

CFR part 4010) implements section 4010.

The regulation requires the controlled group to file certain identifying information, certain financial information, each plan's actuarial valuation report, certain participant information, and a determination of the amount of each plan's benefit liabilities. The information submitted under the regulation allows the PBGC (1) to detect and monitor financial problems with the contributing sponsors that maintain severely underfunded pension plans and their controlled group members and (2) to respond quickly when it learns that a controlled group with severely underfunded pension plans intends to engage in a transaction that may significantly reduce the assets available to pay plan liabilities.

The collection of information under the regulation has been approved by OMB under control number 1212-0049, expiring March 31, 2002. The PBGC is requesting that OMB extend its approval for three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC estimates that an average of 70 controlled groups per year respond to this collection of information. The PBGC further estimates that the average annual burden of this collection of information is 7.9 hours and \$10,000 per controlled group, for a total burden of 552 hours and \$700,000.

Issued in Washington, D.C., this 20th day of February, 2002.

**Stuart Sirkin,**

*Director, Corporate Policy and Research  
Department, Pension Benefit Guaranty  
Corporation.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45456; File No. SR-Phlx-2002-08]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Extension of Its Pilot Program to Implement its Existing Fee Schedule for Electronic Communication Networks

February 19, 2002.

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 January 28, 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 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 extend its one-year pilot program for an additional one-year period, in order to continue to impose a \$2,500 monthly fee for Electronic Communications Networks ("ECNs") that are member organizations and send order flow to the Exchange's equity trading floor.<sup>3</sup> The Exchange believes that the original pilot program was due to expire on January 31, 2002.<sup>4</sup>

The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and the Commission.

#### 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 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.

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

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

<sup>3</sup> As stated in the Phlx fee schedule, the term ECN shall mean any electronic system that widely disseminates to third parties orders entered therein by an Exchange market maker or over-the-counter ("OTC") market maker, and permits such orders to be executed against in whole or in part. The term ECN shall not include: any system that crosses multiple orders at one or more specified times at a specified price set by the ECN, algorithm, or by any derivative pricing mechanism and does not allow orders to be crossed or executed against directly by participants outside of such times; or any system operated by or on behalf of an OTC market maker or exchange market maker as principal, other than riskless principal.

<sup>4</sup> See Exchange Act Release No. 44155 (April 5, 2001), 66 FR 19274 (April 13, 2001).

#### 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 extend the Exchange's current ECN pilot program until January 31, 2003, thereby continuing to impose a \$2,500 monthly fee for ECNs that are member organizations and send order flow to the Exchange's equity trading floor.<sup>5</sup> According to the Exchange, the continuation of the \$2,500 fee is intended to attract equity order flow from ECNs to the Exchange by continuing to substitute a fixed monthly fee, in light of the potential for high volumes of order flow from ECNs.<sup>6</sup>

The monthly fee will continue to apply to ECN order flow to the Exchange's equity trading floor, including from ECNs that either became members or began sending order flow after the commencement of the program. The \$2,500 fee would continue to apply to trades where the ECN was not acting as a Phlx specialist or floor broker.<sup>7</sup>

Currently, no ECN operates from the Exchange's equity trading floor as a floor broker or specialist unit. If, however, an ECN did operate from the equity trading floor, it would be subject to various floor-related fees respecting its floor operation.<sup>8</sup> In addition, an ECN's transactions as a floor broker would be subject to the equity transaction value charge, and its specialist trades would be subject to other charges.<sup>9</sup> Even if the ECN was acting as a floor broker or specialist with

<sup>5</sup> The \$2,500 monthly fee will apply regardless of the ECN's average daily Phlx equity volume.

<sup>6</sup> In order to recoup costs due from the Exchange to the Commission pursuant to Section 31(b) of the Act, the Exchange intends to continue to apply such fee to ECNs, as the current fee schedule reflects. This fee is currently \$15 per \$1,000,000 of the aggregate dollar amount of the sale of securities.

<sup>7</sup> An ECN would continue to incur specialist or floor brokerage transaction fees if it acts as a Phlx specialist or floor broker.

