

in Item IV below. CSE 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*

1. Purpose

The Exchange is proposing two amendments to the Exchange Rules governing transaction fees and market data revenue credits in keeping with recent trends in the securities industry.

The first amendment adds subsection (2) to CSE Rule 11.10(A)(e), ("Crosses and Meets"). Proposed subsection (2) establishes a fee schedule for transactions in Nasdaq/NM Securities.

The second amendment creates an incentive for CSE members to trade Nasdaq/NM Securities on the Exchange and will be codified as CSE Rule 11.10(A)(l) ("Tape 'C' Transaction Credit"). The Exchange believes the credit is a logical next step in its efforts to provide competitive exchange services to CSE members trading Nasdaq/NM Securities. Under the Nasdaq program,<sup>4</sup> CSE member firms will receive a 75 percent (75%) pro rata transaction credit on all Nasdaq Tape C market data revenue generated by CSE member trading of Nasdaq/NM Securities.

2. Statutory Basis

The proposed rule change is generally consistent with section 6(b) of the Act.<sup>5</sup> The proposed rule change also furthers the objectives of section 6(b)(5) of the Act,<sup>6</sup> particularly, in that it is designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposal also is consistent with section 6(b)(4) of the Act<sup>7</sup> in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members by crediting CSE members on a pro rata basis.

<sup>4</sup> Nasdaq/NM Securities will be traded on CSE pursuant to section 12(f) of the Act as well as the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities traded on Exchanges on an Unlisted Trading Privileges Basis ("Nasdaq-UTP Plan").

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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

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

The CSE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*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**

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(2) thereunder,<sup>9</sup> as establishing or changing a due, fee, or other charge paid solely by members of the CSE. 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.<sup>10</sup>

**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 CSE. All submissions should refer to File No. SR-CSE-2001-05 and should be submitted by January 9, 2002.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</sup> See section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

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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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-45150; File No. SR-Phlx-2001-110]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Permitting Inactive Nominees To Become Effective Members on December 5, 2001**

December 12, 2001.

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 December 4, 2001, 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 proposed to allow Inactive Nominees,<sup>3</sup> upon request, to act as effective members of the Phlx on Wednesday, December 5, 2001 on the Phlx Equity Trading Floor. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, 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 Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at

<sup>11</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> Inactive Nominees are designated by Phlx member organizations to serve as such. They have been approved by the Phlx for membership in accordance with the Phlx Rules, but will not have the rights and privileges of membership until made effective by the Exchange. See Phlx By-law Article XII, Section 12-10 and Phlx Rule 21.

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*

(1) Purpose

The purpose of the proposed rule change is to allow Inactive Nominees, upon request, to act as effective members of the Phlx on Wednesday, December 5, 2001 on the Phlx Equity Trading Floor. Wednesday, December 5, 2001 is the 6th Annual McNamara Trading Day benefiting St. Jude Children's Research Hospital. McNamara Trading Company, the largest floor brokerage member organization on the Equity Floor, donates all commissions from the day's trading to the St. Jude Children's Research Hospital. The Equity Floor typically experiences a very large increase in volume that day. The Exchange believes that making Inactive Nominees effective members upon their request on that day should better enable the Exchange and its members to maintain fair and orderly markets in securities due to the expected increased volume.<sup>4</sup>

The Phlx has authority to make Inactive Nominees effective members. Phlx By-law Article XII, Sections 12-10(a) and (b) state that an Inactive Nominee is "an individual \* \* \* approved for membership" in the Exchange, but "shall have no rights or privileges of membership unless and until said Inactive Nominee becomes an effective member." One way that an Inactive Nominee becomes an effective member is by assuming, pursuant to Phlx Rule 21, legal title to a membership through an intra-firm transfer. This allows an Inactive Nominee to become an effective member of the Exchange through the transfer of a membership from another member, associated with the Inactive Nominee's firm, to the Inactive Nominee. Consequently, the member leaving the membership goes on Inactive Nominee status.

The Exchange now proposes to permit an Inactive Nominee to become an effective member on December 5, 2001 without receiving transfer of membership from the Inactive

Nominee's associated member.<sup>5</sup> To become an effective member on that date, an Inactive Nominee need only request to be made an effective member to the Exchange's Membership Services Department.<sup>6</sup> In order to address the anticipated high volume of trading on December 5, 2001, both the Inactive Nominee and the associated member of the Inactive Nominee's firm would be permitted to trade as Exchange members on the Phlx equity trading floor on that date.<sup>7</sup>

(2) Statutory Basis

The Exchange believes that the current proposal should allow the Exchange to continue to maintain fair and orderly markets on the Phlx Equity Floor on Wednesday, December 5, 2001 in light of the expected increase in trading activity that day. As such, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</sup> in particular, because it should promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

*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*

No written comments were received.

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

The foregoing rule change has become effective pursuant to Section

<sup>5</sup> Telephone conversation between John Dayton, Assistant Secretary & Counsel, Phlx, and Steven Johnston, Special Counsel, Division of Market Regulation, Commission, on December 10, 2001 (clarifying effect of proposal on transfer of membership).

<sup>6</sup> Such Inactive Nominees will return to Inactive Nominee status at the close of business on Wednesday, December 5, 2001. In addition, Inactive Nominees may choose to become an effective member pursuant to Phlx Rule 21.

<sup>7</sup> Telephone conversation between John Dayton, Assistant Secretary & Counsel, Phlx, and Steven Johnston, Special Counsel, Division of Market Regulation, Commission, on December 10, 2001 (clarifying combined participation of members and associated Inactive Nominees in trading, as well as purpose of combined participation).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

19(b)(3)(A)(i) of the Act<sup>10</sup> and subparagraph (f)(1) of Rule 19b-4<sup>11</sup> thereunder because it constitutes a stated policy, practice, or interpretation with respect to the administration of Phlx By-law Article XII, Section 12-10(b); namely that Inactive Nominees could, upon request, be made effective members for trading on the Phlx Equity Floor on Wednesday, December 5, 2001. 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 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-2001-110 and should be submitted by January 9, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

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

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**SMALL BUSINESS ADMINISTRATION**

**Reporting and Recordkeeping Requirements Under OMB Review**

**AGENCY:** Small Business Administration.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>11</sup> 17 CFR 240.19b-4(f)(1).

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

<sup>4</sup> For example, trading volume on November 11, 1999, the 1999 McNamara Trading Day, was over 18.1 million shares, triple Phlx's then average daily volume.