

on the foreign currency options trading floor. I would also give the Board of Governors the opportunity to decide whether this pilot program should be implemented on a permanent basis.

2. Statutory Basis

The Exchange believes that the proposed rule is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(4)¹¹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

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

The Exchange represents that the proposed rule change will impose no 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 solicited or received with respect to the proposed rule change.

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹² and Rule 19b-4(f)(2) thereunder¹³ because it involves a due, fee, or other charge. 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.

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.¹⁴ Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 will also be available for inspection and copying at the principal office of the Exchange.

All submissions should refer to File No. SR-Phlx-00-24 and should be submitted by May 8, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42655; File No. SR-Phlx-00-25]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Eliminating the Restriction on Exercise Prices for FLEX Equity Call Options to Those Prices That Apply to Standardized Equity Call Options

April 10, 2000.

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 March 15, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change.

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

The Phlx proposes to delete the provision in Exchange Rule 1079(a)(3) that limits exercise prices for FLEX

equity call options to those that apply to standardized equity call options.³

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 Exchange 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 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 Exchange proposes to amend Phlx Rule 1079(a)(3) to eliminate the limitation of the exercise prices available for FLEX equity call options to those prices that are available for standardized equity call options. Under Phlx Rule 1079, FLEX call options allow certain terms to be customized, such as the underlying security, the type of option, the exercise price, the exercise style, and the expiration date. The Exchange, however, restricted the strike prices for FLEX equity call options to those prices that are available for standardized equity call options because of a concern that the flexible strike price feature could result in an available standardized equity call option that would not be classified as a "qualified" covered call under the Internal Revenue Code ("Code"). The Exchange represents that this would jeopardize the modest tax treatment enjoyed by writers of standardized equity call options.

Currently under Section 1092(c)(4)(B) of the Code, writers of such qualified covered short positions in equity call options receive advantageous tax treatment if the options are exchange-traded and not "deep-in-the-money." An option is "deep-in-the-money" if the strike price of the option is lower than the lowest qualified benchmark price for stock.⁴ The Code defines this benchmark price as generally the highest strike price available for trading

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(2).

¹⁴ In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78(s)(1).

² 17 CFR 240.19b-4.

³ The Commission notes that the proposed rule change would also eliminate the requirement that FLEX equity call options follow the exercise price intervals set out for standardized options in Phlx Rule 1012.

⁴ Section 1092(c)(4)(C) of the Code.

that is less than the current price of the underlying stock.⁵

The Exchange implemented Phlx Rule 1079(a)(3) to remove uncertainty concerning what constitutes a qualified covered call under Section 1092(c)(4) of the Code. If the exercise prices of FLEX equity call options were not subject to the same prices and intervals that apply to standardized equity call options, this could raise the question of whether the existence of a series of FLEX equity call options with a strike price of, for example, \$58 when the price of the underlying stock is \$59, would disqualify a standardized equity call option with a strike price of \$55, which would otherwise be the lowest qualified benchmark price, *i.e.*, the highest strike price available for trading that is less than the price of the stock. The Exchange represents that it was concerned that the Internal Revenue Service ("IRS") may interpret the short covered standardized call equity option with a \$55 strike price as deep-in-the-money and not grant it qualified covered call treatment under Section 1092(c)(4) of the Code.

On January 25, 2000, the IRS resolved this question by issuing a final rule which states that strike prices established by the equity options with flexible terms will not be taken into account when determining whether standardized equity call options are deep-in-the-money and therefore do not receive qualified covered call treatment.⁶ Therefore, the Exchange now proposes to modify Phlx Rule 1079(a)(3)(B) to lift the restriction on exercise prices for FLEX equity call options. The Exchange represents that the effect of the IRS regulations and the Exchange's proposal is to permit certain taxpayers, particularly institutional and other large Exchange's proposal is to permit certain taxpayers, particularly institutional and other large investors, to engage in transactions in FLEX equity call options with a wider range of exercise prices (as was originally intended) without affecting the applicability of Section 1092 of the Code for qualified covered call options involving equity call options with standard terms.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act⁷ in general, and furthers the objectives of Section

6(b)(6)(5)⁸ in particular, in that it is designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by eliminating the restriction on FLEX equity call options that has limited their usefulness as a risk management tool.

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

The Phlx does not believe that the proposed rule change will impose any 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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder because the foregoing proposed 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 after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has requested that the Commission accelerate the operative date of the proposed rule change so that the Exchange may implement this proposal as quickly as possible and allow FLEX options to be used as they were originally intended.

