

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50416; File No. SR–Phlx–2004–45]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 703 To Adopt a Tiered Late Filing Fee Schedule for Financial Reports

September 21, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4² thereunder, the Securities and Exchange Commission (“Commission”) is giving notice that on July 16, 2004, the Philadelphia Stock Exchange, Inc. (“Phlx” or “Exchange”) filed with the Commission a proposed rule change to adopt a tiered late filing fee schedule for financial reports. On September 3, 2004, the Phlx amended the proposal.³ The amendment replaced the original filing. The proposed rule change is described in Items I, II, and III, below. These Items have been prepared by the Phlx. The Exchange has designated this proposed rule change as one establishing or changing a due, fee, or other charge imposed by the Phlx under Section 19(b)(3)(A)(ii) of the Act, which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the 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 Exchange Rule 703, “Financial Responsibility and Reporting,” to adopt a tiered late filing fee schedule.

Currently, Exchange Rule 703(e), “Due Dates; Fees for Late Filing,” states in part that “[E]ach financial report required by Rule 703(c) shall be filed with the Exchange within seventeen business days after the conclusion of the reporting period.” Should a member organization or foreign currency options participant organization fail to comply with these filing requirements, unless an extension has been granted, that member organization or foreign currency options participant organization must pay a fee of \$100 for each week or any part thereof that the report has not been filed.

The Exchange proposes to change the current fee of \$100 for each week or any part thereof that the report has not been filed to a tiered method so that the fee for the first late filing in a twelve-month period is \$100 per week or any part thereof;⁴ the fee for the second late filing during a twelve-month period is \$300 per week or any part thereof; and the fee for the third late filing, and subsequent late filings, during a twelve-month period is \$1,000 per week or any part thereof.⁵ The proposed changes to Exchange Rule 703(e) are set forth below. Proposed new language is in italic and proposed deletions are in brackets.

Rule 703. Financial Responsibility and Reporting

(a)–(d) No change.

(e) Due Dates; Fees for Late Filing.—Each financial report required by Rule 703(c) shall be filed with the Exchange within seventeen business days after the conclusion of the reporting period. Reports shall be deemed to have been filed on the date which they have been postmarked; if such reports have not been postmarked, they shall be deemed to have been filed when received by the Exchange. A request for an extension of time to file any such report must be received by the Exchange no later than the business day before the due date for the required report. Unless such an extension has been granted, a member organization or foreign currency options participant organization shall pay a *late fee* [of \$100] *as set forth below* for each week or any part thereof that the report has not been filed.

(i) *\$100 per week for the first late filing in a twelve-month period;*

(ii) *\$300 per week for the second late filing during a twelve-month period; and*

(iii) *\$1,000 per week for the third late filing, and subsequent late filings, during a twelve-month period.*

The twelve-month period is calculated based on report due dates. Delinquencies will be calculated based on a running twelve-month period.

(f) No change.

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⁴ The twelve-month calculation period will begin on the date the report is due. For example, if a January report is due on February 24, but not filed until March 15, the twelve-month calculation period would begin on February 24. A filing submitted after its due date and within twelve months from February 24 would be considered a second late filing.

⁵ The Exchange may present repeated or aggravated failure to file such reports on a timely basis, regardless of the number of days late, to the Exchange’s Business Conduct Committee for disciplinary action under Exchange Rules.

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 stated that no written comments were either solicited or received on the proposed rule change. The text of these statements may be inspected and copied in the Commission’s Public Reference Room and at the principal office of the Phlx. 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 encourage increased compliance with the filing requirements of Exchange Rule 703(e). The Exchange believes that implementing higher fees for late filings is necessary to convey the importance of filing the periodic and annual reports, as set forth in Exchange Rule 703, in a timely manner.

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 Act⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act⁷ 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 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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and Rule 19b–

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See September 2, 2004 letter from Cynthia Hoekstra, Counsel, Phlx, to Rose Wells, Division of Market Regulation, Commission, and attachments.

