

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 ISE 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 effect the following changes in the ISE's fees:

Discounts: A Click terminal is a device that ISE Electronic Access Members ("EAMs") can use to enter orders on the ISE. The current ISE fee schedule imposes a flat monthly fee of \$500 per terminal and \$250 for each application program interface ("API") associated with a terminal. This structure can act as a disincentive for EAMs to utilize multiple Click terminals. The ISE is adopting a tiered fee schedule with volume discounts for Clicks and APIs that would lower the software fees to half the current charges (from \$500 to \$250) for the sixth Click terminal and all subsequent terminals, and the API fee (from \$250 to \$100) for the sixth and subsequent APIs.

Trade review devices: These devices allow a member to "listen" to the broadcast of ISE messages confirming executions effected by the member. Members use these devices for analytical, hedging, risk management, back-office processing and similar purposes. The ISE is establishing monthly "trade review device" fees, including multiple-terminal discounts, that are the same as the Click fees: \$500 for the first five terminals and \$250 per terminal thereafter.

Execution Fees: The ISE fee schedule provides for lower execution fees as the Exchange's average daily volume (ADV) increases. There are discounts at ADV of 300,000, 500,000 and 700,000 contracts a day. The amendment to the fee schedule clarifies that the reduced fees apply only to executions above the break-points. For example, at ADV of 550,000 contracts; the \$.21 fee will apply for the first 300,000 contracts; the \$.17 fee will apply for the next 200,000 contracts; and the \$.14 fee will apply for the last 50,000 contracts.

Membership Dues: ISE Rule 205 authorizes the Exchange to charge "membership dues," payable on the first day of a calendar quarter. The fee schedule, however, includes monthly "access fees," rather than specific membership dues. The ISE is amending ISE Rule 205 to reflect this, and is not

proposing any changes to the access fees themselves.

Regulatory Fees: The ISE fee schedule contains a provision for an annual \$3,500 regulatory fee. ISE Rule 208 currently states that this fee is to be collected on a quarterly basis. The ISE believes that it is an unnecessary administrative burden to bill for and collect this relatively small fee on a quarterly basis. Accordingly, the ISE is eliminating the word "quarterly" from this rule so that it can collect the fee on an annual basis. There are no changes to the fee itself.

The basis for this proposed rule change is the requirement under section 6(b)(4) of the Act³ that an exchange provide 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 ISE believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

Because the ISE has designated the foregoing proposed rule change as a fee change pursuant to section 19(b)(3)(A) of the Act⁴ and Rule 19b-4(f)(2) thereunder,⁵ the proposal has taken effect upon filing with the Commission. At any time within 60 days of the filing of such 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 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 offices of the ISE. All submissions should refer to SR-ISE-00-08 and should be submitted by November 24, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43380; File Nos. SR-PHLX-00-86 and SR-PHLX-00-87]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes by the Philadelphia Stock Exchange, Inc. Relating to an Amendment to the Exchange's Payment for Order Flow Fee and a Rebate for Certain Fees Incurred

October 25, 2000.

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 September 11, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" of the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

³ 15 U.S.C. 78f(b)(4).

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(2).

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

In SR-PHLX-00-86, the Phlx proposes to amend its payment for order flow program³ that imposed a fee, effective, August 1, 2000, of \$1.00 per contract on transactions by Phlx specialists and Registered Options Traders ("ROTs") in the Top 120 Options⁴ traded on the Phlx. The effect of the amendment would be to exclude from the program, as of September 1, 2000, any transaction between a Phlx specialist or a Phlx ROT and a Phlx member firm trading in its proprietary account. The proposed amendment is effective as of September 1, 2000.⁵

In SR-PHLX-00-87, the Phlx proposes to rebate the fees that the Phlx ROTs and Phlx specialists incurred during the period from August 1, 2000, through August 31, 2000, when they traded with Phlx member firms that were effecting trades for their proprietary accounts and not on behalf of customers. The text of these proposed rule changes is available at the principal offices of the Phlx.

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

In its filing with the Commission, the Phlx included statement concerning the purpose of and basis for the proposed rule changes and discussed any comments it had received on them. 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 Changes

The purpose of SR-PHLX-00-86, is to amend the Phlx's payment for order

³ See Securities Exchange Act Release No. 43177 (Aug. 18, 2000), 65 FR 51889 (Aug. 25, 2000).

