

technology fee in their capacity as a Phlx member and not additionally in their capacity as a foreign currency options participant. The Exchange believes this clarification should help to avoid member confusion relating to the application of the technology fee.

## 2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of section 6(b)(4) of the Act<sup>8</sup> in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members, as all members (except foreign currency options participants who do not hold legal title to a Phlx membership)<sup>9</sup> will be subject to the increased fee.

### *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 proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and Rule 19b-4(f)(2) thereunder.<sup>11</sup> Accordingly, the proposal will take effect upon filing with the Commission. 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.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> The Exchange does not believe that it is appropriate to apply the proposed fee increase to foreign currency options participants who do not also hold legal title to a Phlx membership because such participants are unlikely to benefit from the technology-related expenditures that the proposed fee increase is intended to address. The Exchange believes that the number of foreign currency option contracts currently traded on the Exchange is an insignificant part of the Exchange's overall options trading program.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

## 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 Phlx. All submissions should refer to File No. SR-Phlx-2003-41 and should be submitted by July 14, 2003.

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. 34-48040; File No. SR-Phlx-2003-28]

### **Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Retroactively Apply Its Broker-Dealer Transaction Fee for Equity Option Transactions for the Period From April 1, 2003 to April 10, 2003**

June 17, 2003.

On April 28, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), 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> a proposed rule change to retroactively apply its broker-dealer transaction fee for equity option transactions for the period from April 1, 2003 to April 10, 2003. The proposed

<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.

rule change was published for comment in the **Federal Register** on May 13, 2003.<sup>3</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of section 6 of the Act<sup>4</sup> and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(4) of the Act,<sup>5</sup> which requires that the Exchange's rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities. The Commission believes that the proposed application of the lower broker-dealer transaction fee for block equity option transactions implemented on April 11, 2003 to transactions settling from April 1, 2003 to April 10, 2003 should establish reasonable execution costs for market participants during that period.

For this reason, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>6</sup> that the proposed rule change (SR-Phlx-2003-28) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>3</sup> See Securities Exchange Act Release No. 47799 (May 6, 2003), 68 FR 25670.

<sup>4</sup> 15 U.S.C. 78f. In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(12).