

increasing the limit on trade-through liability from 25 contracts to 50 contracts per Satisfaction Order received during the same period.

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 Exchange has neither solicited nor received comments on the proposed rule change.

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

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷

A proposed rule change filed under Rule 19b-4(f)(6)¹⁸ normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii), and designate the proposed rule change immediately operative.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.¹⁹ By waiving the pre-filing requirement and accelerating the operative date, the Pilot Program can continue without interruption. The Commission believes that allowing the pilot to continue will

allow Participants to either gather sufficient information to justify the need for the pilot program or determine that the exemption from trade-through liability is no longer necessary. Increasing the maximum number of contracts to be satisfied with respect to Satisfaction Orders in the last seven minutes of trading in options to 50 contracts will enhance customer order protection.

At any time within 60 days of the filing of such 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.²⁰

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. 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-2005-07 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-Phlx-2005-07. 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, 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. Copies of the filing also will 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 SR-Phlx-2005-07 and should be submitted on or before January 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51116; File No. SR-Phlx-2005-06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Extend Its Pilot Fee Schedule for Electronic Communications Networks

February 1, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 26, 2005, 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 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 fees to extend its current pilot program for an additional one-year period (until January 31, 2006), to continue to impose a \$2,500 monthly fee for electronic communications networks ("ECNs") that are member

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ *Id.*

¹⁹ For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²⁰ For purposes 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 the period to commence on January 28, 2005, the date the Exchange filed Amendment No. 1 to the proposed rule change. See 15 U.S.C. 78s(c)(3)(C).

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

organizations and send order flow to the Exchange's equity trading floor.³ The current pilot program is scheduled to expire on January 31, 2005.⁴

The \$2,500 fee would continue to apply to ECN trades where the ECN is not acting as a specialist or a floor broker, but rather an order flow provider. This fee is in lieu of the equity transaction value charge that would normally apply to (non-specialist) equity trades.

No changes are being made to the Exchange's Summary of Equity Charges which is available at the principal office of the Phlx, and on the Phlx's Web site, <http://www.phlx.com/exchange/memberservices/feesched.pdf>.

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 extend for an additional one-year period (until January 31, 2006) the Exchange's current ECN pilot program that imposes a \$2,500 monthly fee for ECNs that are member organizations and send order flow to the Exchange's equity trading floor. The continuation of the \$2,500 fee is

³ As stated on the Phlx fee schedule, an ECN shall mean any electronic system that widely disseminates to third parties orders entered therein by an Exchange market maker or over-the-counter ("OTC") market maker, and permits such orders to be executed against in whole or in part; except that the term ECN shall not include: any system that crosses multiple orders at one or more specified times at a single price set by the ECN (by algorithm or by any derivative pricing mechanism) and does not allow orders to be crossed or executed against directly by participants outside of such times; or any system operated by, or on behalf of, an OTC market-maker or exchange market-maker that executes customer orders primarily against the account of such market maker as principal, other than riskless principal. See also Rule 11Ac1-1(a)(8) under the Act, 17 CFR 240.11Ac1-1(a)(8) (defining ECN for the purposes of Rule 11Ac1-1(c)(5)).

⁴ See Securities Exchange Act Release No. 49173 (February 2, 2004), 69 FR 6358 (February 10, 2004) (extending the ECN fee pilot program until January 31, 2005).

intended to attract equity order flow from ECNs to the Exchange by continuing to substitute a fixed monthly fee, in light of the potential for high volumes of order flow from ECNs.⁵ The monthly fee will continue to apply to ECN order flow to the Exchange's equity trading floor, including from ECNs that either became members or began sending order flow after the commencement of the initial program. The \$2,500 fee would continue to apply to ECNs that are not acting as a Phlx specialist or floor broker.⁶ Currently, no ECN operates from the Exchange's equity trading floor as a floor broker or specialist unit. If, however, an ECN did operate from the equity trading floor, it could be subject to various floor-related fees respecting its floor operation.⁷ In addition, an ECN's transactions as a floor broker would be subject to the equity transaction charge and its specialists would be subject to other charges.⁸ Even if the ECN were acting as a floor broker or specialist with respect to some trades, those trades for which it was not acting as a floor broker or specialist, but rather an ECN, would be subject only to the flat monthly fee and not other transaction charges. An ECN that operates only as a specialist or floor broker would not have to pay the monthly fee, because it would, instead, be paying the normal transaction charges applicable to floor brokers and specialists.

An ECN would also continue to be subject to, if applicable, the following membership-related fees: Permit Fees, Foreign Currency User Fees, Application Fee, Initiation Fee, Transfer

⁵ To recoup costs due from the Exchange to the Commission pursuant to Section 31(b) of the Act, 15 U.S.C. 78ee(b), the Exchange intends to continue to apply such fee to ECNs, as the current fee schedule reflects.

⁶ An ECN would also continue to incur certain license fees and other fees as specified on the Exchange's schedule of dues, fees, and charges. In addition, an ECN would continue to incur specialist or equity floor brokerage transaction fees if it acts as a Phlx specialist or floor broker.

⁷ According to the Exchange, these include the Trading Post/Booth Fee, Trading Post w/Kiosk Fee, Kiosk Construction Fee (when requested by specialist), Contoller Space Fee, Floor Facility Fee, Shelf Space on Equity Option Trading Floor Fee, Computer Equipment Services, Repairs or Replacements Fee and Computer Relocation Requests Fee. Certain communications fees could also apply, such as the Direct Wire to the Floor Fee, Telephone System Line Extensions, Wireless Telephone System, Tether Initial Connectivity Fee, Tether Monthly Service Fee, Execution Services/Communication Charge, Stock Execution Machine Registration Fee (Equity Floor), Equity, Option, or FCO Transmission Charge, FCO Pricing Tape, Option Report Service Fee, Instinet, and Reuters Equipment Pass-Through Fee.

