

II. Self-Regulatory Organization's Statements Regarding the Purpose of, and the 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 amend the Phlx fee schedule to waive and eliminate all comparison and transaction charges to customers connected with the trading of equity options.³

Currently, the Phlx imposes both comparison and transaction fees on all equity option trades, which vary in amount depending on whether a transaction involves a Registered Options Trader ("ROT"), a firm, a specialist or a customer. Customer orders electronically executed through the Phlx's Automated Options Market (AUTOM) system are entirely exempt from both comparison and transaction fees. Customer block orders (in certain size categories) are entitled to transaction fee discounts up to 25% of the normal charge. Under the proposed rule change all charges to ROTs, firms and specialists will remain unchanged.

The Phlx estimates that annual cost savings for customers will approximate \$4.5 million based upon year-to-date results through July, 2000. These proposed fee adjustments are necessary in order to make the Phlx's fees more competitive with equivalent fees charged by other exchanges and to either maintain or enhance the volume of equity option orders placed with the Phlx. These downward adjustments in fee levels will also encourage the use of options by the investing public and promote competition and efficiencies among exchanges.

Recently, the American Stock Exchange,⁴ Chicago Board Options

Exchange⁵ and the Pacific Exchange⁶ have all changed their respective rules to eliminate similar equity option fees.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁷ in general and furthers the objectives of Section 6(b)(4) of the Act,⁸ in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and others utilizing the Phlx.

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

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

The foregoing rule change establishes or changes a due, fee or charge imposed by the Phlx and, therefore, has become effective upon filing pursuant to Rule 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(2) thereunder.¹⁰ 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 purpose 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.

⁵ See Securities Exchange Act Release No. 42850 (May 30, 2000), 65 FR 36187 (June 7, 2000) (rescinding transaction and trade match fees for customer equity option orders routed through its electronic order routing system).

⁶ See Securities Exchange Act Release No. 43115 (August 3, 2000), 65 FR 49280 (August 11, 2000) (eliminating both the fee for all manual executions of customer option orders and the ticket data entry fee applicable to all customer option orders). See also Securities Exchange Act Release No. 43020 (July 10, 2000), 65 FR 44558 (July 18, 2000) (eliminating of all transaction charges for all forms of electronic executions of customer orders and all on-line comparison charges for all customer executions).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(2).

Persons making written submissions 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 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 submissions should refer to File No. SR-Phlx-00-80 and should be submitted by October 25, 2000.

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

[Release No. 34-43339; File No. SR-PHLX-97-46]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change Amending Article V, Section 5-5 and Article XXII, Section 22-1 of the Exchange's By-Laws

September 25, 2000.

I. Introduction

On February 11, 1998,¹ the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ a proposed rule change to amend the Exchange's By-

¹¹ 17 CFR 240.30-2(a)(12).

¹ The Phlx had originally submitted the filing on December 10, 1997; however, at that time, the filing was incomplete. At the Commission's request the Phlx made a complete filing on February 11, 1998.

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

³ See Phlx Options Rule 1051.

⁴ See Securities Exchange Act Release No. 42675 (April 13, 2000), 65 FR 21223 (April 20, 2000) (eliminating all transaction, clearance and floor brokerage fees for all customer equity option orders).

Laws. On February 17, 1998, the Exchange filed Amendment No. 1 to the proposal with the Commission.⁴ The proposed rule change, including Amendment No. 1, was published for comment in the **Federal Register** on March 17, 1998.⁵ No comments were received on the proposal. On September 7, 1999, the Exchange filed Amendment No. 2 to the proposal with the Commission.⁶

This order approves the proposal, as amended, and requests comment from interested persons regarding Amendment No. 2 to the proposal.

