

## 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 had 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 the statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Phlx recently reinstated its payment for order flow program.<sup>6</sup> Under the program, the Phlx charges ROTs a per-contract fee with respect to their transactions in the top 120 most actively traded equity options issues, subject to certain exceptions.<sup>7</sup> The fees are set forth in the Phlx's ROT Equity Option Payment for Order Flow Charges Schedule.

#### 1. Purpose

The purpose of the proposed rule change is to establish the applicable payment for order flow fees for the top 120 options for trades settling on or after August 1, 2003 through October 31, 2003. The Phlx will file with the Commission a proposed rule change to address changes to the fee schedule for subsequent time periods. The Phlx is not making any other changes to its payment for order flow program at this time.

#### 2. Statutory Basis

The Exchange believes that this proposal to amend its schedule of dues, fees and charges would be an equitable allocation of reasonable fees among Phlx members, and that the proposal is consistent with section 6(b) of the Act<sup>8</sup> and furthers the objectives of section 6(b)(4) of the Act.<sup>9</sup>

<sup>6</sup> See Securities Exchange Act Release No. 47090 (December 23, 2002), 68 FR 141 (January 2, 2003) (SR-Phlx-2002-75).

<sup>7</sup> The payment for order flow fee does not apply to specialist transactions or to transactions between: (1) A ROT and a specialist; (2) a ROT and a ROT; (3) a ROT and a firm; and (4) a ROT and a broker-dealer. According to the Phlx, the fee is not imposed with respect to the above-specified transactions because the primary focus of the payment for order flow program is to attract order flow from customers. The payment for order flow fee also does not apply to index or foreign currency options.

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

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

### 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

The Phlx neither solicited nor received written comments on this proposal.

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

The foregoing proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and Rule 19b-4(f)(2) thereunder.<sup>11</sup> Accordingly, the proposal has taken effect upon filing with the Commission. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the 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-2003-50 and should be submitted by August 19, 2003.

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

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

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

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03-19184 Filed 7-28-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48207; File No. SR-Phlx-2003-47]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Equity Option Specialist Deficit (Shortfall) Fee

July 22, 2003.

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 June 27, 2003, 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 proposes to amend its schedule of dues, fees and charges to amend the Equity Option Specialist Deficit (Shortfall) fee ("shortfall fee") to impose a limit of \$10,000 to the specialist<sup>3</sup> on the monthly amount of the shortfall fee for any Top 120 Equity Option,<sup>4</sup> provided that the market share effected on the Phlx for a Top 120 Option is equal to or greater than 50 percent of the current total national monthly contract volume threshold ("volume threshold") in effect. As of July 1, 2003, the volume threshold is 12 percent in most cases.<sup>5</sup>

<sup>12</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> The Exchange uses the terms "specialist" and "specialist unit" interchangeably herein.

<sup>4</sup> 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 OCC.

<sup>5</sup> An exception to the volume threshold amount relates to a transition period for newly listed options, which is described in Footnote 9.

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 14 percent of the total national monthly contract volume for such Top 120 Option is not effected on the

Exchange in that month.<sup>6</sup> Effective July 1, 2003, the Exchange intends to reduce the volume threshold rate to 12 percent.<sup>7</sup> Therefore, as of July 1, 2003, for each month, if a specialist unit trades an amount equal to or greater

than 6 percent of the total national market share, the shortfall fee will be imposed, but limited to \$10,000.<sup>8</sup>

For example:

	Specialist market share for one month (in percent)	Full shortfall fee at 12%	Shortfall fee under new proposal
Scenario No. 1 .....	9.1	<sup>9</sup> \$18,976	\$10,000
Scenario No. 2 .....	8.8	14,851	10,000
Scenario No. 3 .....	5.6	10,916	10,916
Scenario No. 4 .....	5.4	21,944	21,944

The current rate of \$0.35 per contract and other procedures relating to the shortfall fee, including the Specialist Deficit (Shortfall Fee) Credit, remain unchanged at this time.<sup>10</sup>

The Exchange intends to implement the monthly shortfall fee limited at \$10,000, as described above, for transactions settling on or after July 1, 2003.<sup>11</sup>

The text of the proposed rule change is available at the Office of the Secretary, the Phlx, 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 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 purpose of the proposed rule change is to reduce the burden on specialists who are competing for order flow in the national market in the Top 120 Options. Limiting the monthly amount of the shortfall fee to \$10,000, provided that the specialist unit garners at least 50 percent of the current volume threshold, should encourage specialists to continue to compete for market share in the Top 120 Options, while reducing the economic burden on specialists and eliminating a potential significant liability provided certain lower volume thresholds are achieved.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of section 6(b)(4) of the Act,<sup>13</sup> in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members.

*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 either solicited or received.

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>14</sup> and subparagraph (f)(2) of Rule 19b-4<sup>15</sup> thereunder. 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.

<sup>6</sup> See Securities Exchange Act Release No. 45322 (January 22, 2002), 67 FR 3927 (January 28, 2002) (SR-Phlx-2001-115).

<sup>7</sup> The Exchange recently submitted a proposed rule change to the Securities and Exchange Commission to lower the volume threshold from the current rate of 14 percent to 12 percent, effective for transactions settling on or after July 1, 2003. See SR-Phlx-2003-45.

