

offices of the Phlx 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 the 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 purpose of the proposed rule change is to increase initial and annual off-floor trader fees to generate additional revenue to help off-set the Exchange's costs associated with conducting off-floor trader examinations, including administrative costs, such as cost incurred in conducting background checks on the individuals to whom the fees apply, processing of forms, fingerprint charges, and requests for disciplinary history from the Central Registration Depository.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,⁵ in general, and furthers the objectives of section 6(b)(4) of the Act,⁶ in particular, 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 result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act⁷ and rule 19b-4(f)(2) thereunder,⁸ as establishing or changing a due, fee, or other charge. 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.⁹

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 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-2002-84 and should be submitted by January 31, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-456 Filed 1-9-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47120; File No. SR-Phlx-2002-83]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Extension of Its Pilot Program To Implement Its Existing Fee Schedule for Electronic Communication Networks

January 3, 2003.

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 18, 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 Phlx proposes to extend its two-year pilot program for an additional one-year period, in order to continue to impose a \$2,500 monthly fee for Electronic Communications Networks ("ECNs") that are member organizations and send order flow to the Exchange's equity trading floor.³ The pilot program is due to expire on January 31, 2003.⁴

The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and the Commission.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ As stated in the Phlx fee schedule, the term 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. The term ECN shall not include: any system that crosses multiple orders at one or more specified times at a specified price set by the ECN, 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 as principal, other than riskless principal.

⁴ See Exchange Act Release No. 45456 (February 19, 2002), 67 FR 8831 (February 26, 2002) (SR-Phlx-2002-08) (extending the initial ECN fee pilot program).

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ 17 CFR 240.19b-4(f)(2).

⁹ See section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

¹⁰ 17 CFR 200.30-3(a)(12).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

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 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 for an additional one-year period, until January 31, 2004.⁵ According to the Exchange, the continuation of the \$2,500 fee is 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.⁶

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 program. The \$2,500 fee would continue to apply to ECN that are not acting as a Phlx specialist or floor broker.⁷

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 would be subject to various floor-related fees respecting its floor operations.⁸ In addition, an

ECN's transactions as a floor broker would be subject to the equity transaction value charge, and its specialist trades would be subject to other charges.⁹ 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 only operates 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: Membership dues or Foreign Currency User Fees, Foreign Currency Option Participation Fee, Capital Funding Fee, Application Fee, Initiation Fee, Transfer Fee, Phlx CCH Guide Fee, Examinations Fee, Technology Fee, Review/Process Subordinated Loans Fee, Registered Representative Registration Fees, and Off-Floor Trader Initial Registration Fee, 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 value charge (that would otherwise apply to an ECN's equity trades) ranges from \$.00 to \$.0075 per share per transaction, 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 value 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. The Phlx believes that additional order flow enhances liquidity, and improves 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 is consistent with section 6(b) of the Act,¹⁰ in general, and section 6(b)(4) of the Act,¹¹ in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange notes the unique character of ECNs, and believes that 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 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

Written comments were neither solicited nor received.

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act¹² and subparagraph (f)(2) of rule 19b-4¹³ thereunder. 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.

⁵ The \$2,500 monthly fee applies regardless of the ECN's average daily Phlx equity volume.

⁶ In order to recoup costs due pays pursuant to section 31(b) of the Act, the Exchange intends to continue to apply such fee to ECNs, as the current fee schedule reflects.

⁷ An ECN would continue to incur specialist or equity floor brokerage transaction fees if it acts as a Phlx specialist or floor broker.

⁸ These include the Trading Post/Booth Fee, Trading Post w/Kiosk Fee, Kiosk Construction Fee (when requested by specialist), Controller 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, Quotron Equipment Fee, Instinet, Reuters Equipment Pass-Through Fee and the Option Mailgram Service Fee.

