

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 that is 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act,¹³ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁴ 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.

The Exchange requests that the Commission waive the 30-day delayed operative date of Rule 19b-4(f)(6)(iii).¹⁵ The Exchange believes that waiver of this period will allow the current Pilot to operate for an additional six months and avoid inconvenience and interruption to the public. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and make this proposed rule change immediately effective.¹⁶ The Commission believes that the waiver of

the 30-day operative delay will allow the Exchange to continue, without interruption, the existing operation of its Pilot for an additional six months, expiring on June 16, 2004.

The Commission believes that the use of Exchange authorized and issued portable telephones would allow the Exchange to have access to all phone records. This ability to track phone calls, along with the data captured in FESC, should aid the Exchange in surveilling for compliance with Exchange rules. In this regard, the Commission notes that proper surveillance is an essential component of any telephone access policy to an Exchange Trading Floor. Surveillance procedures should help to ensure that Floor brokers who are interacting with the public on portable phones are authorized to do so, as NYSE Rule 36 will require,¹⁷ and that orders are being handled in compliance with NYSE rules. The Commission expects that the Exchange actively review these procedures and address any potential concerns that have arisen during the extension of the Pilot. The Commission also requests that the Exchange report any problems, surveillance or enforcement matters associated with the Floor brokers' use of an Exchange authorized and provided portable telephone on the Floor. As stated in the Original Order, the NYSE should also address whether additional surveillance would be needed because of the derivative nature of the ETFs. Furthermore, if the NYSE decides to request permanent approval or another extension of the Pilot, we would expect that the NYSE submit information documenting the usage of the phones, any problems that have occurred, including, among other things, any regulatory actions or concerns, and any advantages or disadvantages that have resulted.¹⁸

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-NYSE-2003-38. 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 principal office of the NYSE. All submissions should refer to File No. SR-NYSE-2003-38 and should be submitted by January 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48925; File No. SR-Phlx-2003-78]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Fees for Remote Specialists

December 15, 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 November 21, 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 Phlx. The Commission is publishing this notice to

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ For purposes of only accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

¹⁷ See note 7 and accompanying text for other NYSE requirement that Floor brokers be properly qualified before doing a public customer business.

¹⁸ This information along with any proposal to extend, or permanently approve, the pilot should be submitted at least two to three months prior to the expiration of the six-month pilot.

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 to provide that fees, dues, discounts, credits and charges that apply to Phlx remote competing specialists will also be applicable to Phlx remote primary specialists.³ The text of the proposed rule change is available at the Office of the Secretary, 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

On August 6, 2002, in connection with the planned commencement of the Exchange's remote competing specialist program, the Exchange amended its fee schedule to specify fees, dues, discounts, credits and charges applicable to Phlx remote competing specialists.⁴ Because at that time the

Exchange's remote specialist program was to be limited to remote competing (as opposed to primary) specialists, that proposed rule change applied only to remote competing specialists.⁵

The Commission recently approved a proposed rule change to expand Phlx's remote specialist program to include remote primary specialists in addition to remote competing specialists.⁶ The purpose of this proposed rule change is to extend the same fees, dues, discounts, credits and charges applicable to remote competing specialists to remote primary specialists.⁷ According to the Exchange, the revenue generated by these fees will enhance the Exchange's ability to provide a marketplace for its remote primary and competing specialists and other members. Accordingly, the text of Appendix A of the Exchange's fee schedule is amended by the deletion of the word "competing" in footnote 22. Also, the term "RS" (for "Remote Specialist") is substituted for the term "RCS" (for "Remote Competing Specialist") in the reference to the "Regular ETP RCS Fee."⁸ All existing references to "Remote Specialists" on Appendix A will now be construed to

commencement of the remote competing specialist program. The Exchange noted in that filing that certain of its current dues, fees and charges are assessed for privileges the Exchange extends with respect to, and services it provides on, the physical equity trading floor. These fees include the Trading Post/Booth Fee; Trading Post with Kiosk Fee; the Kiosk Construction Fee; the Contoller Space Fee; the Floor Facility Fees; the Direct Wire to the Floor Fee; the Telephone System Line Extensions Fee; the Quotron Equipment Fee; the Instinet, Reuters Equipment Fee; the Trading Floor Personnel Registration Fee; the Computer Equipment Services, Repairs or Replacements Fee and the Computer Relocation Requests Fee. The Exchange represents that it does not charge these fees to remote specialists.

⁵ See Phlx Rule 461, PACE Remote Specialist, and Securities Exchange Act Release No. 45184 (December 21, 2001), 67 FR 622 (January 4, 2002) (order approving File No. SR-Phlx-2001-98).

⁶ See Securities Exchange Act Release No. 48816 (November 20, 2003), 68 FR 66912 (November 28, 2003) (order approving File No. SR-Phlx-2003-10). In SR-Phlx-2003-10, the Exchange proposed to amend its rules to permit "primary specialists" to trade away from the Phlx floor, on a remote basis, in limited circumstances. That filing was approved by the Commission on November 20, 2003.

⁷ A related proposed rule change has been filed by Stock Clearing Corporation of Philadelphia with the Commission to amend its schedule of dues, fees and charges as it relates to remote specialists. See File No. SR-SCCP-2003-06.

⁸ Currently, the Regular ETP RCS Fee of \$1,000.00 per month is charged in lieu of the Regular ETP Fee for equity trading permit holders whose Exchange business is limited to operating as a remote competing specialist. The Exchange now proposes to charge that fee in lieu of the Regular ETP Fee for equity trading permit holders whose Exchange business is limited to operating as a remote competing or remote primary specialist or both, and to change the name of the fee accordingly to the "Regular ETP RS Fee."

include both remote primary specialists and remote competing specialists.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with section 6(b) of the Act⁹ in general, and furthers the objectives of section 6(b)(4) of the Act¹⁰ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members. The Exchange represents that the proposal is designed to enable it to provide a competitive marketplace for its 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 proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act¹¹ and Rule 19b-4(f)(2)¹² thereunder. 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.

