

however, that it must reinstate a payment for order flow program to remain competitive. As previously discussed, two exchanges currently have a payment for order flow program.

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

The Phlx has designated the proposal as changing a Phlx due, fee, or other charge. Accordingly, the proposed rule change, as amended, has become immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>26</sup> and Rule 19b-4(f)(2) thereunder.<sup>27</sup> At any time within 60 days after the filing of Amendment No. 1 to the proposed rule change, the Commission may summarily abrogate the proposed 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. 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 the 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-2002-75 and should be submitted by January 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>28</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-33119 Filed 12-31-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-47086; File No. SR-Phlx-2002-81]**

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Index Option Charges

December 23, 2002.

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

### SUMMARY OF EQUITY OPTION CHARGES

Option Comparison Charge I (applicable to all trades—except specialist trades):

Registered Option Trader .....	\$ .03 per contract.
Firm/Proprietary <sup>6</sup> .....	\$ .04 per contract.
Customer Executions .....	No charge.

Option Transaction Charge I:

Customer Executions .....	No charge.
Firm/Proprietary <sup>7</sup> .....	\$ .15 per contract.
Firm/Proprietary Facilitation Transaction <sup>8</sup> .....	\$ .08 per contract.
Registered Option Trader (on-floor) .....	\$ .16 per contract.
Specialist .....	\$ .18 per contract.
Broker/Dealer <sup>9</sup> .....	\$ .35 per contract.

Option Floor Brokerage Assessment I [5% of net floor brokerage income.]

*Monthly Net Floor Brokerage Income:*

<i>First \$0—\$300,000</i> .....	<i>5.5%</i>
<i>Next \$300,001—\$500,000</i> .....	<i>6.5% (excess over \$300,000).</i>
<i>Balance—Over \$500,001</i> .....	<i>7.5% (excess over \$500,000).</i>

*Assessment*

(“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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 and II 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 increase the Options Floor Brokerage Assessment Fee (“Assessment Fee”) from 5% of a firm's monthly net floor brokerage income<sup>3</sup> to a tiered rate ranging from 5.5% to 7.5% of a firm's monthly net floor brokerage income, and to institute a monthly \$100,000 cap on such assessment fee.<sup>4</sup> The revised Assessment Fee is scheduled to be implemented respecting transactions settling on or after January 2, 2003.<sup>5</sup> The text of the proposed rule change is set forth below. New text is in italics. Deleted text is in brackets.

<sup>26</sup> 15 U.S.C. 78(s)(b)(3)(A)(ii).

<sup>27</sup> 17 CFR 240.19b-4(f)(2).

<sup>28</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.

<sup>3</sup> The Floor Brokerage Transaction Fee (for both Equity and Index Options) will continue to apply to floor brokers executing transactions for their own member firms.

<sup>4</sup> See Exchange Rules 714 and 715.

<sup>5</sup> The Assessment 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 18, 2001) (SR-Phlx-2001-49).

## SUMMARY OF EQUITY OPTION CHARGES—Continued

Monthly Cap: \$100,000.

<sup>6</sup>For the purpose of this Summary of Equity Option Charges, the Firm/Proprietary comparison or transaction charge applies to members for orders for the proprietary account of any member or non-member broker-dealer that derives more than 35% of its annual, gross revenues from commissions and principal transactions with customer. Firms will be required to verify this amount to the Exchange by certifying that they have reached this threshold and by submitting a copy of their annual report, which was prepared in accordance with Generally Accepted Accounting Principles ("GAAP"). In the event that a firm has not been in business for one year, the most recent quarterly reports, prepared in accordance with GAAP, will be accepted.

<sup>7</sup>See *supra* note 3.

<sup>8</sup>Equity Option Transaction Charges continue to apply to facilitation transactions involving Exchange-traded options subject to licensing agreements.

<sup>9</sup>For the purpose of this Summary of Equity Option Charges, this charge applies to members for orders, 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 orders for the account of an ROT entered from off-floor.

#### Floor Brokerage Transaction Fee I

\$.05 per contract, for floor brokers executing transactions for their own member firms

#### Specialist Deficit (Shortfall) Fee I

\$.35 per contract for specialists trading any Top 120 Option if the following total national monthly contract volume for such Top 120 Option is not effected on the Phlx: 11% for the period January through March 2002; 12% for the period April through June 2002; 13% for the period July through September 2002; and 14% for

the period October through December 2002.

#### Summary of Equity Option Charges

##### Specialist Deficit (Shortfall) Fee Credit

A credit of \$.35 per contract may be earned by options specialists for all contracts traded in excess of the following volume thresholds in eligible issues for the monthly periods commencing September 1, 2001. These credits may be applied against previously imposed "shortfall fees" for the preceding six months for issues that in the month the deficit occurred, the

equity option traded in excess of 10 million contracts per month: 11% for the period January through March 2002; 12% for the period April through June 2002; 13% for the period July through September 2002; and 14% for the period October through December 2002.

