

plus approximately \$167 for membership dues). Moreover, the Exchange believes that charging \$200 more for the first permit in each member organization is reasonable and equitable, in light of the administration of a member organization's registration; the first "membership" or permit qualifies a member organization, which requires certain registration, filing and processing by the Exchange.<sup>18</sup> The Exchange believes that the \$200-\$300 monthly fee for order flow providers should attract order flow providers as well as reflect their limited, order entry access.<sup>19</sup> Order flow providers will not take up space and resources on the Phlx trading floor or use floor services to the same extent as Phlx floor-based members. The Exchange believes that this proposal to impose permit fees depending on how a permit is used is both reasonable and equitable, similar to its current ETP structure.<sup>20</sup> The Exchange also believes that the proposed increased Foreign Currency User Fee is reasonable and equitable because, although the fee will increase substantially from current membership fees for FCOPs who do not also hold legal title to a Phlx membership,<sup>21</sup> it will be more closely aligned with permit fees, such that access to Phlx products will be similarly priced.<sup>22</sup>

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

The Exchange does not believe that the proposed rule change will impose

<sup>18</sup> Similarly, the Exchange's current fee schedule reflects that ETP fees are discounted for multiple memberships. The fee respecting ETPs is \$3,500 per month per ETP ("Regular ETP"), however a Regular ETP 3-Seat Fee of \$1,350 per month per ETP is charged for Regular ETP holders and ETP organizations in lieu of the Regular ETP Fee if the ETP organization has at all times at least three associated persons who are members of the Exchange by virtue of a membership, whether owned or leased. See Securities Exchange Act Release No. 45480 (February 26, 2002), 67 FR 10029 (March 5, 2002) (SR-Phlx-2002-10).

<sup>19</sup> This is similar to the current Off-Floor ETP fee of \$500 per month per ETP, which is charged to Off-Floor ETP holders, while Regular ETPs are \$3,500 per month per ETP, the Regular ETP 3-Seat Fee is \$1,350 per month per ETP and the Regular ETP RS Fee is \$1,000 per month per ETP. See Securities Exchange Act Release Nos. 45480 (February 26, 2002), 67 FR 10029 (March 5, 2002) (SR-Phlx-2002-10) and 48925 (December 15, 2003), 68 FR 70855 (December 19, 2003) (SR-Phlx-2003-78).

<sup>20</sup> *Id.*

<sup>21</sup> In terms of membership-type fees, currently, FCOPs who do not hold legal title to a Phlx membership are assessed a technology fee of \$150 monthly in lieu of the \$950 monthly technology fee. In addition, they are assessed a Foreign Currency User fee of \$166.67 and a FCOP fee of \$166.67 per month. Of course, as stated above, other non-membership fees, such as transaction fees, may apply to FCOPs.

<sup>22</sup> FCOPs may, of course, determine to dispose of their FCOP and apply for a permit instead.

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>23</sup> and Rule 19b-4(f)(2) thereunder.<sup>24</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, 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. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-Phlx-2004-02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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

<sup>23</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>24</sup> 17 CFR 240.19b-4(f)(2).

available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-2004-02, and should be submitted by February 27, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>25</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-2552 Filed 2-5-04; 8:45 am]

BILLING CODE 8010-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-49163; File No. SR-Phlx-2003-89]

### **Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendments No. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Extension of a Linkage Fee Pilot Program**

January 30, 2004.

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 31, 2003, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On January 26, 2004, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> On January 29, 2004, the Exchange submitted Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposed rule change, as amended, on an accelerated basis.

<sup>25</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 Angela Saccomandi Dunn, Counsel, Phlx to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 23, 2004. ("Amendment No. 1"). Amendment No. 1 replaced and superseded the original proposed rule change in its entirety.

<sup>4</sup> See letter from Angela Saccomandi Dunn, Counsel, Phlx to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 29, 2004. ("Amendment No. 2"). Amendment No. 2 replaced and superseded Amendment No. 1 in its entirety.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to extend the Exchange's current one-year pilot program until July 31, 2004, in order to continue to impose its current schedule of dues, fees and charges applicable to execution of Principal Orders ("P Orders")<sup>5</sup> sent via the Intermarket Options Linkage (the "Linkage") under the Plan for the Purpose of Creating and Operating an Options Intermarket Linkage (the "Plan").<sup>6</sup>

The proposed fee schedule is available at the Exchange 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 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 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 extend the Exchange's current pilot program until July 31, 2004, so that the Phlx may continue to impose the transaction charges to Eligible Market Makers<sup>7</sup> who send inbound P Orders to the Exchange pursuant to the Plan.<sup>8</sup> The Commission

<sup>5</sup> See *infra* note 8.

<sup>6</sup> See Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (order approving the Plan submitted by American Stock Exchange LLC, Chicago Board Options Exchange, Inc. and International Securities Exchange, Inc.); and 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (order approving Phlx as participant in the Plan).

<sup>7</sup> Eligible Market Maker is defined, with respect to an Eligible Options Class, as a Market Maker that:

(a) Is assigned to, and is providing two-sided quotations in, the Eligible Option Class;

(b) is participating in its market's automatic execution system in such Eligible Option Class; and

(c) is not prohibited from sending Principal Orders in such Eligible Option Class through the Linkage pursuant to Section 8(b)(iii) of the Plan.

See Section 2(7) of the Plan.

<sup>8</sup> Under the Plan and Exchange Rule 1083(k), which tracks the language of the Plan, a "Linkage Order" means an Immediate or Cancel order routed through the Linkage as permitted under the Plan. There are three types of Linkage Orders:

previously approved such charges, on a pilot basis, scheduled to expire on January 31, 2004.<sup>9</sup>

The fee schedule is intended to provide that execution of inbound P Orders routed through Linkage would be subject to the same fees as non-Linkage broker-dealer orders that are not subject to automatic execution ("AUTO-X").<sup>10</sup> The Exchange will not assess any charges for P/A Orders and Satisfaction Orders.