⁴ A top 120 Option is defined as one of the 120 most actively traded equity options in terms of the total number of contracts that were traded on all U.S. options markets for the period January 1, 2000 through June 30, 2000, based on volume information provided by The Options Clearing Corporation. The Phlx will determine the Top 120 Options every six months, with the next measuring period commencing June 1, 2000 and ending on November 30, 2000. The proposed fee does not apply to index or currency options.

⁵ The \$1.00 fee is not eligible for the monthly credit of up to \$1,000 to be applied against certain fees, dues, charges, and other amounts that certain members owe to the Exchange. See Securities Exchange Act Release No. 42791 (May 16, 2000), 65 FR 33606 (May 24, 2000).

flow fee program such that, effective September 1, 2000, the Phlx will not assess the \$1.00 per contract fee on transactions in which a Phlx member firm, trading for its proprietary account, trade with a Phlx specialist or Phlx ROT. In SR-PHLX-00-87, the Phlx proposes to rebate the fees that Phlx specialists and ROTs incurred in executing such transactions with Phlx member firms during the period from August 1, 2000 through August 31, 2000.

The purpose of the Phlx's payment for order flow program is to generate a source of revenue that specialists may use to attract order flow in the Top 120 Options traded on the Phlx. The Phlx's payment for order flow program originally imposed a \$1.00 fee on all transactions of specialists and ROTs in the Top 120 Options, other than ROT-to-ROT or specialist-to-ROT transactions. The Phlx believes that it was necessary for it to adopt this type of fee in order to maintain and enhance its competitive position. Effective September 1, 2000, the proposed rule change would exempt from the fee all transactions between a specialist or an ROT and a member firm trading for its proprietary account.⁶

The Phlx believes that it would not promote the goals of its payment for order flow program to collect the \$1.00 fee from ROTs and specialists when they engage in transactions with Phlx member firms trading for their proprietary accounts. Any funds collected in connection with those trades would not be used to make payments to member firms for their proprietary order flow, because those are not the kind of transactions that the fee is designed to attract. The Phlx proposes to rebate to specialists and ROTs any fees that were imposed on them for their transactions with respect to the proprietary trading of Phlx member firms during the period from August 1, 2000 through August 31, 2000.

In sum, the Phlx's payment for order flow program, as amended by SR-PHLX-00-86, would impose the \$1.00 fee on all transactions by specialists and ROTs in the Top 120 Options, with the exception of: (1) Transactions between ROTs; (2) transactions between a specialist and an ROT; and (3)

⁶ The Phlx has also filed a proposed rule change to amend its payment for order flow program to exclude, effective October 1, 2000, any transactions between Phlx specialists or ROTs and broker-dealer orders. See SR-PHLX-00-88 (October 2, 2000). The Phlx also proposed to rebate the fees that were imposed upon specialists and ROTs for transactions of the type that would be excluded by virtue of SR-PHLX-00-88. See SR-PHLX-00-89 (October 4, 2000).

transactions between a specialist or an ROT and a member firm acting for its proprietary account and not on behalf of a customer. The Exchange envisions that the persons who pay the fees will also participate in the order flow derived from the plan, amended as proposed. The Exchange believes that the plan, amended as proposed, will provide for the equitable allocation of reasonable fees among the Exchange's members because the specialists and ROTs who pay the fee should also receive the benefits of increased order flow. Moreover, the Exchange believes that the fee should promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest by attracting more order flow to the Exchange. In the Exchange's view, this should result in increased liquidity, tighter markets, and more competition among exchange members. Accordingly, the Exchange believes that its proposals are consistent with and further the objectives of the Act, including sections 6(b)(4)⁷ and 6(b)(5)⁸ thereof.

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

The Phlx neither solicited nor received any written comments with respect to the proposed rule changes.

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

Because the Phlx has designated the foregoing proposed rule changes as fee changes pursuant to section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(2) thereunder,¹⁰ the proposals have taken effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule changes, the Commission may summarily abrogate them if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78f(b)(6).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(2).

in furtherance of the purposes of the Act.

IV. Solicitation of Comments

The Commission invites interested persons to submit written data, views, and arguments concerning the foregoing, including whether the proposed rules are 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 submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications between the Commission and any person relating to the proposed rule changes, 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 filings will also be available for inspection and copying at the principal offices of the Phlx. All submissions should refer to File Nos. SR-PHLX-00-86 and SR-PHLX-00-87, and should be submitted by November 24, 2000.

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. 34-43481; File Nos. SR-PHLX-00-88 and SR-PHLX-00-89]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes by the Philadelphia Stock Exchange, Inc. Relating to an Amendment to the Exchange's Payment for Order Flow Fee and a Rebate for Certain Fees Incurred

October 25, 2000.

