

specialist determines to re-engage AUTO-X, he/she may re-engage the system. The specialist must notify the Market Surveillance staff that the conditions supporting the extraordinary circumstances no longer exist, and that the specialist is re-engaging AUTO-X. This may be done after AUTO-X is re-engaged.

Currently, in the event extraordinary circumstances exist floor-wide, two Exchange Floor Officials and the Chairperson of the Options Committee or his/her designee may determine to disengage the AUTO-X feature floor-wide. Under the proposal, five minutes after the initial declaration and every fifteen minutes thereafter, as long as the extraordinary circumstances are in effect floor wide, two Floor Officials, the Chairperson of the Options Committee or his/her designee, with the concurrence of a designated Market Surveillance staff person, must re-evaluate the circumstances to determine if the floor-wide extraordinary circumstances still exist.

The Exchange also proposes to define "extraordinary circumstances" under which AUTO-X may be disengaged and to specify in the rules the requirement that certain relevant information is documented by the Exchange upon actual disengagement and re-engagement of AUTO-X. Currently, extraordinary circumstances that justify disengagement include "fast market conditions, systems malfunctions, and other circumstances that limit the Exchange's ability to disseminate or update market quotations in a timely and accurate manner."<sup>13</sup> The proposal would amend and clarify this definition, which was used in the original proposed rule change adopting Exchange Rule 1080.<sup>14</sup>

The proposed rule would define extraordinary circumstances to include market occurrences and system malfunctions that impact a specialist's ability to accurately price and disseminate option quotations in a timely manner. Such occurrences include fast market conditions, such as increased volatility, order imbalances, volume surges or significant price variances in the underlying security; internal system malfunctions including the Exchange's Auto-Quote system; or malfunctions of external systems, such as a specialized quote feed, or delays in the dissemination of quotes from the Option Price Reporting Authority; or other similar occurrences.

The proposed rule changes, among other things, would codify the Exchange's current practice as described in this paragraph. With respect to record keeping requirements, the Exchange maintains an electronic audit trail, called an AUTO-X Disengagement Log, that electronically monitors and electronically records every situation in which AUTO-X is disengaged. With respect to any request for AUTO-X disengagement relief, the Exchange currently records: (1) Any action taken to disengage AUTO-X or to operate it in any manner other than normal; (2) the date of the specialist's request to disengage AUTO-X; (3) the time the specialist's request was granted, and the time of re-engagement; (4) the reason for the request to disengage (e.g., extraordinary circumstances or other); (5) whether another market has implemented comparable relief; (6) the specialist's name; (7) the specialist unit's name; (8) the options class (except in a case of floor-wide disengagement); (9) the particular problem that the specialist experienced; and (10) the two Floor Officials' signatures (in case of floor-wide disengagement, the Options Committee Chairperson or his designee's signature is also required). Under the proposed rule, the Exchange would codify its practice of maintaining this documentation pursuant to the Exchange's record retention requirements under Section 17 of the Act.<sup>15</sup>

### III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended by Amendment Nos. 1, 2, 3, and 4, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>16</sup> and, in particular, the requirements of Section 6 of the Act<sup>17</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>18</sup> because it provides objective criteria and well-defined procedures for disengaging and reengaging AUTO-X, which should increase the likelihood that AUTO-X will not be disengaged in a discriminatory manner. Moreover, the record keeping requirements and other

proposed procedures are not unreasonable.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-Phlx-2001-27), as amended by Amendment Nos. 1, 2, 3, and 4, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

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

[FR Doc. 02-12804 Filed 5-21-02; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45942; File No. SR-Phlx-2002-32]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Various Option Fees

May 16, 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 May 1, 2002, 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 Phlx. 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 for its equity option transaction charges in the following three ways: (1) To reinstate a \$.08 per contract Firm/Proprietary Facilitation Transaction charge,<sup>3</sup> (2) to increase the Firm/

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</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> A facilitation transaction occurs when a Floor Broker holds an options order for a public customer and a contra-side order for the same option series and, after providing an opportunity for all persons in the trading crowd to participate in the transaction, executes both orders as a facilitation cross. See Securities Exchange Act Release No. 44893 (October 2, 2001), 66 FR 51485 (October 9, 2001) (eliminating Firm/Proprietary Facilitation Transaction charge); Phlx Rule 1064.

<sup>15</sup> 15 U.S.C. 78q.

<sup>16</sup> In approving this proposed rule change, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>17</sup> 15 U.S.C. 78f.

<sup>18</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> See Securities Exchange Act Release No. 38792 at note 17 (June 30, 1997), 62 FR 36602 (July 8, 1997).

<sup>14</sup> *Id.*

Proprietary charge<sup>4</sup> from \$.08 to \$.15 per contract, and (3) to increase the Broker/Dealer charge<sup>5</sup> from \$.25 to \$.30 per contract.