<sup>8</sup> These include the Trading Post/Booth Fee, Trading Post w/Kiosk Fee, Controller Space Fee, Floor Facility Fee, Shelf Space on Equity Option Trading Floor Fee, Computer Equipment Services, Repairs or Replacements Fee and Computer Relocation Requests Fee. Certain communications fees could also apply, such as the Direct Wire to the Floor Fee, Telephone System Line Extensions, Wireless Telephone System, Tether Initial Connectivity Fee, Tether Monthly Service Fee, Execution Services/Communication Charge, Stock Execution Machine Registration Fee (Equity Floor), Equity, Option, or FCO Transmission Charge, FCO Pricing Tape, Option Report Service Fee, Quotron Equipment Fee, Instinet, Reuters Equipment Pass-Through Fee and the Option Mailgram Service Fee.

<sup>9</sup> The PACE Specialist Charge is a fee imposed on specialist transactions only and the Equity Floor Brokerage Assessment and Equity Floor Brokerage Transaction Fee apply to floor brokerage activity.

respect to some trades, those trades for which it was not acting as a floor broker or specialist, but rather an ECN, would be subject only to the flat monthly fee and not other transaction charges.

An ECN that only operates as a specialist or floor broker would not have to pay the monthly fee, because it would, instead, be paying the normal transaction charges applicable to floor brokers and specialists.

An ECN would also continue to be subject to, if applicable, the following membership-related fees: Membership dues or Foreign Currency User Fees, Foreign Currency Option Participation Fee, Capital Funding Fee, Application Fee, Initiation Fee, Transfer Fee, Phlx CCH Guide Fee, Examinations Fee, Technology Fee, Review/Process Subordinated Loans Fee, Registered Representative Registration Fees, and Off-Floor Trader Initial Registration Fee and Annual Fee.

Because the \$2,500 fee is a flat monthly fee as opposed to a per-transaction fee, it is intended to encourage ECN volume. Currently, the equity transaction value charge (that would otherwise apply to an ECN's equity trades) ranges from \$.015 to \$.14 per \$1,000 of transaction value, with a \$50 maximum fee per trade side, and various other applicable discounts. Thus, many variables determine whether the proposed monthly \$2,500 fee is generally more favorable than the equity transaction value charge, depending upon the number of trades, size of the trade and type (*i.e.*, PACE). As a general matter, the Exchange believes that \$2,500 would be more favorable to the ECN because it is a fixed amount.

The Exchange believes that the monthly ECN fee provides competitive fees with appropriate incentives, thus providing a reasonable method to attract large order flow providers such as ECNs to the Exchange. Additional order flow should enhance liquidity, and improve the Exchange's competitive position in equity trading. The Exchange believes that structuring this fee for ECNs is appropriate, as ECNs are unique in their role as order flow providers to the Exchange. Specifically, ECNs operate a unique electronic agency business, similar to a securities exchange, as opposed to directly executing orders for their own customers as principal or agent.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,<sup>10</sup> in general, and section

6(b)(4) of the Act,<sup>11</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange notes the unique character of ECNs, and believes that the fixed monthly fee is a reasonable method of attracting a new form of order flow to the Exchange.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

### *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

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) of the Act<sup>12</sup> and subparagraph (f)(2) of Rule 19b-4<sup>13</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-2002-08 and should be submitted by March 19, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

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

[FR Doc. 02-4475 Filed 2-25-02; 8:45 am]

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## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3396]

#### State of California

San Diego County and the contiguous counties of Imperial, Orange and Riverside in the State of California constitute a disaster area as a result of damages caused by a severe wildfire that occurred February 10 through February 14, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on April 22, 2002 and for economic injury until the close of business on November 19, 2002 at the address listed below or other locally announced locations:

U.S. Small Business Administration,  
Disaster Area 4 Office, P. O. Box 13795,  
Sacramento, CA 95853-4795.

The interest rates are:

|                                                                                         | Percent |
|-----------------------------------------------------------------------------------------|---------|
| For Physical Damage:                                                                    |         |
| Homeowners With Credit Available Elsewhere .....                                        | 6.625   |
| Homeowners Without Credit Available Elsewhere .....                                     | 3.312   |
| Businesses With Credit Available Elsewhere .....                                        | 7.000   |
| Businesses and Non-Profit Organizations Without Credit Available Elsewhere .....        | 3.500   |
| Other (Including Non-Profit Organizations) With Credit Available Elsewhere .....        | 6.375   |
| For Economic Injury:                                                                    |         |
| Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere ..... | 3.500   |

The number assigned to this disaster for physical damage is 339605 and for economic damage is 905700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

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

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

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

<sup>14</sup> 17 CFR 200.30-3(a)(12).