

limitation, the Commission believes that sophisticated, high net-worth investors will have a better opportunity to take advantage of the risk-management mechanisms provided by FLEX options.<sup>10</sup>

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission recently approved a virtually identical Chicago Board Options Exchange, Inc., proposal SR-CBOE-99-63,<sup>11</sup> which had been published as SR-CBOE-98-39.<sup>12</sup> The Commission received no comment letters on this filing. Additionally, Amex filed a very similar proposal, SR-Amex-98-43, which it later withdrew because the IRS had not yet acted on its proposed rulemaking.<sup>13</sup> The current proposals mirror the changes that were approved in SR-CBOE-99-63. In addition, the proposals allow FLEX options to be used as they were originally intended to be used. The Commission believes, therefore, that granting accelerated approval to the proposed rule changes is appropriate and consistent with Section 6 of the Act.<sup>14</sup>

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-PCX-00-01 and SR-Amex-00-02) are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-M**

<sup>10</sup> The Commission expects that the Options Disclosure Document ("ODD") will promptly be amended to reflect the removal of the strike price limitation for FLEX equity call options. See October 1996 Supplement to the ODD.

<sup>11</sup> See Release No. 34-42371 (January 31, 2000) (order approving SR-CBOE-99-63.)

<sup>12</sup> See Release No. 34-40584 (October 21, 1998), 63 FR 58080 (October 29, 1998) (notice of filing of SR-CBOE-98-39.)

<sup>13</sup> See Release No. 34-40795 (December 15, 1998), 63 FR 71321 (December 24, 1998) (notice of filing SR-Amex-98-43.)

<sup>14</sup> 15 U.S.C. 78f.

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

<sup>16</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42405; File No. SR-Phlx-99-51]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Assessing a Monthly Capital Funding Fee on a Permanent Basis

February 8, 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. 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 schedule of dues, fees, and charges to charge each of the 505 Exchange set owners<sup>3</sup> a monthly capital funding fee of \$1,500 per seat owned.<sup>4</sup> The Commission previously approved implementation of the capital funding fee on a pilot basis until April 5, 2000;<sup>5</sup> the Exchange is now requesting permanent approval of the fee. This proposed rule change replaces SR-Phlx-99-43.<sup>6</sup>

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

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

<sup>3</sup> For the purposes of this 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>4</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. 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>5</sup> On January 5, 2000, the Commission approved Phlx's proposal to implement the capital funding fee on an accelerated basis until April 5, 2000. Securities Exchange Act Release No. 42318 (January 5, 2000), 65 FR 2216 (January 13, 2000) (SR-Phlx-99-49).

<sup>6</sup> On October 1, 1999, the Exchange filed a proposal to charge this \$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. See *supra* note 5.

#### 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

The purpose of the proposed rule change is to amend Phlx's schedule of dues, fees, and charges to charge a monthly capital funding fee 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 the fees will assist the Exchange in

<sup>7</sup> Under Phlx's rules, 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).

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, fee and other charges among its members and 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 written comments.<sup>13</sup>

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

With 35 days of the publication 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 the 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, 450 Fifth Street, NW, Washington, DC 20549. 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-99-51 and should be submitted by March 9, 2000.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-3745 Filed 2-16-00; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-42408; File No. SR-Phlx-99-17]

### **Self Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 1 and 2 to the Proposed Rule Change Relating to Trustees of Stock Exchange Fund**

February 9, 2000.

#### **I. Introduction**

On June 9, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), 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> a proposed rule change to amend Article IX of its By-Laws, concerning Trustees of Stock Exchange Fund. Notice of the proposal appeared in the **Federal Register** on July 9, 1999.<sup>3</sup> The Commission received no comments on the proposal. The Phlx subsequently submitted Amendment No. 1 to the proposed rule change on August 16, 1999<sup>4</sup> and Amendment No.

2 on November 5, 1999.<sup>5</sup> The proposed change relates specifically to Section 9-5, concerning Agent of Trustees, and Section 9-6, concerning Reports. This notice and order approves the proposed rule change, as amended, and solicits comments from interested persons on Amendment Nos. 1 and 2.

#### **II. Description of the Proposal**

Section 9-5 of Article IX currently mandates that the Trustees of the Stock Exchange Fund, with the approval of the Board of Governors, appoint a Trust Company to act as their Agent to hold the securities of the Exchange for safeguarding and to collect the interests, dividends, and income from the Fund for the Treasurer of the Exchange. The Agent also is empowered to make deliveries of securities held for the Trustees of the Stock Exchange Fund from time to time as the Trustees of the Stock Exchange Fund direct.

The proposed rule change, as amended, deletes reference to a Trust Company and mandates that the Trustees, with the approval of the Board of Governors, appoint as Agents for such purpose either a broker-dealer registered with the Commission under Section 15 of the Act<sup>6</sup> or a bank as defined in Section 3(a)(6) of the Act.<sup>7</sup> The reason for the change, according to Phlx, is that the Exchange no longer utilizes its subsidiary, the Philadelphia Depository Trust Co., for such services.

Section 9-6 of Article IX currently mandates that the Trustees of the Stock Exchange Fund submit to the Phlx Board of Governors at least quarterly a statement of the investments of the Exchange. The proposed rule change would mandate that the Trustees submit the quarterly statement to the Finance Committee of the Exchange, and that the Finance Committee then forward it to the Board of Governors with its recommendation.<sup>8</sup> The Board believes that oversight by the Finance Committee of the Trustees of the Stock Exchange Fund is appropriate, since the Finance

Associate Director, Division of Market Regulation, Commission, dated August 11, 1999. The substance of Amendment No. 1 is discussed below.

<sup>5</sup> See Letter from Murray L. Ross, Vice President and Secretary, Phlx, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, Commission, dated November 4, 1999. The substance of Amendment No. 2 is discussed below.

<sup>6</sup> 15 U.S.C. 78o.

<sup>7</sup> 15 U.S.C. 78c(a)(6).

<sup>8</sup> Such recommendation may vary according to issues that may arise, including such matters as altering the portfolio mix and appointing a new Agent pursuant to Section 9-5 of Article IX as amended by this proposal. Telephone conversation between Murray L. Ross, Vice President and General Secretary, the Phlx, and Karl Varner, Special Counsel, and Ira L. Brandriss, Attorney, the Commission, on February 9, 2000.

<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 \$1,000 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. 79f(b)(5).

<sup>13</sup> In connection with SR-Phlx-99-43, *see supra* note 6, 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 Vanasco, Wayne & Genelly.

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

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

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

<sup>3</sup> See Securities Exchange Act Rel. No. 41591 (July 1, 1999), 64 FR 37187.

<sup>4</sup> See Letter from Murray L. Ross, Vice President and Secretary, Phlx, to Michael Walinskas, Deputy