#### Real-Time Risk Management Fee I

\$.0025 per contract for firms/members receiving information on a real-time basis

See Appendix A for additional fees. I denotes fee eligible for monthly credit of up to \$1,000.

#### SUMMARY OF INDEX OPTION CHARGES

Option Comparison Charge I (applicable to all trades—except specialist trades):

Registered Option Trader .....	\$.03 per contract.
Firm (Proprietary and Customer Executions) .....	\$.04 per contract.

Option Transaction Charge I:

Customer Executions: .....	
Market value less than \$1.00 <sup>1</sup> .....	\$.20 per contract.
Market value \$1.00 or over <sup>1</sup> .....	\$.40 per contract.
Firm <sup>2</sup> .....	\$.10 per contract.
Registered Option Trader and Specialist .....	\$.14 per contract.

Option Floor Brokerage Assessment I [5% of net floor brokerage income.]

Monthly Net Floor Brokerage Income:

First \$0—\$300,000 .....	5.5%.
Next \$300,001—\$500,000 .....	6.5% (excess over \$300,000).
Balance—Over \$500,001 .....	7.5% (excess over \$500,000).
Monthly Cap: \$100,000.	

Assessment

#### Floor Brokerage Transaction Fee I

\$.05 per contract, for floor brokers executing transactions for their own member firms.

<sup>1</sup> Block transaction for customer executions of 500 to 999 contracts and 1,000 contracts and more are eligible for a discount to such charges of 15% and 25% respectively from the stated rates upon submission to the Phlx of a customer option block discount request form with supportive documentation within thirty (30) days of monthly billing date.

<sup>2</sup> Non-clearing firm members' proprietary transactions are eligible for the "firm" rate based upon submission of a PHLX rebate request form with supportive documentation within thirty (30) days of invoice date.

#### Real-Time Risk Management Fee I

\$.0025 per contract for firms/members receiving information on a real-time basis

See Appendix A for additional fees. I denotes fee eligible for monthly credit of up to \$1,000.

#### 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 III 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 the Assessment Fee to generate revenue, which should help offset rising Exchange costs. The tiered structure and cap should generate additional income without being overly burdensome to the floor brokers. A description of the proposal is below:

Monthly Net Floor Brokerage Income	Assessment
First \$0—\$300,000 .....	5.5%.
Next \$300,001—\$500,000 .....	6.5% (excess over \$300,000).
Balance Over \$500,001 .....	7.5% (excess over \$500,000).

*Monthly Cap:* \$100,000.

The tiered rate amount is applied to each tier of monthly net floor brokerage income separately; for instance, if the monthly net floor brokerage income is \$400,000, then the first \$300,000 is assessed at a rate of 5.5%, and the remainder (\$99,999) is assessed at the rate of the next tier—6.5%.

The Exchange believes that the proposed tiered Assessment Fee structure is reasonable and equitable because the amount a floor broker is assessed is directly related to such floor broker's monthly net floor brokerage income, which roughly correlates to such floor broker's overall activity on the Exchange. Therefore, those floor brokers who use a greater percentage of the Exchange's resources are assessed at a higher level. In order to balance the increase in the Assessment Fee, the Exchange intends to cap such assessment at \$100,000 per month.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>11</sup> 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 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 Act<sup>12</sup> and Rule 19b-4(f)(2) thereunder.<sup>13</sup> 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 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-2002-81 and should be submitted by January 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-33120 Filed 12-31-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47087; File No. SR-Phlx-2002-80]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Index Option Charges

December 23, 2002.

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> 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 and II 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 by: (1) increasing the Registered Option Trader ("ROT") Index Option Transaction Charge from \$0.14 per contract to \$0.19 per contract;<sup>3</sup> and (2) assessing an Index Option Book Charge of \$1000 per month on Phlx specialists in the Exchange's Sector Index Options ("Index Options"), except for the KBW Bank SectorSM ("BKXSM"), the Oil Service SectorSM ("OSXSM"), the Semiconductor SectorSM ("SOXSM") and the Gold and Silver SectorSM ("XAUSM"), which will be assessed a \$2,000 per month Index Option Book Charge.<sup>4</sup> Any newly-listed Index Options will be assessed at \$1,000 per

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The \$0.03 per contract Index Option Comparison Charge will continue to apply to ROT transactions.

<sup>4</sup> The Index Option Transaction Charge for Specialists will remain at \$1.14 per contract. The ROT Index Option Transaction Charge and the Index Option Book Charge will 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 18, 2001) (SR-Phlx-2001-49).

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).