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.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78(s)(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

³ Subsection (b)(5) of Phlx Rule 229A, Operation of PACE System when Competing Specialists are Trading, provides in part that "Primary Specialist" shall mean the primary specialist identified as such by the Equity Allocation, Evaluation and Securities Committee. Subsection (b)(6) of Phlx Rule 229A provides in part that "Competing Specialist" shall mean any competing specialist identified as such by the Equity Allocation, Evaluation and Securities Committee pursuant to Phlx Rule 460. Phlx Rule 460, Procedures for Competing Specialists, sets forth procedures for applying to become a competing specialist as well as competing specialists' obligations.

⁴ See Securities Exchange Act Release No. 46392 (August 21, 2002), 67 FR 55294 (August 28, 2002) (File No. SR-Phlx-2002-45) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Fees for Remote Competing Specialists). In that filing, the Exchange adopted a number of new fees applicable to members and member organizations in connection with their remote competing specialist operations, and amended the existing exemption of certain member organizations operating on the Exchange's trading floor from the Exchange's Examinations Fee in light of the

SR-Phlx-2003-78. 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 principal office of the Phlx. All submissions should refer to File No. SR-Phlx-2003-78 and should be submitted by January 9, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48923; File No. SR-OC-2003-09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by OneChicago, LLC To Adopt OneChicago Rule 616 Relating to "Chinese Walls"

December 12, 2003.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-7 under the Act,² notice is hereby given that on December 8, 2003, OneChicago, LLC ("OneChicago" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes described in Items I, II, and III below, which Items have been prepared by OneChicago. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

OneChicago also has filed the proposed rule change with the Commodity Futures Trading

Commission ("CFTC"). OneChicago filed a written certification with the CFTC under section 5c(c) of the Commodity Exchange Act³ on December 5, 2003, which stated that the effective date of the proposed rule change is December 8, 2003.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

OneChicago proposes to add new OneChicago Rule 616, attached hereto as Exhibit 4, to create a safe harbor for OneChicago market makers so that they may engage in Other Business Activities described below which may result in inadvertent cross trades without violating OneChicago Rule 604, provided that OneChicago confirms that each such market maker has implemented and maintains "Chinese Wall" procedures in conformance with the Rule. The text of the proposed rule change appears below. New text is in *italics*. Deleted text is in [brackets].

Rule 616. Safe Harbor for Inadvertent Cross Trades

(a) An Entity acting as a market maker for any Exchange product (an "Exchange Market Maker") may engage in Other Business Activities, or it may be affiliated with a broker-dealer that engages in Other Business Activities, and shall not be in violation of Exchange Rule 604 due to inadvertent cross trades with respect to any trades that are matched by the OneChicago System against trades entered for or on behalf of the Other Business Activities, provided that the Exchange Market Maker implements and maintains a Chinese Wall between its market-making operations and such Other Business Activities that meets the requirements below.

(b) Definitions: For purposes of this rule, (1) "Other Business Activities" means:

(A) conducting an investment or banking or public securities business;

(B) making markets in the securities underlying the security futures or options on the securities or indexes underlying the security futures in which it makes markets; or

(C) entering agency orders or proprietary orders (other than market making transactions for Exchange products) into the OneChicago System.

(2) "Chinese Wall" means an organizational structure that satisfies each of the following conditions:

(A) The market-making activities are conducted in a location physically

separated from the locations in which the Other Business Activities are conducted in a manner that effectively impedes communications between persons conducting the market-making function and persons conducting the Other Business Activities.

(B) Procedures are implemented and maintained to prevent persons in possession of material, non-public corporate or market information on one side of the Chinese Wall from divulging such information to persons on the other side of the Chinese Wall.

(C) Persons on one side of the Chinese Wall may not exercise influence or control over persons on the other side of the Chinese Wall, except that:

(i) the market-making operations and the Other Business Activities may be under common management provided such managerial oversight (a) does not conflict with or compromise the Entity's responsibilities under the Rules of the Exchange and (b) persons occupying managerial positions do not divulge information or allow information to be divulged pertaining to market maker positions and trading activities to any other person so that any person on one side of the Chinese Wall becomes aware of pending or anticipated quotes or unfilled orders on the other side of the Chinese Wall; and

(ii) the common supervisor or any individual responsible for monitoring the overall risk exposure of the Entity (the "Risk Exposure Supervisor") may establish general trading parameters with respect to both market-making and other proprietary trading other than on an order specific basis, provided that the Risk Exposure Supervisor does not:

(a) enter orders into the OneChicago System or make trading decisions for either the Entity's market-making account or proprietary account;

(b) provide to any person performing the Other Business Activities described in paragraph (b)(1)(c) of this Rule any information relating to market-making activity; nor

(c) provide a person performing the market-making function with information regarding the firm's pending transactions or order flow arising out of its activities described in paragraph (b)(1)(c) of this Rule.

(3) An "Entity" means an inanimate business organization, including a corporation, a partnership or other legal business organization. It does not include animate beings.

(c) An Entity implementing a Chinese Wall pursuant to this Rule shall submit to the Exchange a written statement setting forth:

(1) The manner in which it intends to satisfy the conditions in paragraph (b)

¹³ 17 CFR 200.30-3(a)(12).

¹⁴ 15 U.S.C. 78s(b)(7).

² 17 CFR 240.19b-7.

³ 7 U.S.C. 7a-2(c).