

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 NASD. All submissions should refer to File No. SR-NASD-2001-69 and should be submitted by February 19, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>22</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45322; File No. SR-Phlx-2001-115]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 thereto by the Philadelphia Stock Exchange, Inc. Relating to the Volume Thresholds for the Options Specialist Shortfall Fee and Corresponding Shortfall Credit

January 22, 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 December 20, 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. On January 15, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> 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 Exchange proposes to amend its schedule of dues, fees and charges to increase the requisite volume thresholds associated with the options specialist 10 percent deficit fee ("shortfall fee")<sup>4</sup> and corresponding options specialist 10 percent shortfall credit ("shortfall credit").<sup>5</sup> The Exchange also proposes to amend the definition of a Top 120 Option, clarify who is eligible to receive the shortfall credit and make other minor, technical amendments to its fee schedule. The Exchange intends to implement the proposed volume thresholds retroactively for transactions settling on or after January 2, 2002.<sup>6</sup>

The text of the proposed rule change appears below. New text is in italics; deletions are in brackets.

#### Summary of Equity Option Charges (P. 1/2)

##### SPECIALIST [10%] DEFICIT (*Shortfall*) FEE I

\$.35 per contract for specialists trading any Top 120 Option if [at least 10% of] *the following* total national monthly contract volume for such Top 120 Option is not effected on the PHLX: *11 percent for the period January through March 2002; 12 percent for the period April through June 2002; 13 percent for the period July through September 2002; and 14 percent for the period October through December 2002.*

#### Summary of Equity Option Charges (P. 2/2)

##### [OPTIONS] SPECIALIST [10%] DEFICIT (Shortfall) FEE CREDIT

A credit of \$.35 per contract may be earned by options specialists for all contracts traded in excess of the [10%] *following* volume thresholds in eligible

the Act. Finally, the Exchange requested that the proposed fee be approved as of January 2, 2002 and that the proposed rule change be approved on an accelerated basis in order to permit the Exchange to invoice its January fees in a timely manner by the middle of February.

<sup>4</sup> See Securities Exchange Act Release No. 43201 (August 23, 2000), 65 FR 52465 (August 29, 2000) (SR-Phlx-00-71).

<sup>5</sup> See Securities Exchange Act Release No. 44892 (October 1, 2001), 66 FR 51487 (October 9, 2001) (SR-Phlx-2001-83).

<sup>6</sup> See Amendment No. 1, *supra* note 3. The Exchange states that the shortfall fee will continue to be eligible for the monthly credit of up to \$1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. See Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR-Phlx-2001-49).

issues for the monthly periods commencing September 1, 2001. These credits may be applied against previously imposed "shortfall fees" for the preceding six months for issues that in the month the deficit occurred, the equity option traded in excess of 10 million contracts per month: *11 percent for the period January through March 2002; 12 percent for the period April through June 2002; 13 percent for the period July through September 2002; and 14 percent for the period October through December 2002.*

\* \* \* \* \*

I denotes fee eligible for monthly credit of up to \$1,000.

#### 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

###### (1) Purpose

According to the Exchange, the purpose of the proposed rule change is to increase the volume thresholds related to the options specialist shortfall fee and corresponding shortfall credit in order to encourage specialists to compete for order flow in the national market. The options traded by the specialist unit, and the transactions related thereto, may be especially valuable to that specialist unit and the Exchange due to their potential profitability. Therefore, the Exchange believes that the specialist should compete for order flow in the national market, because that specialist unit is the key party responsible for marketing and receiving order flow in that particular option.

Currently, the Exchange imposes a fee of \$0.35 per contract to be paid by the specialist trading any Top 120 Option if at least 10 percent of the total national monthly contract volume ("total volume") for such Top 120 Option is not effected on the Exchange in that

<sup>22</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 letter from Cynthia K. Hoekstra, Counsel, Phlx, to Kelly Riley, Senior Special Counsel, Division of Market Regulation, Commission, dated January 14, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange clarified the statutory basis of the proposed rule change to include Section 6(b)(4) of the Act. In addition, the Exchange requested that, rather than being filed pursuant to Section 19(b)(3)(A)(ii) of the Act, under which it was originally filed, that the proposed rule change now be filed pursuant to Section 19(b)(2) of

month.<sup>7</sup> In addition, a corresponding shortfall credit of \$0.35 per contract may be earned toward previously imposed shortfall fees for each contract traded in excess of the 10 percent volume threshold during a subsequent monthly time period. Thus, the Exchange states that options specialists may apply this credit when trading in their issues falls below the 10 percent volume threshold in one month, and exceeds the threshold in a subsequent month. Such a credit may be applied against shortfall fees imposed within the preceding six months for the same option, provided that, in the month the deficit occurred, the option traded in excess of 10 million contracts nationwide that month.<sup>8</sup>