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 the Philadelphia Stock Exchange, Inc. ("Phlx" or the "Exchange") filed with the Securities and Exchange

Commission ("Commission") proposed rule changes SR-PHLX-00-88 and SR-PHLX-00-89 on October 2, 2000 and October 4, 2000, respectively, as described in Items I, II, and III below, which Items the Phlx has prepared. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

In SR-PHLX-00-88, the Phlx proposes to amend its payment for order flow program³ that imposed a fee, effective August 1, 2000 of \$1.00 per contract on transactions by Phlx specialists and Registered Options Traders ("ROTs") in the Top 120 Options⁴ traded on the Phlx. The effect of the amendment would be to exclude from the program, as of October 1, 2000, any transaction between a Phlx specialist or a Phlx ROT and a broker-dealer order.⁵ The proposed amendment is effective as of October 1, 2000.⁶

In SR-PHLX-00-89, the Phlx proposes to rebate the fees that the Phlx ROTs and Phlx specialists incurred during the period from August 1, 2000 through September 30, 2000, when they engaged in a transaction with a broker-dealer order, and not with the order of a customer. The text of these proposed rule changes is available at the principal offices of the Phlx.

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

In its filings with the Commission, the Phlx included statements concerning the purpose of and basis for the

³ See Securities Exchange Act Release No. 43177 (Aug. 18, 2000), 65 FR 51889 (Aug. 25, 2000).

⁴ A Top 120 Option is defined as one of the 120 most actively traded equity options in terms of the total number of contracts that were traded on all U.S. options markets for the period January 1, 2000 through June 30, 2000, based on volume information provided by The Options Clearing Corporation. The Phlx will determine the Top 120 Options every six months, with the next measuring period commencing June 1, 2000 and ending on November 30, 2000. The proposed fee does not apply to index or currency options.

⁵ According to the Phlx, a broker-dealer order is an order, entered from other than the floor of the exchange, for any account: (i) in which the holder of a beneficial interest is a member or non-member broker-dealer; or (ii) in which the holder of beneficial interest is a person associated with or employed by a member or non-member broker-dealer. This includes orders for the account of an ROT entered from off the floor.

⁶ The \$1.00 fee is not eligible for the monthly credit of up to \$1,000 to be applied against certain fees, dues, charges, and other amounts that certain members owe to the Exchange. See Securities Exchange Act Release No. 42791 (May 16, 2000), 65 FR 33606 (May 24, 2000).

proposed rule changes and discussed any comments it received on them. 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 Changes

The purpose of SR-PHLX-00-88 is to amend the Phlx's payment for order flow fee program such that, effective October 1, 2000, the Phlx would not assess the \$1.00 per contract fee on transactions in which a Phlx specialist or Phlx ROT trades with a broker-dealer order. Moreover, in connection with SR-PHLX-00-89, the Phlx proposes to rebate the fees that Phlx specialists and ROTs incurred in executing such transactions with broker-dealers during the period from August 1, 2000 through September 30, 2000.

The purpose of the Phlx's payment for order flow program is to generate a source of revenue that specialists may use to attract order flow to the Phlx. The Phlx's payment for order flow program originally imposed a \$1.00 fee on all transactions of specialists and ROTs in the Top 120 Options traded on the Phlx, other than ROT-to-ROT or specialist-to-ROT transactions.⁷ The Phlx believes that it was necessary for it to adopt this type of fee in order to maintain and enhance its competitive position.

Proposed rule change SR-PHLX-00-88 would now exempt from the fee all transactions between a specialist or an ROT and a broker-dealer order. The Phlx believes that it would not promote the goals of the payment for order flow program to collect the \$1.00 fee from an ROT or a specialist that engages in a transaction with a broker-dealer order, and not the order of a customer. Therefore, any funds collected in connection with those trades would not be used to make payments to broker-dealers for their proprietary order flow, because those are not the kind of transactions that the fee is designed to attract. Indeed, because the primary

⁷ See Securities Exchange Act Release No. 43177 (Aug. 18, 2000), 65 FR 51889 (Aug. 25, 2000). The Phlx later filed a proposed rule change to amend its payment for order flow program in order to exclude from the program, as of September 1, 2000, any transactions between Phlx specialists or ROTs and Phlx member firms trading in their proprietary accounts. See SR-PHLX-00-86 (September 11, 2000). The Phlx also proposed to rebate the fees that were imposed upon specialists and ROTs for transactions of the type that would be excluded by virtue of SR-PHLX-00-86. See SR-PHLX-00-87 (September 11, 2000).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.