basis. In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation.<sup>10</sup>

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-M**

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> This approval order should not be interpreted as suggesting that the Commission is predisposed to approving any pending Phlx filing to assess fees under the authority of Article Twentieth.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

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

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

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42318; File No. SR-Phlx-99-49]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Implementing a Pilot Program to Assess a Monthly Capital Funding Fee

January 5, 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 November 26, 1999, 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 January 5, 2000, Phlx submitted an amendment to the proposed rule filing ("Amendment No. 1").<sup>3</sup> The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposal until April 5, 2000.

#### 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 charge each of the 505 Exchange seat owners<sup>4</sup> a monthly capital funding fee of \$1,500 per seat owned.<sup>5</sup> The proposed capital funding fee will be implemented under a three-month pilot program to expire on April 5, 2000.<sup>6</sup>

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

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

<sup>3</sup> See Letter from Phlx to Marla Chidsey, Attorney, Division of Market Regulation, Commission, from Bob Ackerman, Senior Vice President, Chief Regulatory Officer, Phlx, dated January 5, 2000. Amendment No. 1 provides Phlx's a fee schedule and is attached as Appendix A.

<sup>4</sup> For the purpose of filing, the term owner is defined as any person or entity who or which is a holder of equitable title to a membership in the Exchange.

<sup>5</sup> Although the term "seat owner" is not defined in Phlx's Bylaws or the Certificate of Incorporation, the term seat owner is the equivalent of a "membership owner" as referenced in Phlx's Bylaws and Certificate of Incorporation. However, a seat owner is not per se a member of the Phlx Exchange. Telephone conversation between Marla Chidsey, Attorney, Division of Market Regulation, Commission, and Bob Ackerman, Senior Vice President, Chief Regulatory Officer, Phlx (January 5, 2000).

<sup>6</sup> On November 26, 1999, the Exchange filed for permanent approval of the \$1,500 capital funding fee. See SR-Phlx-99-51. On October 1, 1999, the Exchange filed a proposal to charge the monthly

#### II. Self-Regulatory Organization's Statement Regarding the Purpose of, and the 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 III 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

The purpose of the proposed rule change is to amend Phlx's schedule of dues, fees, and charges to charge a monthly capital funding of \$1,500 per Exchange seat to seat owners.<sup>7</sup>

The \$1,500 capital funding fee will be imposed on each of the 505 Exchange seat owners on the last business day of the calendar month. Thus, the owner is responsible for paying the entire subsequent month's fee on the last business day of the prior month.<sup>8</sup> The Exchange intends to segregate the funds generated from the \$1,500 fee from Phlx's general funds.

The monthly \$1,500 fee is part of the Exchange's long-term financing plan. This monthly fee will provide funding for technological improvements and other capital needs.<sup>9</sup> Specifically, it is intended to fund capital purchases, including hardware for capacity upgrades, development efforts for decimalization, and trading floor expansion. The revenue raised from the fee will be utilized over a three-year period. At that time the Exchange intends to reevaluate its financing plan to determine whether this fee should continue. The revenue generated from

\$1,500 capital funding fee. See Securities Exchange Act Release No. 42058 (October 22, 1999), 64 FR 58878 (December 15, 1999). However, on November 17, 1999, the Exchange withdrew SR-Phlx-99-43.

<sup>7</sup> Under Phlx's by-laws, seat owners who lease out their seats are not deemed members of the Exchange. See Phlx Rules of Board of Governors, Rules 3, 5, 17, and 18.

<sup>8</sup> For example, owners of record on September 30 will be billed \$1,500 for the month of October.

<sup>9</sup> This fee is distinguished from the Exchange's technology fee in that the technology fee was intended to cover system software modifications, Year 2000 modifications, specific system development (maintenance) costs, SIAC and OPRA communication charges, and ongoing system maintenance charges. The technology fee became effective upon filing in March, 1997. See Securities Exchange Act Release No. 38394 (March 12, 1997), 62 FR 13204 (March 19, 1997) (SR-Phlx-97-09).

the fees will assist the Exchange in remaining competitive in the capital markets environment.<sup>10</sup>

For these reasons, the Exchange believes that the proposed rule change is consistent with Section 6 of the Act,<sup>11</sup> in general, and with Section 6(b)(4),<sup>12</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities.

