

Plan, regulatory trading halts instituted by Nasdaq would be honored by exchanges trading Nasdaq securities on an unlisted trading privileges basis ("UTP Exchanges") and the NASD's Alternative Display Facility ("ADF") participating in the Reporting Plan (collectively, "Plan Participants"). The Commission understands that Nasdaq and the other Plan Participants are still discussing this issue. The Commission believes that an agreement would need to be reached among the Plan Participants on this subject before trading halts instituted by Nasdaq under the proposed rule would be considered "regulatory" trading halts under the Reporting Plan. Thus, approval of the proposed rule change, as amended, does not resolve the issue of whether a trading halt instituted by Nasdaq under the proposed rule constitutes a "regulatory" trading halt under the Reporting Plan.

The Commission finds good cause for approving proposed Amendment No. 2 before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. Nasdaq filed Amendment No. 2 to further clarify the manner in which Nasdaq envisions implementing the proposed rule change. The Commission believes the substance of Amendment No. 2 does not warrant republication of the proposed rule change as amended. Therefore, the Commission finds good cause for accelerating approval of the proposed rule change, as amended by Amendment No. 2.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether Amendment No. 2 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 Amendment No. 2 that are filed with the Commission, and all written communications relating to Amendment No. 2 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-2001-75 and should be submitted by June 27, 2003.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act¹², that the proposed rule change (SR-NASD-2001-75), as amended by Amendment No. 1, be, and it hereby is, approved, and that Amendment No. 2 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47958; File No. SR-Phlx-2002-87]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. and Amendment No. 1 Thereto Relating to the Imposition of a 500 Contract Cap on Payment for Order Flow Fees

May 30, 2003.

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 December 26, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III, below, which the Phlx has prepared. The Phlx submitted Amendment No. 1 to the proposed rule change on May 29, 2003. 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 options payment for order flow program by imposing a 500 contract cap per individual cleared side of a transaction. Specifically, the applicable payment for order flow fee would not apply to any contracts over 500, per individual cleared side of a transaction. For example, if a transaction consists of 750 contracts by one Registered Options Trader ("ROT"), the applicable payment for order flow fee would be applied to,

and capped at, 500 contracts for that transaction. Also, if a transaction consists of 600 contracts, but is divided equally among three ROTs, the 500 contract cap would not apply to any such ROT and each ROT would be assessed the applicable payment for order flow fee on 200 contracts, as the payment for order flow fee is assessed on a per ROT, per transaction basis.³ The Phlx is proposing to implement the 500 contract cap for trades settling on or after June 2, 2003.⁴

The text of the proposed rule change is available at the Phlx and at 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 had 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Phlx recently filed a rule change with the Commission to reinstate its payment for order flow program.⁵ Under

³ Currently, specialists may request reimbursement for payment for order flow funds in connection with any transactions to which they were not a party, based on the percentage of ROT monthly volume to total specialist and ROT monthly volume. The 500 contract cap would be imposed in connection with calculating the amount of the payment for order flow fee, and not for determining the percentage of ROT monthly volume to total specialist and ROT monthly volume.

⁴ The proposed rule change specifies that the Phlx's fee schedule, entitled "Exchange's ROT Equity Option Payment for Order Flow Charges," are subject to a 500 contract cap, by individual cleared side of a transaction. The Phlx's original rule change proposal included a fee schedule that was current as of December 2002 but has been superseded by more recent schedules. The Phlx submitted Amendment No. 1 to the proposed rule change to indicate the current fee schedule and to propose that the cap be implemented for trades settling on or after June 2, 2003. See letter from Cindy Hoekstra, Counsel, Philadelphia Stock Exchange, to Patrick Joyce, Senior Counsel, Commission, dated May 29, 2003.