The Commission finds that it is appropriate to designate the proposal to become operative upon filing, because the immediate implementation of the proposed rule change is consistent with the protection of investors and the public interest. Specifically, the Commission previously approved virtually identical proposals by three

other exchanges.⁹ The Commission notes that the proposed rule change concerns issues that have previously been the subject of a full comment period pursuant to Section 19(b) of the Act.¹⁰ The Commission does not believe that the proposed rule change raises any new regulatory issues.¹¹

The Commission also believes that immediate implementation of the proposed rule change is beneficial to investors. The Commission believes that the proposal allows sophisticated high net-worth investors to take full advantage of FLEX options. In part, FLEX options were created to allow these investors to manage their risks by having the ability to negotiate exercise prices, contact terms for exercise style (*i.e.*, American, European, or capped), and expiration dates. However, because of the adverse tax effect on qualified covered calls, the Exchange limited FLEX equity call options exercise prices to those prices available for standardized equity call options. Now that the tax issue has been clarified, the Exchange is removing this restriction. With the removal of this limitation, the Commission believes that sophisticated, high net-worth investors will better be able to take advantage of the risk-management mechanisms provided by FLEX equity call options.

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 interests, for the protection of investors or otherwise in furtherance of the purposes of the Act.¹²

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

⁹ See Securities Exchange Act Release No. 42371 (January 31, 2000), 65 FR 5921 (February 7, 2000) (Order approving SR-CBOE-99-63); see also Securities Exchange Act Release No. 42389 (February 7, 2000), 65 FR 8224 (February 17, 2000) (Order approving SR-PCX-00-01 and SR-Amex-00-02).

¹⁰ 15 U.S.C. 78s(b).

¹¹ The Commission notes that the discussion of the same restrictions on exercise price intervals and exercise prices for FLEX equity call options has been eliminated from the October 1996 Supplement to the Options Clearing Corporation options disclosure document. See Securities Exchange Act Release No. 42491 (March 2, 2000), 65 FR 13351 (March 13, 2000) (Order approving SR-ODD-00-01).

¹² In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ Section 1092(c)(4)(D) of the Code.

⁶ See Department of Treasury, IRS REG-104641-97, 65 FR 3812 (January 25, 2000).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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 will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Phlx-00-25 and should be submitted by May 8, 2000.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42659; Filed No. SR-PHlx-00-23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Modify the Frequency of Billing for the Controller Space Charge, Floor Facilities Fees, Shelf Space Fee on the Equity Options Floor, and Direct Wire Changes From a Quarterly to a Monthly Basis

April 10, 2000.

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 March 9, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 22, 2000, the Exchange

submitted Amendment No. 1 to the proposed rule change.³

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 so that it will bill the controller space charge, floor facilities fees, shelf space fee on the equity options floor and direct wire charges on a monthly basis rather than the quarterly basis the Exchange currently uses. The amounts of the charges of fees will remain unchanged; only the frequency of billing for such fees or charges will change to a monthly basis. The Phlx proposes that the change in the frequency of billing for the fees or charges mentioned above become effective at the opening of business on April 1, 2000.

II. Self-Regulatory Organization's Statements of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV 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 Exchange proposes to amend the Phlx's fee schedule to change the frequency that Exchange members, foreign currency option ("FCO") participants and member organizations and participant organizations are billed for the controller space charge, floor facilities fees, shelf space fee for the equity options floor and the direct wire charges. The Exchange proposes to bill these fees or charges on a monthly basis, instead of on a quarterly basis.⁴

³ In Amendment No. 1, the Exchange provided an updated schedule of dues, fees and charges in Appendix A to the proposed rule change. See Letter from Murray L. Ross, Vice President and Secretary, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), SEC, Dated March 21, 2000.

⁴ The Exchange will bill the controller space charge at a rate of \$250.00 per month instead of the current rate of \$750.00 per quarter. The Exchange will bill the floor facilities fees and the shelf space fee at a rate of \$125.00 per month instead of the current rate of \$375.00 per quarter. The Exchange will bill the direct wire charges at a rate of \$20.00 per month instead of the current rate of \$60.00 per quarter.

The Exchange's Finance Committee is recommending that the fees or charges mentioned above be billed monthly instead of quarterly to enhance operational efficiency for the Exchange and its members and participants. The Exchange represents that the proposed rule change would permit the Exchange's Accounting Department to operate more effectively. The Exchange further represents that the proposed rule change would allow Exchange members and participants to more accurately gauge their monthly operating expenses, and to permit them to reduce their operational cash flow burdens that may result from the current quarterly payment schedule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act⁵ in general, and further the objectives of Section 6(b)(4)⁶ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges amount its members and other persons using its facilities. Specifically, the Exchange believes that the proposed rule change is reasonable and equitable because only the frequency of billing for the fees or charges mentioned above will be changed, and not the amount billed.

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

The foregoing rule change establishes or changes a fee, due or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(2) thereunder.⁸ The Exchange intends to implement the change to the frequency of billing for the fees or charges mentioned above at the opening of business on April 1, 2000. At any time within 60 days of filing of such proposed rule change, the Commission may summarily abrogate such rule

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(2).

¹³ 17 CFR 200.30-3 (a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.