⁹ The PACE Specialist Charge is a fee imposed on specialist transactions only and the Equity Floor Brokerage Assessment and Equity Floor Brokerage Transaction Fee apply to floor brokerage activity.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-2002-83 and should be submitted by January 31, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-457 Filed 1-9-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47118; File No. SR-Phlx-2002-34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 and No. 2 thereto by the Philadelphia Stock Exchange, Inc. to Adopt a Seat Transaction Policy and Add Supplementary Material to Phlx Rule 708

January 2, 2003.

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 June 21, 2002, 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 December 16, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.³ On December 27, 2002,

the Exchange filed Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to adopt a Seat Transaction Policy for Governors, Committee Members and Associated Member Organizations ("Seat Transaction Policy" or the "Policy"), described in further detail below, which, if approved, will form a part of the Exchange's Code of Conduct for Governors and Committee Members (the "Governance Members Code of Conduct"), which prohibits Exchange Governors, Committee Members and Member Firms associated with them from engaging in purchases or sales of Exchange "Seats" (as further defined below), except in accordance with the Policy. The Policy generally restricts such Seat Transactions if a Governance Member is in possession of Material Confidential Information⁵ of the Exchange, except in accordance with the procedures set forth in the Policy. In addition, the Exchange proposes to amend Phlx Rule 708, *Acts Detrimental to the Interest and Welfare of the Exchange*, by adding commentary that provides notice to members and member organizations that any violation of the Exchange's Seat Transaction Policy constitutes a violation of Phlx Rule 708. Below is the text of the proposed rule change. Proposed new language is in italics.

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Philadelphia Stock Exchange

Code of Conduct for Board Members and Committee Members

Articles I. thru IV. No change.

Article V. Seat Transaction Policy for Governors and Committee Members

Chinese Wall

A Chinese Wall, also known as an Information Barrier, is an internal written policy of an Exchange or PBOT member firm or member organization that is designed to prevent the

2002 ("Amendment No.1"). Amendment No. 1 replaces Phlx's original proposal in its entirety.

⁴ See letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Florence Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated December 27, 2002 ("Amendment No. 2"). Amendment No. 2 makes certain technical changes to the proposed rule change.

⁵ See definition of Material Confidential Information, below.

disclosure by a Governor or Committee Member associated with such Exchange or PBOT member firm or member organization, or FCO Participant or FCO Participant Organization (collectively, "Member Organizations"), of non-public, confidential or otherwise sensitive Exchange or PBOT information possessed by such Governor or Committee Member to any third party, including, without limitation, any employee, agent, associated person, representative or consultant of such Member Organization, as the case may be.

Material Confidential Information

Material Confidential Information includes any information that is proprietary to the Exchange, which a reasonable person would consider significant or important when purchasing or selling a Seat.

Seat Transaction

A transaction pursuant to which a Covered Person or a Member Organization purchases or sells a Seat.

Special Committee on Seat Transactions

The Special Committee on Governor and Committee Member Seat Transactions ("Special Committee") is a Special Committee of the Board having jurisdiction over all Seat Transactions by Covered Persons or Member Organizations.

Window Period

A Window Period is a period of time, imposed by the Special Committee on Seat Transactions, during which a Covered Person or associated Member Organization may not engage in a Seat Transaction, such as a period of time prior to the announcement of new products to be traded on the Exchange, prior to the announcement of a corporate transaction involving the Exchange, prior to the announcement of certain regulatory actions affecting the Exchange, prior to the announcement of an increase or decrease in fees to be paid by the Exchange members, or prior to the announcement of any significant action by the Board of Governors or any Committee.

1. Responsibility for Compliance

(a) Each Covered Person⁶ bears personal responsibility for complying with this Seat Transaction Policy. Each Member Organization associated with a Covered Person must also comply with this Seat Transaction Policy. Where a

⁶ As used in the Seat Transaction Policy, "Covered Person" shall mean any person who serves the Exchange as a Board Member or as a Committee Member.

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Florence Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated December 13,