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

The Exchange believes that the proposed rule imposes no burden on competition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

The Exchange received no written comments on the proposal.<sup>13</sup>

### III. 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, 450 Fifth Street, NW, Washington, DC 20549-0609. 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-99-49 and should be submitted by February 3, 2000.

### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds, for the reasons set forth below, that the Phlx's proposal is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act.<sup>14</sup> Section 6(b)(4) of the Act requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The proposal is consistent with the Act because it is an across-the-board assessment on all seat owners

intended to raise revenues to provide capital improvements to the Exchange that the Phlx has represented are necessary to help the Phlx remain competitive with other markets.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. The Phlx has represented that to complete in the current capital market environment the Exchange needs funding to make technological and capital improvements. The Exchange represents that the revenue raised from the fee is necessary to fund capital purchases, including hardware for capacity upgrades, development efforts for decimalization, trading floor expansion, and communication enhancements. Based upon this these representations of the Exchange the Commission deems it appropriate to approve the proposed rule change on an accelerated basis until April 5, 2000.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-Phlx-99-49) is hereby approved on an accelerated basis until April 5, 2000.<sup>16</sup> In approving this pilot program, the Commission has considered its impact on efficiency, competition, and capital formation.<sup>17</sup>

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

### APPENDIX A

[New Text Underlined; Deleted Text Bracketed]

Membership dues or Foreign Currency User Fees .....	1,000.00 semi-annually
Foreign Currency Option Participation Fee .....	1,000.00 semi-annually
Capital Funding Fee <sup>2</sup> .....	1,500.00 monthly
Application Fee .....	200.00
Initiation Fee .....	1,500.00
Transfer Fee .....	500.00
Trading Post/Booth .....	750.00 quarterly
Controller Space .....	750.00 quarterly
Floor Facility Fees .....	375.00 quarterly
Shelf Space on Equity Option Trading Floor .....	375.00 quarterly
Direct Wire to the Floor .....	60.00 quarterly
Telephone System Line Extensions .....	22.50 monthly/per extension
Wireless Telephone System .....	200.00 monthly
Execution Services/Communication Charge .....	200.00 monthly
Stock Execution Machine Registration Fee (Equity Floor) .....	300.00
Equity, Option, or FCO Transmission Charge .....	750.00 monthly
FCO Pricing Tape .....	600.00 monthly
Option Report Service: (New York) .....	600.00 monthly

<sup>10</sup> In addition, the Exchange has separately proposed to amend its schedule of fees, dues, and charges to allow for a monthly credit of up to \$1000 to be applied against certain fees, dues, charges and other amounts owed to the Exchange by an owner who is also a member of the Exchange (SR-Phlx-99-54).

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

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> However, in connection with SR-Phlx-99-43, *see*, note 6 above, the Exchange received comments from the following parties: Bloom Staloff, Robert W. Baird & Co. Inc., William J. Kramer, Doris Elwell, Benton Partners, Karen D. Janney, Robert Leff, and Vansco, Wayne & Genelly.

<sup>14</sup> 15 U.S.C. 78f(b)(4).

<sup>15</sup> 15 U.S.C. 78s(b)(2).

<sup>16</sup> The Commission's approval of this pilot should not be interpreted as suggesting the Commission is predisposed to approving the proposal permanently.

