

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 Section. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR-CBOE-2001-62 and should be submitted by March 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45478; File No. SR-CHX-2002-04]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated To Provide for Rebilling of Costs Related to Member Firm Connectivity With the MAX System

February 26, 2002.

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 February 1, 2002, the Chicago Stock Exchange, Incorporated ("CHX" 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. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> 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 Exchange proposes to amend its membership dues and fees schedule ("Schedule") to provide for rebilling of certain costs relating to member firm connectivity with the Exchange's automatic execution system. The text of the proposed rule change is below. Proposed new language is in italics.

##### Membership Dues and Fees

\* \* \* \* \*

##### H. Equipment, Information Services and Technology Charges

*MAX Connection Charges If the Exchange incurs direct costs relating to a member firm's connection to the MAX System, including costs associated with installation of equipment, telecommunication lines, telecommunication services and maintenance charges, such costs will be rebilled to the member firm at cost, provided, however, that the Exchange will not seek reimbursement of those connection-related costs deemed reasonable and necessary by the Exchange if the member firm to which the costs are allocable has routed an average of not less than 100,000 trades per month to the Exchange via the MAX System, during the 6 months preceding the billing date.*

\* \* \* \* \*

#### 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 CHX proposes to amend the Schedule to provide for rebilling of costs incurred by the Exchange relating to member firm connectivity with the

MAX System.<sup>4</sup> The Exchange currently pays such costs with respect to several high-volume order sending firms although it has no stated policy regarding where it will absorb such costs.

To provide high-volume order sending firms with continued incentive to route orders to the Exchange, consistent with their best execution obligations, the proposed rule change includes a provision by which the Exchange would waive its right to reimbursement of MAX connectivity charges if an order sending firm had routed an average of 100,000 trades per month to the CHX during the six-month period preceding the billing date.

The CHX believes that the proposed rule change constitutes an equitable means of recovering its often-substantial technology costs, while recognizing that in certain instances, business considerations warrant the Exchange's absorption of such costs. The Exchange recognizes the Commission's interest in making available information regarding the magnitude of the MAX connectivity charges that the Exchange would waive for firms meeting the requisite volume criteria. Accordingly, while the Exchange cannot provide one fixed number due to varying utility rates and connectivity needs for each order-sending firm, the Exchange notes that the approximate average charge per month for MAX connectivity charges (i.e. telecommunications utility charges) will be approximately \$4,000. Additionally, one-time initial hardware, software and setup charges range by order-sending firm, up to \$50,000.<sup>5</sup>

<sup>4</sup> The CHX Midwest Automated Execution system, commonly referred to as the "MAX System," is the principal system by which orders are routed to the CHX and executed automatically.

<sup>5</sup> With regard to one-time initial hardware, software and setup charges, the decision not to seek reimbursement applies only to order-sending firms that are establishing new connectivity to the MAX System. For order-sending firms that were already connected with the MAX System at the time the CHX filed this proposed rule change, the initial hardware, software and setup charges are moot under this proposed rule change. For order-sending firms that establish new connectivity to the MAX System, the CHX will look back six months from the CHX billing date to determine whether an order-sending firm has routed an average of 100,000 trades per month to the CHX. If so, the CHX will not seek reimbursement for initial hardware, software and setup. Were an order-sending firm establishing new connectivity to the MAX System to fall below the 100,000-trade-routing threshold within the six-month look-back period from the CHX billing date, the order-sending firm would be charged the costs of initial hardware, software and setup, as well as any monthly connectivity charges. Once six months have passed since the initial hardware, software and setup charges have been incurred, the only connectivity charges eligible for a waiver of reimbursement are the monthly connectivity charges. February 26, 2002 telephone conversation between Kathleen M. Boege, Associate

<sup>12</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.

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

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>6</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among its 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 solicited or received.

## 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)(ii) of the Act<sup>7</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>8</sup> 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 proposal is consistent with the Act. 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 Exchange. All submissions should refer to file number SR-CHX-2002-04, and should be submitted by March 26, 2002.

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. 34-45480; File No. SR-Phlx-2002-10]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Establishing Fees for Equity Trading Permit Holders**

February 26, 2002.

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 February 6, 2002, 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. 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 Exchange proposes to amend its schedule of dues, fees and charges to: (1) Adopt new fees applicable to holders of equity trading permits ("ETPs") and ETP organizations;<sup>3</sup> (2) establish that certain fees, dues and charges currently applicable to members and member organizations will also be applicable to ETP holders and ETP organizations; and (3) amend the Exchange's member credit program to provide that monthly fees charged to ETP holders and ETP organizations are credit-eligible, and to

clarify certain aspects of the Exchange's member credit program as it applies to ETPs.<sup>4</sup> The text of the proposed rule change is available at the Phlx's Office of the Secretary and at the Commission.

### **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

On January 9, 2002, the Commission approved a proposed rule change to adopt Exchange Rule 23, which provides for ETPs.<sup>5</sup> Specifically, Exchange Rule 23(a) provides that the Exchange shall issue up to 75 ETPs outstanding from time to time. The Exchange anticipates commencing an ETP program in the near future. Accordingly, the purpose of the proposed rule change is to: (1) Establish that certain fees, dues and charges currently applicable to members and member organizations will be applicable to ETP holders and ETP organizations under Exchange Rule 23; (2) adopt new fees applicable to members by virtue of being ETP holders and to ETP organizations; and (3) amend the Exchange's member credit program to provide that monthly fees charged to ETP holders and ETP organizations are

<sup>4</sup> The fees proposed herein would be applicable to ETP holders, which, according to the Exchange, are members although they are not entitled to certain rights under Delaware corporate law. See Securities Exchange Act Release No. 45254 (January 9, 2002), 67 FR 2720 (January 18, 2002) (SR-Phlx-00-03, Amendment 3, footnote 1). Therefore, the fees that are proposed herein to be imposed on ETP holders are member fees. Hence, this proposed rule change is effective on filing pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(2) thereunder.

<sup>5</sup> See Securities Exchange Act Release No. 45254 (January 9, 2002), 67 FR 2720 (January 18, 2002) (approving SR-Phlx-00-02 and SR-Phlx-00-03). The Exchange notes, as a preliminary matter, that ETPs are not required in order to trade equities on the Exchange. ETPs are simply being made available pursuant to Exchange Rule 23 as an alternative to owning or leasing a membership on terms and conditions that reflect the Exchange's reasonable business judgment.

General Counsel, CHX, and Florence Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, and Joseph Morra, Special Counsel, Division, Commission.

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

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

<sup>9</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.

<sup>3</sup> The Exchange defines an ETP organization as a broker-dealer whose associated person has qualified the firm as an "ETP organization" pursuant to Exchange Rule 23(g).