⁵ See Securities Exchange Act Release No. 47090 (December 23, 2002), 68 FR 141 (January 2, 2003) (SR-Phlx-2002-75). The rule change proposal, which originally included the 500-contract cap that is the subject of the current proposal, became effective immediately upon filing with the Commission in November 2002. In December 2002, the Phlx amended the filing to remove the 500-

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the program, Phlx ROTs are assessed a payment for order flow fee, per contract, per options issue, as set forth in the Phlx's ROT Equity Option Payment for Order Flow Charges Schedule, subject to certain exceptions.⁶

1. Purpose

The purpose of the proposed rule change is to establish a 500 contract cap, which the Phlx believes is reasonable and equitable because capping each trade with a 500 contract cap should provide sufficient payment for order flow funds for the specialists while lessening the economic burden on ROTs.⁷ In the Phlx's view, the imposition of a cap should provide increased liquidity and encourage competition in markets where ROTs may otherwise not be able to compete. Moreover, the Phlx believes that the absence of a cap would cause ROTs to incur expenses that may impair their ability to participate in a larger share of the market.

2. Statutory Basis

The Phlx believes that its proposal to amend its schedule of dues, fees and charges is consistent with section 6(b) of the Act⁸ and furthers the objectives of sections 6(b)(4) and 6(b)(5) of the Act.⁹ The Phlx believes that the proposed rule change would serve as an equitable allocation of reasonable fees among Phlx members because the 500 contract cap per individual cleared side of a transaction imposed in connection with the payment for order flow fee should lessen the economic burden on ROTs. Moreover, the Phlx believes that the 500 contract cap should attract more order flow to the Phlx, which should result in increased liquidity, tighter markets, and more competition among exchange members, thereby promoting just and equitable principles of trade, removing impediments to and perfect the

mechanism of a free and open market, and protecting investors and the public interest consistent with section 6(b)(5) of the Act.¹⁰

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

The Phlx did not solicit or receive written comments concerning the proposal.

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

Within 35 days of the date 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 period 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 Phlx. All submissions should refer to File No. SR-Phlx-2002-87 and should be submitted by June 27, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47953; File No. SR-Phlx-2003-16]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Accelerating Approval of Amendment No. 3 Thereto, by the Philadelphia Stock Exchange, Inc., Relating to a Pilot Program for Options Intermarket Linkage Fees

May 30, 2003.

On March 18, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its fee structure to clarify which fees apply to trades pertaining to the options intermarket linkage ("Linkage") and to specify that such fees are for a one-year pilot.³ On March 21, 2003, Phlx submitted Amendment No. 1 to the proposed rule change.⁴ The proposed rule change, as amended by Amendment No. 1, was originally published for comment in the **Federal Register** on April 2, 2003.⁵ On April 23, 2003, Phlx filed Amendment No. 2 to the proposed rule change.⁶ On April 23, 2003, Phlx filed a supplementary letter to Amendment No. 2.⁷ Amendment No. 2 was published for comment in the

contract cap. Accordingly, the 500 contract cap was in effect for only those trades executed on or after November 18 that settled through December 31, 2002.

⁶ The payment for order flow fee does not apply to transactions between: (1) A ROT and a specialist; (2) a ROT and a ROT; (3) a ROT and a firm; and (4) a ROT and a broker-dealer. Also, the payment for order flow fee does not apply to index or foreign currency options.

⁷ According to the Phlx, the imposition of a monetary cap has been implemented by other exchanges in connection with payment for order flow programs. *See, e.g.,* Securities Exchange Act Release Nos. 45240 (January 7, 2002), 67 FR 1531 (January 11, 2002) (SR-PCX-2001-53) (implementing a ceiling on marketing charges of \$200 per trade); 46976 (December 9, 2002), 67 FR 77116 (December 16, 2002) (SR-ISE-2002-26) (lowering the cap on each payment for order flow fund from \$650,000 to \$550,000).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and 78f(b)(5).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 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 Richard S. Rudolph, Director and Counsel, Phlx to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 17, 2003 ("Original Filing").

⁴ *See* letter from Richard S. Rudolph, Director and Counsel, Phlx to Jennifer Lewis, Attorney, Division, Commission, dated March 20, 2003 ("Amendment No. 1").

⁵ *See* Securities Exchange Act Release No. 47561 (March 21, 2003), 68 FR 15250.

⁶ *See* letter from Richard S. Rudolph, Director and Counsel, Phlx to Jennifer Lewis, Attorney, Division, Commission, dated April 22, 2003 ("Amendment No. 2").

⁷ *See* letter from Richard S. Rudolph, Director and Counsel, Phlx to Jennifer Lewis, Attorney, Division, Commission, dated April 22, 2003.