##### 2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with 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, in that it is an equitable allocation of reasonable dues, fees, and other charges among Eligible Market Makers who submit P Orders to the Exchange through the Linkage.

#### 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.

(i) "Principal Acting as Agent ("P/A") Order," which is an order for the principal account of a specialist (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent;

(ii) "Principal ("P") Order," which is an order for the principal account of an Eligible Market Maker and is not a P/A Order; and

(iii) "Satisfaction Order," which is an order sent through the Linkage to notify a member of another Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

<sup>9</sup> See Securities Exchange Act Release No. 47953 (May 30, 2003), 68 FR 34027 (June 6, 2003) (SR-Phlx-2003-16).

<sup>10</sup> Currently, for non-Linkage off-floor broker-dealer orders sent via the Philadelphia Stock Exchange Automated Options Market ("AUTOM"), which is the Exchange's electronic order delivery, routing, execution and reporting system, the Exchange charges \$.45 per contract for trades executed by AUTO-X, the automatic execution feature of AUTOM, and \$.35 per contract up to 2,000 contracts, \$.25 per contract for 2,001 to 3,000 contracts, and \$.20 per contract above 3,000 contracts (with the first 3,000 contracts charged \$.25 per contract) to the sending off-floor broker-dealer for non-AUTO-X trades.

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

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

### III. 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. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-Phlx-2003-89. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 be submitted by February 27, 2004.

### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange,<sup>13</sup> and, in particular, with the requirements of Section 6(b) of the Act<sup>14</sup> and the rules and regulations thereunder. The Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(4) of the Act,<sup>15</sup> which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Phlx's Linkage fee pilot until July

<sup>13</sup> In approving this rule, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78f(b).

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

31, 2004 will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval will preserve the Exchange's existing pilot program for Linkage fees without interruption as the Phlx and the Commission further consider the appropriateness of Linkage fees.

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change, as amended, (SR-Phlx-2003-89) is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 04-2553 Filed 2-5-04; 8:45 am]

BILLING CODE 8010-01-P

## DEPARTMENT OF STATE

[Public Notice 4616]

### Culturally Significant Objects Imported for Exhibition; Determinations: "The Drawings of Jim Dine"

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the objects to be included in the exhibition "The Drawings of Jim Dine," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the

foreign owners. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about March 21, 2004, to on or about August 1, 2004, and at possible additional venues yet to be determined, is in the national interest. Public notice of these determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619-6529). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: January 28, 2004.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 04-2617 Filed 2-5-04; 8:45 am]

BILLING CODE 4710-08-P

## DEPARTMENT OF STATE

[Public Notice 4617]

### The Department of State on Behalf of Millennium Challenge Corporation Section 608(a), Pub. L. 108-199 (Division D) FR 04-02; Notice of Countries That are Candidates for Millennium Challenge Account Eligibility in FY 2004 and of Countries That are Not Candidates Because of Legal Prohibitions

**AGENCY:** Millennium Challenge Corporation.

**SUMMARY:** The Millennium Challenge Act of 2003 (the "Act") authorizes the provision of assistance to countries that enter into compacts with the United States to support policies and programs that advance the prospects of such countries achieving lasting economic growth and poverty reduction. The Act requires the Millennium Challenge Corporation to take a number of steps in determining the countries that, based on their demonstrated commitment to just and democratic governance, economic freedom and investing in their people, will be eligible countries for Millennium Challenge Account ("MCA") assistance during Fiscal Year 2004. These steps include the publication of Notices in the **Federal Register** that identify:

1. The "candidate countries" for MCA assistance (Section 606(a)(1) of the Act);
2. the eligibility criteria and methodology that will be used to choose "eligible countries" from among the

"candidate countries" (Section 608(b) of the Act); and

3. the countries determined by the Board of Directors of the Millennium Challenge Corporation to be "eligible countries" for Fiscal Year 2004 and identify the countries on the list of eligible countries with which the Board will seek to enter into compacts (Section 608 (d) of the Act).

This Notice is the first of the three required Notices listed above.

## Candidate Countries

The Act requires the identification of all countries that are candidates to receive MCA assistance in FY 2004 and the identification of all countries that would be candidate countries but for legal prohibitions. Section 606(a)(1) of the Act provides that, during FY 2004, countries shall be candidate countries for the MCA if they:

- are eligible for assistance from the International Development Association;
- have a per capita income equal to or less than the historic ceiling of the International Development Association (or \$1415 for FY 2004);
- and are not subject to legal provisions that prohibit them from receiving United States economic assistance under Part I of the Foreign Assistance Act of 1961, as amended.

Pursuant to Section 606(c) of the Act, the Board of Directors of the Millennium Challenge Corporation has identified the following countries as candidate countries under the Act for FY 2004:

1. Afghanistan
2. Albania
3. Angola
4. Armenia
5. Azerbaijan
6. Bangladesh
7. Benin
8. Bhutan
9. Bolivia
10. Bosnia and Herzegovina
11. Burkina Faso
12. Cameroon
13. Cape Verde
14. Chad
15. Comoros
16. Congo, Dem. Rep.
17. Congo, Rep. (Brazzaville)
18. Djibouti
19. East Timor
20. Eritrea
21. Ethiopia
22. Gambia
23. Georgia
24. Ghana
25. Guinea
26. Guyana
27. Haiti
28. Honduras
29. India

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</sup> *Id.*

<sup>18</sup> 17 CFR 200.30-3(a)(12).