

subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all 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 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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 Number SR-Phlx-2004-86 and should be submitted on or before January 7, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50832; File No. SR-Phlx-2004-62]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change To Waive the Options Specialist Shortfall Fee for One Specialist Unit That Did Not Have a Specialized Quote Feed in Place

December 9, 2004.

On September 23, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to

waive the options specialist shortfall fee for the period May 2004 through August 2004 for one specialist unit that did not have a specialized quoted feed in place that could price an option accurately for any option where the primary volume in the underlying security shifted to another market. The proposed rule change was published for comment in the **Federal Register** on November 1, 2004.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>4</sup> and, in particular, the requirements of section 6 of the Act<sup>5</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(4) of the Act,<sup>6</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 issuers and other persons using its facilities. The Commission believes that failure to grant the proposed waiver would result in an inequitable application of the Exchange's options specialist shortfall fee for one particular specialist that, because of a unique situation, did not have a specialized quote feed in place for the period from May 1, 2004 through August 31, 2004. The Commission's decision to approve this waiver from the Phlx specialist shortfall fee is limited in scope to this particular specialist at this time.<sup>7</sup>

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act<sup>8</sup>, that the proposed rule change (SR-Phlx-2004-62) be, and it hereby is, approved.

<sup>3</sup> See Securities Exchange Act Release No. 50591 (October 26, 2004), 69 FR 63427.

<sup>4</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

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

<sup>7</sup> The waiver of the options specialist shortfall fee in this instance is fact-specific. Future requests for similar waivers, should any arise, must be filed for notice and comment pursuant to Section 19(b) of the Act. 15 U.S.C. 78s(b). See also, March 27, 2003 letter from Annette L. Nazareth, Director, Division of Market Regulation, Commission, to T. Grant Callery, Executive Vice President and General Counsel, National Association of Securities Dealers.

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50836; File No. SR-Phlx-2004-70]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Impose New License Fees and To Modify the Calculation of the Firm-Related Equity Option and Index Option Fee Cap

December 10, 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 November 1, 2004, 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. On December 9, 2004, Phlx filed Amendment 1 to the proposed rule change.<sup>3</sup> Phlx filed this proposal pursuant to Section 19(b)(3)(A)(ii)<sup>4</sup> of the Act and Rule 19b-4(f)(2)<sup>5</sup> thereunder as a proposal establishing or changing a due, fee, or other charge imposed by the self-regulatory organization, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> In Amendment No. 1, the Phlx made minor technical changes; clarified the calculation of the \$50,000 cap (described below), specifically as it relates to the firm-related equity option and index option comparison and transaction charges for products without license fees and with license fees; and further clarified that applicable firm-related charges for the QCX, QCE, and FXI will not be counted towards the \$50,000 cap. For purpose 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 December 9, 2004, the date that the Phlx filed Amendment No. 1.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

<sup>14</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.