

burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all brokers, dealers and municipal securities dealers.

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 MSRB has designated this proposed rule change as constituting a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing MSRB rule under Section 19(b)(3)(A) of the Act,⁴ which renders the proposed rule change effective upon filing with the Commission.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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.⁵

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. 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-MSRB-2004-01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your 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 Room. Copies of such filing will also be available for inspection and copying at the MSRB's offices. All submissions should refer to file number SR-MSRB-2004-01 and should be submitted by April 1, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49362; File No. SR-Phlx-2004-15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Modifications to the Fee Schedule To Delete Obsolete Fees and Clarify Language

March 4, 2004.

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 February 13, 2004, 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 Phlx. On February 27, 2004, the Phlx amended its proposal.³ The Exchange filed the proposed rule change under paragraph (f)(2) of Rule 19b-4 under the Act.⁴ 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 amend its schedule of dues, fees and charges ("fee schedule"), as described in detail below, to more accurately reflect charges that are currently imposed by the Exchange

on its members. No new dues, fees and charges are being imposed pursuant to this proposed rule change.

The Exchange proposes to delete in their entirety, all charges relating to: (1) "Summary of Value Line Index Option Charges" and (2) the "eVWAP Fee Schedule." Additionally, the Exchange proposes to delete from Appendix A of its fee schedule references to the "Option Mailgram Service" and "Quotron Equipment." The Phlx also proposed to revise the "Summary of Equity Charges" portion of the fee schedule. The proposed rule change would delete the reference to "Remaining shares, \$0.004" that appears on the last line under the Equity Transaction Charge and, instead, the term "Remaining shares" will replace the language that appeared on the transaction fee line that read "Next 7,500."⁵ The Phlx would make this change to indicate that all remaining shares that are not subject to the \$0.0075 equity transaction charge are subject to the \$0.005 equity transaction charge, subject to the \$50 maximum. The text of the proposed rule change, as amended, is available at 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 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 make minor modifications to the Exchange's fee schedule to more accurately reflect the charges currently imposed by the Exchange and delete obsolete fees. Both the "Option Mailgram Service" fee and the "Quotron Equipment" fee are no longer charged by the Exchange; this service and equipment are no longer offered. In addition, eVWAP and Value Line Index

⁵ Applying the amount of \$0.004 to the remaining shares is unnecessary, because the \$50.00 maximum fee per trade side is reached before the \$0.004 can apply.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ See 15 U.S.C. 78s(b)(3)(C).

⁶ 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 Angela Saccomandi Dunn, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated February 26, 2004 ("Amendment No. 1"). In Amendment No. 1, Phlx replaced Exhibit 2 to its Form 19b-4.

⁴ 17 CFR 240.19b-4(f)(2).

Option products, are no longer offered at the Exchange. Also, a minor modification to the reference to "Remaining Shares" that appears on the "Summary of Equity Charges," under the "Equity Transaction Charge" section, will eliminate unnecessary language.⁶

By removing and clarifying the aforementioned portions of the Exchange's fee schedule, as described in detail above, the Exchange believes that its fee schedule will be more accurate and clear, and minimize member confusion.

2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule is consistent with section 6(b) of the Act⁷ in general, and furthers the objectives of section 6(b)(4) of the Act⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

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

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition 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

No written comments on the proposed rule change were either solicited or received.

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

The proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A)(ii) of the Act⁹ and Rule 19b-4(f)(2)¹⁰ thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange. 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-Phlx-2004-15. This file number should be included on the subject line if e-mail is used. To help the Commission 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 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-2004-15 and should be submitted by April 1, 2004.

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. 34-49365; File No. SR-Phlx-2004-18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Make Permanent a Pilot Program Relating to the Book Sweep Function of the Exchange's Automated Options Market System

March 4, 2004.

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

("Act")¹ and Rule 19b-4² thereunder, notice is hereby given that on March 1, 2004, 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. 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 adopt, on a permanent basis, Rule 1080(c)(iii) concerning a feature of the Exchange's Automated Options Market ("AUTOM") System,³ designed to automatically execute limit orders on the book when the specialist's quotation locks or crosses a limit order on the book, thus rendering such limit order marketable. This feature, called "Book Sweep," is currently operating as a six-month pilot.⁴ The text of the proposed rule change is available at the principal offices of the Phlx and at the Commission. The proposed rule change does not alter the text of the pilot language in Rule 1080(c)(iii), but simply makes permanent Rule 1080(c)(iii).

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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 features. 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.

⁴ In September, 2003, the Commission approved the Exchange's Book Sweep proposal on a six-month pilot basis. See Securities Exchange Act Release No. 48563 (September 29, 2003), 68 FR 57724 (October 6, 2003) (SR-Phlx-2003-30).

⁶ See *supra* note 3.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

¹¹ 17 CFR 200.30-3(a)(12).