⁸ For example, certain license fees may apply to specialists, and the Equity Floor Brokerage Assessment and Equity Floor Brokerage Transaction Fee apply to floor brokerage activity.

Fee for Foreign Currency Options Participations, Phlx CCH Guide Fee, Examinations Fee, Review/Process Subordinated Loans Fee, Registered Representative Registration fees, Trading Floor Personnel Registration Fee, Off-Floor Trader Initial Registration Fee and Annual Fee, and Remote Specialist fees.

Because the \$2,500 fee is a flat monthly fee as opposed to a per-transaction fee, it is intended to encourage ECN volume. Currently, the equity transaction charge that would otherwise apply to an ECN's equity trades ranges, based on share volumes, with a \$50 maximum fee per trade side, and various other applicable discounts. Thus, many variables determine whether the proposed monthly \$2,500 fee is generally more favorable than the equity transaction charge, depending upon the number of trades, size of the trade and type (*i.e.*, PACE). As a general matter, the Exchange believes that \$2,500 would be more favorable to the ECN because it is a fixed amount.

The Exchange believes that the monthly ECN fee provides competitive fees with appropriate incentives, thus providing a reasonable method to attract large order flow providers such as ECNs to the Exchange. Additional order flow should enhance liquidity, and improve the Exchange's competitive position in equity trading. The Exchange believes that structuring this fee for ECNs is appropriate, as ECNs are unique in their role as order flow providers to the Exchange. Specifically, ECNs operate a unique electronic agency business, similar to a securities exchange, as opposed to directly executing orders for their own customers as principal or agent.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁰ in particular, in that it is an equitable allocation of reasonable fees among Exchange members, due to the unique character of ECNs, and because the fixed monthly fee is a reasonable method of attracting a new form of order flow to the Exchange.

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

The Exchange does not believe that the proposed rule change would impose any inappropriate burden on competition.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

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 immediately pursuant to Section 19(b)(3)(A)(ii) of the Act¹¹ and Rule 19b-4(f)(2)¹² thereunder, in that it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary of appropriate in the public interest, for the protection of investors, or otherwise in the 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. 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-2005-06 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-Phlx-2005-06. 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, 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. Copies of the filing also will 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 Number SR-Phlx-2005-06 and should be submitted on or before February 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51096; File No. SR-Phlx-2004-96]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments No. 1 and No. 2 Thereto Relating to its Equity Option Specialist Deficit (Shortfall) Fee

January 28, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 30, 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 and II below, which Items have been prepared by the Exchange. The Phlx submitted Amendments No. 1 and No. 2 to the proposal on January 25, 2005, and January 28, 2005, respectively.³ The proposed rule change, as amended, has been filed by the Phlx as establishing or changing a due, fee, or other charge, pursuant to

Section 19(b)(3)(A)(ii) of the Act⁴ and Rule 19b-4(f)(2)⁵ thereunder, which renders the proposal effective upon filing with the Commission. 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 Equity Option Specialist Deficit (Shortfall) Fee ("shortfall fee") in two ways: (1) To include Streaming Quote Options traded on Phlx XL, the Exchange's electronic trading platform for options, in the shortfall fee calculation, which have thus far been exempt from the shortfall fee; and (2) to amend the amount of the shortfall fee cap and revise how it is applied per option for the top 120 options, including Streaming Quote Options traded on Phlx XL.

Currently, specialists⁶ are required to reach a total national monthly contract volume of at least 12 percent in any top 120 option,⁷ in most cases,⁸ in order not to be charged a monthly shortfall fee of \$0.35 per contract by the Phlx.⁸ However, the shortfall fee is currently not applicable to top 120 Streaming Quote Options traded on Phlx XL.¹⁰ At this time, the Exchange proposes to charge equity options specialist units the shortfall fee of \$0.35 per contract currently in effect to be paid monthly in connection with transactions in any top 120 Streaming Quote Option traded on Phlx XL if at least 12 percent of the total

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

⁶ The Exchange uses the terms "specialist unit" and "specialist" interchangeably herein.

⁷ 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 The Options Clearing Corporation.

⁸ An exception to the 12 percent volume threshold amount relates to a transition period for newly listed top 120 options or for any top 120 option (including those equity options listed on the Exchange before February 1, 2004) acquired by a new specialist unit. During the transition period, the shortfall fee is imposed in stages such that the requisite volume threshold is zero percent for the first full calendar month of trading, three percent for the second full calendar month of trading, six percent for the third full calendar month of trading, nine percent for the fourth full calendar month of trading and 12 percent for the fifth full calendar month of trading (and thereafter). See Securities Exchange Act Release No. 49324 (February 26, 2004), 69 FR 10089 (March 3, 2004) (SR-Phlx-2004-08).

⁹ See Securities Exchange Act Release No. 48206 (July 22, 2003), 68 FR 44555 (July 29, 2003) (SR-Phlx-2003-45).

¹⁰ See Securities Exchange Act Release No. 50332 (September 9, 2004), 69 FR 55858 (September 16, 2004) (SR-Phlx-2004-49).

¹³ 13 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendments No. 1 and No. 2 made clarifying changes to the tiered threshold schedule applicable during the transition period, described in *infra* note 8, and other minor technical changes.

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).