

OCC–2002–02, OCC agreed to include as stated policies in its by-laws two undertakings previously furnished to the Commission.⁴ This proposed rule change incorporates those undertakings as Interpretations and Policies under section 1 of Article VIIB of OCC's By-Laws. The two policies provide that:

1. Non-Equity Exchanges will be promptly provided with information that the Chairman considers to be of competitive significance to such Non-Equity Exchanges that was disclosed to Exchange Directors at or in connection with any meeting or action of the Board of Directors or any Committee of the Board of Directors.

2. A requesting Non-Equity Exchange shall be afforded the opportunity to make presentations to the Board of Directors or an appropriate Committee of the Board of Directors.

OCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder because it should ensure the fair representation of participants and stockholders of OCC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would 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 not and are not intended to be solicited with respect to the proposed rule change, and none have been 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)(i) of the Act⁵ and rule 19b–4(f)(1)⁶ thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, enforcement, or administration of an existing rule. 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.

⁴ *Id.* at note 6.

⁵ 15 U.S.C. 78s(b)(3)(A)(i).

⁶ 17 CFR 240.19b–4(f)(1).

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. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR–OCC–2002–27. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR–OCC–2002–27 and should be submitted by May 19, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47715; File No. SR–Phlx–2003–26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Amend Its Broker-Dealer Transaction Fee for Equity Option Transactions

April 22, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

⁷ 17 CFR 200.30–3(a)(12).

(“Act”),¹ and rule 19b–4 thereunder,² notice is hereby given that on April 11, 2003, 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 decrease the broker-dealer transaction fee for “block” equity option transactions as follows: Broker/Dealer³ (non-AUTO-X)

Up to 2,000 contracts—\$.35 per contract
Between 2001 and 3,000 contracts—\$.25 per contract (for all contracts)

Residual above 3,000 contracts—\$.20 per contract above 3,000 contracts (with the first 3,000 contracts charged \$.25 per contract)

This fee will be applied per transaction (not per month).⁴ The Exchange proposes to implement this fee on transactions settling on or after April 11, 2003.⁵ Footnote 10 of the Exchange's fee schedule is also being amended to change the term “orders” to “transactions.” All other equity option transaction charges will remain unchanged.

The text of the proposed rule change is available upon request from the Office of the Secretary, the Commission, and the Exchange.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ This charge applies to members for transactions, received from other than the floor of the Exchange, for any account (i) in which the holder of beneficial interest is a member or non-member broker-dealer or (ii) in which the holder of beneficial interest is a person associated with or employed by a member or non-member broker-dealer. This includes transactions for the account of a Register Options Trader (“ROT”) entered from off-floor.

⁴ Member organizations may need to file a form with the Exchange to identify eligible block trades.

⁵ This fee will continue to be eligible for the monthly credit of up to \$1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. See Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 28, 2001) (SR–Phlx–2002–32).

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

Currently, the Exchange imposes a flat \$0.35 per contract for broker-dealer transactions not executed via the AUTO-X feature of AUTOM,⁶ the Exchange's automated options trading system. The intent of the present fee change is to add breakpoints above which the per contract charge for broker-dealer transactions will be reduced, thereby potentially attracting additional options business to the Exchange, particularly large transactions. For example, under the proposal (i) a transaction of 1,700 contracts will be charged \$0.35 per contract, (ii) a transaction of 2,500 contracts will be charged \$0.25 per contract for all contracts, and (iii) a transaction of 3,500 option contracts will be charged \$0.25 for each of the first 3,000 contracts and \$0.20 for each of the remaining 500 contracts.⁷ Footnote 10 of the Exchange's fee schedule is also being amended to change the term "orders" to "transactions."

The purpose of the proposed rule change is to generate additional revenue for the Exchange by attracting additional order flow through lowering the cost of executing certain large block equity option transactions. The proposed rule change should also make the Exchange's fees for trading equity option contracts on the Phlx more competitive with other options exchanges.

⁶ AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO-X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. See Exchange Rule 1080.

⁷ Of course, the contra-side to a transaction may also be subject to transaction and other charges.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,⁸ in general, and furthers the objectives of section 6(b)(4) of the Act,⁹ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members. The Exchange believes the proposal is reasonable and equitable because it decreases transaction costs for broker-dealers executing equity options transactions on 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 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 due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act¹⁰ and rule 19b-4(f)(2) thereunder.¹¹ 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 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. 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

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78(s)(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(2).

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-2003-26 and should be submitted by May 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47714; File No. SR-Phlx-2003-25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Automatic Price Improvement for Buy Orders in Securities Exempt for the Short Sale Rule

April 22, 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 April 3, 2003, 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 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 Exchange proposes to amend Supplementary Material .07 to Phlx rule 229 to modify the Exchange's Automatic Price Improvement ("API") program to allow specialists to choose to improve buy orders in securities that are exempted from or otherwise not subject to rule 10a-1 under the Act³ (the "Short Sale rule").

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.10a-1.