

\*\*\* All API Session/API fees associated with a second and subsequent Click terminals are waived through May 31, 2003 [May 31, 2002]. Thereafter, such fees are waived for third and subsequent Session/API associated with an incremental Click terminal for EAMs if the member executes, on average, at least 500 customer or firm proprietary contracts per day per incremental Click terminal on the Exchange for the month.

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## 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

The ISE proposes to amend three aspects of its current fee schedule. First, the ISE proposes to extend the waiver of customer transaction fees. While the ISE currently waives customer transaction and comparison fees, this waiver will expire on May 26, 2002. The ISE proposes to extend this waiver through June 30, 2003 for competitive reasons.

Second, the ISE proposes to extend the waiver of the Click terminal fee and the API fee associated with the use of Click terminals for an additional year. "Clicks" are ISE order-entry terminals, and the waiver applies to a member's second and subsequent Click terminals. By its terms, this waiver will expire on May 31, 2002. Because this fee waiver has worked well to encourage firms to install and use multiple Clicks, the ISE proposes to extend the program for an additional year.

Third, the ISE proposes to delete the "Torque" fees from our fee schedule. ISE market makers can use either the Torque application or any other application of their choice to support their trading. Recently, the ISE ceased to provide Torque directly to market makers. Instead, market makers using Torque currently contract directly with the supplier of that application, and pay all fees directly to that supplier. Thus, the ISE believes that Torque fees are no longer relevant and proposes to delete these fees from its fee schedule.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>5</sup> in general, and Section 6(b)(4) of the Act,<sup>6</sup> in particular, in that it provides 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 Exchange 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

The foregoing rule change, as amended, has become effective as of the date of filing of Amendment No. 2, on April 25, 2002, pursuant to Section 19(b)(3)(A)<sup>7</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>8</sup> thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange. 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>9</sup>

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

<sup>9</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on April 25, 2002, the date the ISE filed Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

### 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 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, as amended, 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 ISE. All submissions should refer to File No. SR-ISE-2002-08 and should be submitted by May 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Margaret H. McFarland,  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45847; File No. SR-Phlx-2002-30]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Adoption of a Fee for Construction of Kiosks

April 30, 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 April 24, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the

<sup>10</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.

proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, 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 require specialists and specialist units (collectively referred to as "specialist units") to pay for the construction cost of a kiosk if the specialist unit initiates the construction request for the kiosk.<sup>3</sup> The text of the proposed rule change is available at the Phlx's Office of the Secretary 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 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 III 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

The purpose of the proposed rule change is to require specialist units to pay for the cost of constructing a kiosk, if requested by them, due to the considerable costs associated with construction. These requests for construction may not be consistent with the Exchange's floor development plans, thereby requiring an unbudgeted expenditure of capital by the Exchange. However, consistent with current Exchange billing policies, if the Exchange chooses to construct a kiosk, it will charge the specialist unit the fee for a trading post with kiosk. Therefore, for future kiosk construction requests initiated by a specialist unit, the Exchange will pass through the construction cost to the specialist unit.<sup>4</sup>

<sup>3</sup> A kiosk is an open, flat surface that contains computer terminals and allows the specialist units to face the trading crowd.

<sup>4</sup> The decision to construct a kiosk at a particular post is solely within the Exchange's discretion, even if the specialist unit pays for the construction cost for the kiosk.

The Exchange intends to request one-half of the cost prior to construction, with the remainder charged after construction is completed.<sup>5</sup> Because the specialist unit would pay for the construction cost of the kiosk, the Exchange's current monthly fee of \$375 for trading post with kiosk will not apply.<sup>6</sup> However, the Exchange's current monthly fee of \$250 for a trading post will continue to apply.<sup>7</sup>

##### 2. Statutory Basis

The Exchange believes that 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)(4) of the Act,<sup>9</sup> in particular, by providing for the equitable allocation of reasonable dues, fees and other charges among the Exchange's members because the members who request and pay for the construction of the kiosk will incur the benefit of using the kiosk.

### **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 solicited or received with respect to the proposed rule change.

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

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and Rule 19b-4(f)(2) thereunder.<sup>11</sup> At any time within 60 days of the filing of Amendment No. 1 to the 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,

<sup>5</sup> This fee is not 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).

<sup>6</sup> See Securities Exchange Act Release No. 44744 (August 24, 2001), 66 FR 45884 (August 30, 2001) (SR-Phlx-2001-80).

<sup>7</sup> Generally, post space is space on the Exchange's trading floor for specialist units.

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

<sup>9</sup> 15 U.S.C. 78f(b)(4).

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

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

or otherwise in furtherance of the purpose 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, as amended, 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 at 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-2002-30 and should be submitted by May 28, 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**

### **[Declaration of Disaster #3404]**

#### **Commonwealth of Kentucky; Amendment #1**

In accordance with information received from the Federal Emergency Management Agency, dated April 26, 2002, the above numbered declaration is hereby amended to include Floyd, Johnson, Knott, Magoffin, Martin and Pike Counties in the Commonwealth of Kentucky as disaster areas due to damages caused by severe storms and flooding occurring on March 17 through March 21, 2002.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Buchanan and Dickenson

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