4(f)(2)⁹ 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 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.¹⁰

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the rule change, including whether the rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PHLX-2004-45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathon G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Phlx-2004-45. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, please use only one method. The Commission will post all electronic comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the rule change that are filed with the Commission, and all written communications relating to the 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 comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-Phlx-2004-45 and should be submitted on or before October 19, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[File Nos. SR-Phlx-2004-50 and SR-Phlx-2004-56]

Securities Exchange Act of 1934; Release No. 50420; In the Matter of the Philadelphia Stock Exchange, Inc.; Order of Summary Abrogation

September 22, 2004.

Notice is hereby given that the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(3)(C) of the Securities Exchange Act of 1934 ("Act"),¹ is summarily abrogating certain proposed rule changes of the Philadelphia Stock Exchange, Inc. ("Phlx").

On July 29, 2004, the Phlx filed SR-Phlx-2004-50. On August 16, 2004, the Phlx submitted Amendment No. 1 to the proposed rule change.² On August 18, 2004, the Phlx submitted Amendment No. 2 to the proposed rule change.³ The proposed rule change, as amended, modified the Phlx's schedule of dues, fees, and charges to revise its equity option payment for order flow program by (1) charging a \$0.35 per contract (for all equity options other than options on the QQQ) or a \$1.00 per contract (for options on the QQQ) equity option payment for order flow fee on

transactions by Phlx's Registered Options Traders ("ROT's") when they trade with a customer; (2) permitting specialists to opt in or out of the program by notifying the Exchange in writing at least five business days prior to the start of the month; and (3) combining the payment for order flow fees collected from ROTs in one account to form a "pool" from which specialists may request reimbursement for the amounts that they pay to order flow providers to send order flow to the Exchange. The filing was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.⁴

On August 16, 2004, the Phlx filed SR-Phlx-2004-56. The proposed rule change amended the Phlx's schedule of dues, fees, and charges to revise its equity option payment for order flow program by (1) requiring a specialist unit to pay equity option payment for order flow fees in a given month at the same rate as ROTs if the specialist unit elects to participate in the program and does not pay a specified percentage of the total amount of equity option payment for order flow funds collected from ROTs in the options for which that specialist unit is acting as the specialist, and (2) providing that specialist units may opt out of the equity option payment for order flow program, as long as they notify the Exchange in writing by the 15th day of the month. The filing was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.⁵

Pursuant to Section 19(b)(3)(C) of the Act,⁶ at any time within 60 days of the date of filing a proposed rule change pursuant to Section 19(b)(1) of the Act,⁷ the Commission may summarily abrogate the change in the rules of the self-regulatory organization and require that the proposed rule change be re-filed in accordance with the provisions of Section 19(b)(1) of the Act⁸ and reviewed in accordance with Section 19(b)(2) of the Act,⁹ 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.

The Commission believes that the above-referenced proposed rule changes raise serious questions as to whether they are consistent with the Act and with the protection of investors.

¹¹ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(3)(C).

² See letter from Cynthia K. Hoekstra, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 13, 2004 ("Amendment No. 1"). Amendment No. 1 replaced the original proposed rule change in its entirety.

³ See letter from Richard S. Rudolph, Director and Counsel, Phlx, to David Liu, Attorney, Division, Commission, dated August 18, 2004 ("Amendment No. 2"). Amendment No. 2 deleted all references to the proposed \$0.05 per contract charge for broker-dealer (AUTOM-delivered) transactions and replaced the proposed rule text contained in Amendment No. 1 in its entirety.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 15 U.S.C. 78s(b)(3)(C).

⁷ 15 U.S.C. 78s(b)(1).

⁸ 15 U.S.C. 78s(b)(1).

⁹ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act (15 U.S.C. 78s(b)(3)(C)), the Commission considers the period to commence on September 3, 2004, the date the Phlx filed its amendment.