The proposed fee amendments would increase the requisite volume thresholds by 1 percent per quarter over each quarter of 2002. Thus, the minimum trading volume requirements for total volume in the Top 120 Options would be in excess of: 11 percent for the period January through March 2002; 12 percent for the period April through June 2002; 13 percent for the period July through September 2002; and 14 percent for the period October through December 2002. The related shortfall credit will also be amended to correspond with the volume thresholds described above. Therefore, in order to qualify for the shortfall credit, specialists/specialist units must have total volume in the Top 120 Options (that otherwise qualify based on the 10 million contract volume requirement) in excess of: 11 percent for the period January through March 2002; 12 percent for the period April through June 2002; 13 percent for the period July through September 2002; and 14 percent for the period October through December 2002.

The Exchange also proposes to amend the definition of a Top 120 Option to include the top 120 most actively traded equity options in terms of the total numbers of contracts in that option that were traded nationally for a specified month based on volume reflected by OCC.<sup>9</sup>

<sup>7</sup> The Exchange states that at present a Top 120 Option is defined as one of the 120 most actively traded equity options in terms of the total number of contracts in that option that were traded nationally for a specified month based on volume reflected by The Options Clearing Corporation ("OCC") and which was listed on the Exchange after January 1, 1997.

<sup>8</sup> The Exchange states that nationwide trading figures are based on the national monthly contract volume reflected by the OCC.

<sup>9</sup> The Exchange states that previously, options listed on the Phlx before January 1, 1997 were excluded from the calculation of the Top 120 Options. The Phlx intends to continue to divide by two the total volume reported by OCC, which reflects both sides of an executed transaction, thus

Currently, the rate of \$0.35 per contract is paid to the Exchange if the requisite volume for such Top 120 Option is not effected on the Phlx in that month and a shortfall credit of \$0.35 may be earned against previously imposed shortfall fees, as discussed above. These rates will remain unchanged.

In order to avoid one specialist unit trying to claim the credit for volume deficits created by another specialist unit, the Exchange also proposes to clarify that the shortfall credit is available only to the same specialist unit or one associated with or related to that specialist unit to capture, for example, affiliates, subsidiaries and corporate mergers.

The Exchange states that other procedures relating to the specialist shortfall fee and shortfall credit remain unchanged.<sup>10</sup> Finally, the Exchange proposes to make other minor, technical amendments to the headings of the shortfall fee and credit to make them more consistent.

The Exchange believes that this proposal is necessary to continue to attract order flow to the Exchange in order to remain competitive. According to the Exchange, the proposed fee should encourage specialists to vigorously compete for order flow, which not only enhances the specialists' role, but also provides additional revenue to the Exchange. Moreover, the Exchange expects that specialists' efforts to maintain the requisite volume thresholds as outlined above should contribute to deeper, more liquid markets and tighter spreads. Thus, the Exchange believes that competition should be enhanced, and important auction market principles preserved.

In conclusion, the Exchange proposes to implement the proposed volume thresholds retroactively for transactions settling on or after January 2, 2002. To that end, the Exchange has requested

avoiding one trade being counted twice for purposes of determining overall volume. See Securities Exchange Act Release No. 43201 (August 23, 2000), 65 FR 52465 (August 29, 2000) (SR-Phlx-00-71).

<sup>10</sup> The Exchange states that, for example, the previously imposed transition period for newly listed options would remain in effect. Therefore, the requisite volume threshold of three percent for the first full calendar month and six percent for the second full calendar month of trading will remain unchanged. The Exchange fee schedule continues to apply to all equity options transactions not covered by this options specialist shortfall fee. Also, the three-month differentiation to determine whether an equity option is considered a Top 120 Option will remain in effect, i.e., September's Top 120 Options are based on June's volume. See Securities Exchange Act Release No. 43201 (August 23, 2000), 65 FR 52465 (August 29, 2000) (SR-Phlx-00-71). Any excess volume (over the total volume target) may not be carried over to a future month.

accelerated approval so that the proposed rule change may become effective as of January 2, 2002. The Exchange stated that approval of the proposed rule change on an accelerated basis would ensure that all of the applicable fees for January 2002 are integrated into the Exchange's routine billing cycle thus avoiding potential member confusion.

## (2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Sections 6(b)(4)<sup>12</sup> and 6(b)(5)<sup>13</sup> of the Act, in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and it is intended to promote just and equitable principles of trade and protect investors and the public interest by attracting more order flow to the Exchange, which should result in increased liquidity and tighter markets.

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

The Exchange 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 either solicited or received.