<sup>8</sup> Pursuant to the Exchange's current shortfall fee program, the shortfall fee is imposed in stages for newly listed options, such that the requisite volume threshold is three percent for the first full calendar month of trading and six percent for the second full calendar month of trading. Under the current proposal, the requisite volume threshold of three percent and six percent would remain unchanged, however, the \$10,000 limit would apply if at least 1.5 percent of the total national monthly contract volume was reached in the first calendar month of trading and at least three percent of the total national monthly contract volume was reached in

the second full calendar month of trading. See Securities Exchange Act Release No. 43201 (August 23, 2000), 65 FR 52465 (August 29, 2000) (SR-Phlx-00-71).

<sup>9</sup> For example, the detailed figures for scenario number one are as follows: with a hypothetical total volume of 1,886,569 contracts and total Phlx volume of 172,172 contracts, Phlx target of 12 percent of total national would equal 226,388 contracts (1,886,569 x 12 percent). The volume shortfall in contracts is 54,216 (226,388 - 172,172). Therefore, the shortfall fee totals \$18,976 (54,216 x \$.35). However, the shortfall fee owed to the Exchange by the specialist, pursuant to this proposal, would be limited to \$10,000 because the specialist reached 9.1 percent, which is at least 50 percent (i.e. greater than 6 percent) of the total volume threshold of 12 percent.

<sup>10</sup> A shortfall credit of \$0.35 per contract may be earned toward previously-imposed shortfall fees for each contract traded in excess of the 14 percent volume threshold during a subsequent monthly

time period. See Securities Exchange Act Release No. 45322 (January 22, 2002), 67 FR 3927 (January 28, 2002) (SR-Phlx-2001-115). The Exchange intends to file a separate proposed rule change to eliminate the shortfall credit and to clarify the application of the credit while it was in effect.

<sup>11</sup> The shortfall fee had heretofore been eligible for a 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). This credit program expired effective May 2003. The Exchange intends to file a separate proposed rule change to remove references to the member credit throughout the entire schedule of dues, fees and charges.

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

<sup>13</sup> 15 U.S.C. 78f(b)(4).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

#### 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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-2003-47 and should be submitted by August 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 03-19185 Filed 7-28-03; 8:45 am]

**BILLING CODE 8010-01-P**

#### SMALL BUSINESS ADMINISTRATION

##### [Declaration of Disaster #3528, Amdt. 1]

##### State of Ohio

In accordance with the notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective July 11, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on July 4, 2003 and continuing through July 11, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is September 15, 2003, and for economic injury the deadline is April 15, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 23, 2003.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 03-19262 Filed 7-28-03; 8:45 am]

**BILLING CODE 8025-01-P**

#### SMALL BUSINESS ADMINISTRATION

##### [Declaration of Disaster #3512, Amdt. 6]

##### State of West Virginia

In accordance with the notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective July 21, 2003, the above numbered declaration is hereby amended to include Preston County in the State of West Virginia as a disaster area due to damages caused by severe storms, flooding, and landslides beginning on June 11, 2003 and continuing through July 15, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Grant and Tucker in the State of West Virginia; and Garrett County in the State of Maryland may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 20, 2003, and for economic injury the deadline is March 22, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 23, 2003.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 03-19263 Filed 7-28-03; 8:45 am]

**BILLING CODE 8025-01-P**

#### DEPARTMENT OF STATE

##### [Public Notice 4417]

##### Notice of Receipt of Application for a Presidential Permit for Pipeline Facilities To Be Constructed and Maintained on the Border of the United States

**AGENCY:** Department of State, Office of International Energy and Commodities Policy.

**ACTION:** Notice.

Notice is hereby given that the Department of State has received an application from Valero Logistics Operations, L.P. (Valero) for a Presidential permit, pursuant to

Executive Order 11423 of August 16, 1968, as amended by Executive Order 12847 of May 17, 1993 and Executive Order 13284 of January 23, 2003, authorizing the construction, connection, operation, and maintenance at the U.S.-Mexican border in the vicinity of Laredo, Texas of a liquid pipeline capable of carrying liquefied petroleum gas (LPG), and related facilities.

Valero is a corporation organized and existing under the laws of the State of Texas and with its principal office located in San Antonio, Texas. The proposed new 8<sup>5</sup>/<sub>8</sub> inch diameter pipeline would originate at an existing Valero pipeline system in Laredo, Texas and cover approximately 10.4 miles, crossing under the Rio Grande River and terminating at a new pipeline that will be constructed, owned and operated by Valero Internacional, S. de R.L. de C.V., a subsidiary of Valero, in Nuevo Laredo, Tamaulipas, Mexico. It is anticipated that initial contract deliveries of LPG to Mexico will be 150,000 barrels per month in Nuevo Laredo, but the pipeline capacity would be approximately 32,400 barrels of LPG per day in either direction.

As required by E.O. 11423, the Department of State is circulating this application to concerned federal agencies for comment.

**DATES:** Interested parties are invited to submit, in duplicate, comments relative to this proposal on or before August 28, 2003, to Pedro Erviti, Office of International Energy and Commodities Policy, Department of State, Washington, DC 20520. The application and related documents that are part of the record to be considered by the Department of State in connection with this application are available for inspection in the Office of International Energy and Commodities Policy during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** Pedro Erviti, Office of International Energy and Commodities Policy (EB/ESC/IEC/EPC), Department of State, Washington, DC 20520; or by telephone at (202) 647-1291; or by fax at (202) 647-4037.

Dated: July 21, 2003.

**Matthew T. McManus,**

*Acting Director, Office of International Energy and Commodities Policy, Department of State.*

[FR Doc. 03-18999 Filed 7-28-03; 8:45 am]

**BILLING CODE 4710-07-P**

<sup>16</sup> 17 CFR 200.30-3(a)(12).