All three charges 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.<sup>6</sup>

The proposed amended fees will be implemented for transactions settling on May 1, 2002 and thereafter.

## 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 Phlx 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 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 Exchange proposes to amend its schedule of dues, fees and charges for its equity option transaction charges in the following three ways: to reinstate the Firm/Proprietary Facilitation Transaction charge, to increase the Firm/Proprietary charge, and to increase the Broker/Dealer charge. The purpose of the proposed rule change is to generate additional revenue.

The Exchange does not currently impose any Firm/Proprietary

<sup>4</sup> The Firm/Proprietary charge applies to members for orders for the proprietary account of any member or non-member broker/dealer that derives more than 35 percent of its annual, gross revenues from commissions and principal transactions with customers. See Securities Exchange Act Release No. 43558 (November 14, 2000), 65 FR 69984 (November 21, 2000) (adopting Firm/Proprietary charge).

<sup>5</sup> The Broker/Dealer equity option transaction charge is applied to members for orders, entered from other than the floor of the Exchange, for any account (i) in which the holder of 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. See Securities Exchange Act Release Nos. 45185 (December 21, 2001), 66 FR 67614 (December 31, 2001) (SR-Phlx-2001-113) (increasing Broker/Dealer equity option transaction charge from \$.20 to \$.25) and 43558 (November 14, 2000), 65 FR 69984 (November 21, 2000) (adopting Broker/Dealer equity option transaction charge).

<sup>6</sup> See Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (adopting monthly credit).

Facilitation Transaction charge on Floor Brokers that hold an options order for a public customer and a contra-side order for the same option series and, after providing an opportunity for all persons in the trading crowd to participate in the transaction, execute both orders as a facilitation cross. A Floor Broker engaging in a facilitation transaction must announce that he/she holds an order subject to facilitation prior to the execution, and must mark the floor ticket for the public customer's order with a legible "F." The Exchange proposes to reinstate this charge, which it eliminated in 2001, at \$.08 per contract.<sup>7</sup>

Currently, the Exchange imposes an \$.08 per contract Firm/Proprietary Transaction charge on members for orders for the proprietary account of any member or non-member broker-dealer that derives more than 35 percent of its annual, gross revenues from commissions and principal transactions with customers. Firms are required to verify this amount to the Exchange by certifying that they have reached this threshold and by submitting a copy of their annual report that was prepared in accordance with Generally Accepted Accounting Principles.<sup>8</sup> The Exchange proposes to increase this charge to \$.15 per contract.

Currently, the Exchange imposes a \$.25 per contract Broker/Dealer equity option transaction charge on members for orders entered from other than the floor of the Exchange, for any account where the holder of beneficial interest is a member or non-member broker-dealer, or where the holder of beneficial interest is a person associated with or employed by a member or non-member broker-dealer.<sup>9</sup> This includes broker/dealer orders for the account of a Registered Options Trader ("ROT") entered from off-floor.<sup>10</sup> The Exchange proposes to increase this charge to \$.30 per contract.

#### 2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with

<sup>7</sup> See Securities Exchange Act Release No. 44893 (October 2, 2001), 66 FR 51485 (October 9, 2001).

<sup>8</sup> See Securities Exchange Act Release No. 43558 (November 14, 2000), 65 FR 69984 (November 21, 2000).

<sup>9</sup> Recently, the Exchange began accepting broker-dealer orders over its Automated Options Market System ("AUTOM"). See Securities Exchange Act Release No. 45758 (April 15, 2002), 67 FR 19610 (April 22, 2002).

<sup>10</sup> See Securities Exchange Act Release Nos. 45185 (December 21, 2001), 66 FR 67614 (December 31, 2001) and 43558 (November 14, 2000), 65 FR 69984 (November 21, 2000).

Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>12</sup> in particular, because it is an equitable allocation of reasonable charges among the Exchange's members. The proposal to amend the three charges is intended to generate additional revenue and the Exchange believes the proposal is reasonable and proper.

### 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

The Exchange has designated the proposed rule change as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>13</sup> and Rule 19b-4(f)(2) thereunder.<sup>14</sup> Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of 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, 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

<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. 78s(b)(3)(A)(ii).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

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-2002-32 and should be submitted by June 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-12806 Filed 5-21-02; 8:45 am]

**BILLING CODE 8010-01-P**

## DEPARTMENT OF STATE

[Public Notice 4023]

### Determination and Certification Under Section 40A of the Arms Export Control Act

Pursuant to section 40A of the Arms Export Control Act (Public Law 90-629), as added by section 330 of the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104-132) (22 U.S.C. 2771 *et seq.*), and Executive Order 11958, as amended, I hereby determine and certify to the Congress that the following countries are not cooperating fully with United States antiterrorism efforts:

Cuba  
Iran  
Iraq  
Libya  
North Korea  
Sudan  
Syria

This determination and certification shall be transmitted to the Congress and published in the **Federal Register**.