<sup>17</sup> 15 U.S.C. 78c(f).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

## APPENDIX A—Continued

[New Text Underlined; Deleted Text Bracketed]

(Chicago) .....	800.00 monthly
Quotron Equipment .....	225.00 monthly
Instinet, Reuters Equipment .....	Cost passed through
Examination Fee .....	1,000.00 monthly <sup>3</sup> or pass-through of another SRO's fees
Technology Fee <sup>4</sup> .....	600.00 semi-annually
Review/Process Subordinated Loans .....	25.00
Registered Representative Registration:	
Initial .....	25.00
Maintenance .....	25.00 annually
Transfer .....	25.00
Option Mailgram Service .....	117.00 monthly
Off-Floor Trader Initial Registration Fee .....	200.00
Off-Floor Trader Annual Fee .....	200.00
Computer Equipment Services, Repairs or Replacements <sup>5</sup> .....	100.00 per service call and 75.00 per hour (Two hour minimum)

<sup>1</sup> An exemption from foreign currency user fees is extended to PHLX members also holding title to a foreign currency options participation.

<sup>2</sup> This fee applies to seat owners (holders of equitable title to a membership in the Exchange) and is assessed on a per-membership basis. This fee is imposed pursuant to a pilot program in effect from January 5, 2000 to April 5, 2000.

<sup>3</sup> This fee is applicable to member/participant organizations for which the PHLX is the DEA. The following organizations are exempt: (1) inactive organizations (2) organizations operating from the PHLX trading floor which have demonstrated that at least 25% of their income as reflected on the most recently submitted FOCUS Report was derived from floor activities (3) organizations for any month where they incur transaction or clearing fees charged directly by the Exchange or by its registered clearing subsidiary, provided that the fees exceed the examinations fees for that month; and (4) organizations affiliated with an organization exempt from this fee due to the second or third category. Affiliation includes an organization that is a wholly owned subsidiary of or controlled by or under the common control with an exempt member or participant organization. An inactive organization is one which had no securities transaction revenue, as determined by semi-annual FOCUS reports, as long as the organization continues to have no such revenue each month.

<sup>4</sup> An exemption from the technology fee is extended to foreign currency options participants who are also affiliated with the Exchange as Phlx members.

<sup>5</sup> These fees will be effective from January 1, 2000 until March 31, 2000, unless extended consistent with the requirements of Section 19(b) of the Securities Exchange Act of 1934. At this time, these fees will not be applied to participants on the Foreign Currency Options Trading Floor.

<sup>6</sup> These fees will be effective from January 1, 2000 until March 31, 2000, unless extended consistent with the requirements of Section 19(b) of the Securities Exchange Act of 1934. At this time, these fees will not be applied to participants on the Foreign Currency Options Trading Floor.

[FR Doc. 00-817 Filed 1-12-00; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42320; File No. SR-SCCP-99-04]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Temporary Approval of a Proposed Rule Change Relating to the Extension of the Stock Clearing Corporation of Philadelphia's Restructured Business

January 6, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 22, 1999, the Stock Clearing Corporation of Philadelphia ("SCCP") 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 primarily by SCCP. 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

Under the proposed rule change, SCCP will continue to provide limited clearance and settlement service for an additional year period through December 31, 2000.

#### 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.<sup>2</sup>

##### A. SCCP's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

SCCP proposes to extend for a one year period through December 31, 2000, its ability to provide limited clearance and settlement services. Specifically,

SCCP seeks to continue to provide trade confirmation and recording services for members of PHLX effecting transactions through Regional Interface Operations ("RIO") and ex-clearing accounts. SCCP will continue to provide an interface between its floor members, specialists, and the National Securities Clearing Corporation ("NSCC"). SCCP will also continue to provide margin services to: (i) PHLX equity specialists for their specialists and alternate specialists transactions and for proprietary transactions in securities for which they are not appointed as specialists of alternate specialists and (ii) PHLX members listed on the schedule, discussed below, who are not PHLX equity specialists for proprietary transactions. SCCP may add other PHLX members to the above referenced schedule subject to NSCC's approval pursuant to its agreement with NSCC and the prior proposed rule change, as discussed below. The clearing services to be conducted by SCCP continue to be through an omnibus account that SCCP maintains at NSCC for such purpose; such services do not include the maintenance or offering of Continuous Net Settlement ("CNS") accounts for its participants.

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by SCCP.