II. Description of the Proposal

The Exchange proposes to amend Article V, Section 5–5, of its By-Laws to provide a mechanism to designate the Chief Operating Officer or another senior officer to assume the duties of Chairman on an interim basis in circumstances of an extended absence or inability of the Chairman to serve.⁷ The Exchange also proposes to amend Article XXII, Section 22–1 to clarify the procedures with respect to the submission of amendments to the By-Laws. This proposed amendment to Section 22–1 would raise from fifty to seventy-five the number of Phlx members required to offer an amendment to the By-Laws; would lengthen from two weeks to four weeks the time period in which a vote on a proposed amendment must be held; and would establish the date of the submission of the proposed amendment as the record date for determining the eligibility of members to vote on the proposed amendment. The proposal also changes the requirement that the proposed amendment be submitted to the Board. Under the proposal, the proposed amendment will be submitted to the Secretary.

⁴ See Letter from Murray L. Ross, Vice President and Secretary, Phlx, to Marie Ito, Special Counsel, Commission, dated February 13, 1998 ("Amendment No. 1"). In amendment No. 1, the Exchange made technical corrections to the language contained in Exhibit A to the proposal and provided support for the proposed changes to the By-Laws.

⁵ Securities Exchange Act Release No. 39740 (March 10, 1998), 63 FR 13083.

⁶ See Letter from Edith Hallahan, Deputy General Counsel, Phlx, to Michael Walinskas, Deputy Associate Director, SEC, dated September 3, 1999 ("Amendment No. 2"). In Amendment No. 2, the Exchange eliminated references in the proposal to By-Law Article IV, Section 4–8. The Exchange has filed the proposed changes to Section 4–8 in a separate proposal. See SR-PHLX-00-39.

⁷ The Exchange has defined "extended absence or inability to act" as an inability of the Chairman to fulfill his or her duties for a period longer than four weeks.

III. Discussion

After careful consideration, 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, and, in particular, with the requirements of Section 6(b).⁸ In particular, the Commission believes that the proposal is consistent with the Section 6(b)(3)⁹ requirements that the rules of an Exchange be designed to assure a fair representation of its members in the selection of its directors and administration of its affairs.¹⁰

Under the proposed amendment to Article V, Section 5–5 of the Exchange's By-Laws, the Phlx board will be required to designate an acting Chairman if the Chairman of the Board is unable to fulfill his or her duties for more than four weeks. The Commission finds that the proposal may enable the Exchange to function more efficiently in the face of the extended absence or inability of the Chairman of the Board to act. By clarifying the circumstances under which the Chairman of the Phlx's board will be replaced on a temporary basis, the proposal strengthens existing provisions of the By-Laws, enabling the Exchange to better fulfill its responsibilities as a self-regulatory organization.

The Commission finds that the proposed amendments to Article XXII, Section 22–1 of the Phlx's By-Laws are designed to promote a fair and reasonable process for amending the Phlx's By-Laws that is consistent with the requirements of the Act. The Exchange represents that extending the period of time from two weeks to four weeks to conduct a vote on an amendment to the By-Laws will allow the Exchange sufficient time to send ballots to its membership while allowing the membership sufficient time to cast a reasoned and informed vote.¹¹ In addition, the Commission believes that the proposal, by establishing the record date for determining which members will be entitled to vote on a particular amendment to the Exchange's By-Laws, should improve and clarify the process by which By-Laws are amended.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(3).

¹⁰ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ Telephone conversation between Murray L. Ross, Vice President and Secretary, Phlx and David Sieradzki, Special Counsel, Commission, on July 20, 2000.

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice in the **Federal Register**. Amendment No. 2 removes the section of the proposal amending Article IV, Section 4–8 of the Exchange's By-Laws. As a result, the Amendment raises no new significant regulatory issues. Accordingly, the Commission finds good cause, consistent with Sections 6(b)(6)¹² and 19(b)(2)¹³ of the Act, to approve Amendment No. 2 to the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., 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 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 NASD. All submissions should refer to File No. SR-PHLX-97-46 and should be submitted by October 25, 2000.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR-PHLX-97-46) is approved, as amended, and Amendment No. 2 is approved on an accelerated basis.

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

Margaret H. McFarland,
Deputy Secretary.

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¹² 15 U.S.C. 78f(b)(6).

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).