Dated: May 15, 2002.

**Richard L. Armitage,**

*Deputy Secretary of State, Department of State.*

[FR Doc. 02-12826 Filed 5-21-02; 8:45 am]

**BILLING CODE 4710-10-P**

## DEPARTMENT OF STATE

### Overseas Buildings Operations

[Public Notice 3985]

#### Industry Advisory Panel Meeting Notice

The Industry Advisory Panel of Overseas Buildings Operations will meet on Wednesday, June 19, 2002 from

9:45 until 11:45 a.m. and 1:00 until 3:30 p.m. Eastern Standard Time. The meeting will be held in conference room 1408 at the Department of State, 2201 C Street NW (entrance on 23rd Street), Washington, D.C. The purpose of the meeting is to discuss new technologies and successful management practices for design, construction, security, property management, emergency operations, the environment, and planning and development. An agenda will be available prior to the meeting.

The meeting will be open to the public, however, seating is limited. Prior notification and a valid photo ID are mandatory for entry into the building. Members of the public who plan to attend must notify Sandra Piech at 703/516-1968 before Wednesday, June 12, to provide date of birth, Social Security number, and telephone number.

#### FOR FURTHER INFORMATION CONTACT:

Sandra J. Piech 703/516-1968.

Dated: May 15, 2002.

**Charles E. Williams,**

*Director/Chief Operating Officer, Overseas Buildings Operations, Department of State.*

[FR Doc. 02-12825 Filed 5-21-02; 8:45 am]

**BILLING CODE 4710-24-P**

## DEPARTMENT OF STATE

[Public Notice 4026]

### Universal Postal Union Issues

**AGENCY:** Department of State.

**ACTION:** Notice of Briefing.

The Department of State will host a briefing on Thursday, June 13, 2002, to provide an update on recent decisions and reform initiatives at the Universal Postal Union (UPU).

The briefing will be held from 2 p.m. until approximately 4 p.m., on June 13, 2002, in Room 1406 of the Department of State in Washington, DC. The briefing will be open to the public up to the capacity of the meeting room.

The briefing will provide information on the results of the recent meetings of the Postal Operations Council and the new UPU private-sector Advisory Group, as well as on the status of UPU terminal dues, extra-territorial offices of exchange (ETOEs), customs issues and postal security coordination with the UPU. The briefing will be chaired by Ambassador E. Michael Southwick of the Department of State.

Entry to the Department of State building is controlled and will be facilitated by advance arrangements. In order to arrange admittance, persons desiring to attend the briefing should,

no later than noon on June 11, 2002, notify the Office of Technical and Specialized Agencies, Bureau of International Organization Affairs, Department of State, preferably by fax, providing the name of the meeting and the individual's name, Social Security number, date of birth, professional affiliation, address and telephone number. The fax number to use is (202) 647-8902. Voice telephone is (202) 647-1044. This request applies to both government and non-government individuals.

All attendees must use the Department of State entrance on 23rd Street, between C and D Streets, N.W. For security reasons, C Street is closed to vehicular traffic, but taxis may reach the 23rd Street entrance. One of the following means of identification will be required for admittance: any U.S. driver's license with photo, a passport, or any U.S. Government agency identification card. Questions concerning the briefing may be directed to Mr. Neil Boyer at (202) 647-1044 or via email at [boyerna@state.gov](mailto:boyerna@state.gov).

Dated: May 16, 2002.

**Margaret C. Jones,**

*Director, Office of Technical and Specialized Agencies, Bureau of International Organization Affairs, Department of State.*

[FR Doc. 02-12827 Filed 5-21-02; 8:45 am]

**BILLING CODE 4710-19-P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Applications of Aerodynamics, Inc., for Issuance of New Certificate Authority

**AGENCY:** Department of Transportation.

**ACTION:** Notice of Order to Show Cause Order Dockets OST-01-10985 and OST-01-10986.

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue orders finding Aerodynamics, Inc., fit, willing, and able and awarding it certificates of public convenience and necessity to engage in interstate and foreign charter air transportation of persons, property and mail as a certificated air carrier.

**Responses:** Objections and answers to objections should be filed in Dockets OST-01-10985 and OST-01-10986 and addressed to the Department of Transportation Dockets, PL-401, 400 Seventh Street, SW., Washington, DC 20590, and should be served on all persons listed in Attachment A to the order. Persons wishing to file objections

<sup>15</sup> 17 CFR 200.30-3(a)(12).