

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49770; File No. SR-Phlx-2004-31)

May 25, 2004

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 a Temporary Waiver of Equity Option and Index Option Specialist Transaction Fees and ROT Comparison Fees for New and Recent Options Listings

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 30, 2004, 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. On May 21, 2004, the Exchange submitted Amendment No. 1 to the proposal.³ The proposed rule change, as amended, has been filed by the Exchange as establishing or changing a due, fee, or other charge pursuant to Section 19(b)(3)(A)(ii) of the Act⁴ and Rule 19b-4(f)(2) thereunder,⁵ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Cynthia K. Hoekstra, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 20, 2004 (“Amendment No. 1”). In Amendment No. 1, the Exchange revised the filing to add language regarding the temporary fee waiver to the Exchange's Specialist Unit Fixed Monthly Fee Schedule and to make other non-substantive changes to the filing.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

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 waive, for options other than those with a license fee, (1) specialist equity option and index option transaction charges⁶ and Registered Options Trader ("ROT") equity option and index option comparison charges⁷ and (2) the amount of the applicable increase in the specialist unit fixed monthly fee ("fixed monthly fee"),⁸ for all equity options and index options that begin trading on the Exchange between January 1, 2004 and June 30, 2004. The waiver of fees as described in this proposal is scheduled to become effective for transactions settling on or after May 1, 2004

⁶ Currently, specialist equity option transaction charges are \$0.21 per contract and specialist index option transaction charges are \$0.24 per contract.

⁷ Currently, ROT equity option and index option comparison charges are \$0.03 per contract.

⁸ A specialist unit may elect to pay a fixed monthly fee in lieu of paying fees currently in effect for equity option and index option transaction charges and equity option specialist deficit (shortfall) fees. Currently, for specialist units who have elected to pay a fixed monthly fee and who obtain an equity option or index option book after a specified time period (either September 1, 2003 or March 1, 2004) as a result of a new Exchange listing, the methodology used to calculate the fixed monthly fee for the newly listed Exchange equity option or index option is the average of the two previous months' national volume multiplied by 12% with that product multiplied by 21%, which is then multiplied by the specialist unit's current transaction charge of \$0.21. If an equity option or index option does not have a complete two months' volume, the then-current transaction charge is used until that option trades for two full calendar months nationally, after which the above methodology is applied. The fixed monthly fee is in effect through August 31, 2004. See Securities Exchange Act Release No. 49467 (March 24, 2004), 69 FR 17017 (March 31, 2004) (File No. SR-Phlx-2004-17). Therefore, pursuant to this proposal, if a specialist unit is currently paying a fixed monthly fee of \$100,000 and as a result of a new Exchange listing would pay an additional fixed monthly fee of \$20,000 per month as a result of the above-referenced methodology, the fee of \$20,000 would be waived from May 1, 2004 through August 31, 2004 if the equity option or index option begins trading on the Exchange between January 1, 2004 and June 30, 2004.

through August 31, 2004.⁹ The text of the proposed rule change is available at the Exchange 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

The purpose of the proposed rule change is to create a financial incentive for equity option and index option specialists and ROTs to request to list and/or trade equity options and index options currently not listed on the Exchange or recently listed on the Exchange. The Exchange believes that this financial incentive may provide Phlx with the opportunity to increase the number of equity options and index options listed on the Exchange and increase its market share, which should, in turn, generate additional revenue for the Exchange.

⁹ The fee schedule will note that the fees described in this proposal will be waived from May 1, 2004 through August 31, 2004. The Exchange will delete the reference to this limited waiver from its fee schedule after the specified time period has expired, pursuant to this proposed rule change.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act¹¹ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members.

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 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 with respect to the proposed rule change.

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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act,¹² and Rule 19b-4(f)(2) thereunder,¹³ because it changes a fee imposed by the Exchange. 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

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(2).

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹⁴

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. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2004-31 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-Phlx-2004-31. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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

¹⁴ For purposes of calculating the 60-day abrogation period, the Commission considers the period to have begun on May 21, 2004, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2004-31 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Margaret H. McFarland
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).