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

Within 35 days of the date of 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 Exchange 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, as amended, is consistent with

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

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 Exchange. All submissions should refer to File No. SR-Phlx-2001-115 and should be submitted by February 12, 2002.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### North American Free Trade Agreement; Invitation for Applications for Inclusion on the Chapter Twenty Roster

**AGENCY:** Office of the United States Trade Representative (USTR).

**ACTION:** Invitation for Applications.

**SUMMARY:** Chapter Twenty of the North American Free Trade Agreement (NAFTA) establishes a mechanism for the settlement of disputes between the NAFTA Parties. A five-member panel conducts each dispute settlement proceeding. Article 2009 provides for the establishment of a roster of persons to serve on Chapter Twenty dispute settlement panels. USTR invites qualified persons to apply for consideration as a nominee to the roster of panelists.

**DATES:** Applications should be received no later than February 27, 2002.

**ADDRESSES:** USTR encourages applicants to submit their applications by email to [naftapanel@ustr.gov](mailto:naftapanel@ustr.gov) or by fax to Sandy McKinzy, Attn: Chapter Twenty Roster Applications, at (202) 395-3640. Alternatively, applicants may

submit their applications by first class mail to Sandy McKinzy, Attn: Chapter Twenty Roster Applications, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508. Submissions sent by hand delivery or messengers will not be accepted.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the form of the application, contact Sandy McKinzy, Litigation Assistant, USTR Office of Monitoring and Enforcement, at (202) 395-3582. For other inquiries, contact Kent Shigetomi, Director for NAFTA, at (202) 395-3412 or David W. Oliver, Associate General Counsel, at (202) 395-3581.

#### SUPPLEMENTARY INFORMATION:

#### Dispute Settlement Under NAFTA Chapter Twenty

Chapter Twenty procedures apply to the avoidance or settlement of most types of disputes between the Parties arising under the NAFTA. If the NAFTA Parties cannot settle a dispute through consultations they may convene a dispute settlement panel to consider the matter.

#### Chapter Twenty Roster and Composition of Panels

Article 2009 of the NAFTA provides for a roster of up to 30 persons to serve on Chapter Twenty dispute settlement panels. A separate five-member panel is formed for each dispute. Panelists normally are selected from the roster (although non-roster panelists may be selected, for instance, when a dispute involves a matter for which a particular expertise not reflected on the roster would be helpful). For each case, roster members under consideration to serve as a panelist will be requested to complete a disclosure form, which is used to identify possible conflicts of interest or appearances of conflict. The disclosure form requests information regarding financial interests and affiliations, including information regarding the identity of any clients the roster member may have and, if applicable, clients of the roster member's firm.

#### Criteria for Eligibility for Inclusion on Chapter Twenty Roster

Article 2009 provides that roster members shall (a) have expertise or experience in law, international trade, other matters covered by the NAFTA or the resolution of disputes arising under trade agreements, and shall be chosen strictly on the basis of objectivity, reliability and sound judgment, (b) be independent of, and not be affiliated

with or take instructions from, any Party, and (c) comply with the code of conduct for Chapter Twenty panelists.

#### Procedures for Selection of Chapter Twenty Roster Members

Following the receipt of applications, USTR, in consultation with the Senate Committee on Finance and the House Committee on Ways and Means, selects persons that the United States will nominate for inclusion on the Chapter Twenty roster. Roster members are appointed by consensus of the three NAFTA Parties for terms of three years, and may be reappointed.

#### Remuneration and Expenses

Persons selected for service on a Chapter Twenty panel are remunerated at the rate of \$800 (Canadian) per day, plus expenses.

#### Applications

Qualified persons who wish to be included on the Chapter Twenty roster are invited to submit applications. Applications must be typewritten, and should be headed "Application for Inclusion on NAFTA Chapter Twenty Roster." Applications should include the following information:

1. Name of the applicant.
2. Business address, telephone number, fax number, and email address.
3. Citizenship(s).
4. Spanish language fluency, written and spoken.
5. Current employment, including title, description of responsibilities, and name and address of employer.
6. Relevant education and professional training.
7. Post-education employment history, including the names and addresses of current and prior employers, positions held, dates of employment, and a summary of responsibilities.
8. Relevant professional affiliations and certifications, including, if any, current bar memberships in good standing.
9. A list and copies of publications, testimony, and speeches, if any, relevant to the subject matter of the NAFTA.
10. A list of international trade proceedings or domestic proceedings relating to international trade matters in which the applicant has provided advice to a party or otherwise participated.
11. Summary of any current and past employment by, or consulting or other work for, the Government of the United States, Canada, or Mexico.
12. The names and nationalities of (a) all foreign principals for whom the applicant is currently or has previously

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