SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44894; File No. SR–MSRB–2001–06)

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Reports of Sales and Purchases, Pursuant to Rule G–14

October 2, 2001.

On August 17, 2001, the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder, [2] a proposed rule change to establish an informational service relating to the reports of sales and purchases provided by Rule G–14. The proposed rule change will create a Daily Comprehensive Report from transaction information supplied under Rule G–14.

The proposed rule change was published for the comment in the **Federal Register** on August 31, 2001.[3] The Commission received no comments on the proposal. This order approves the proposal.

In its current form, Rule G–14 requires dealers to report essentially all inter-dealer and customer transactions in municipal securities to the MSRB by midnight of the trade date. In May 2001, the MSRB announced its plan to begin reporting trades in ''real time'' by mid-2003.[4] The dissemination of a Daily Comprehensive Report is the MSRB's next step towards an increase in market transparency.

The MSRB's proposed Daily Comprehensive Report is comprised of the information reported by brokers, dealers and municipal securities dealers, which provides a detailed report of municipal securities transactions effected during a single day. The trade data supplied in the proposed Daily Comprehensive Report shall be similar to that currently supplied in the monthly Comprehensive Transaction Report except that the information is to be available daily. For each trade, the proposed Daily Comprehensive Report will show the trade date, the CUSIP number of the issue traded, a short issue description, the par value traded, the time of trade reported by the dealer, the price of the transaction, and, if any, the dealer-reported yield of the transaction. Each transaction shall be categorized as: a sale by a dealer to a customer, a purchase from a customer, or an inter-dealer trade. Each day's report shall include the transactions effected two weeks previously. The proposed Daily Comprehensive Report is to be available through a subscription service with electronic delivery by File Transfer Protocol (FTP) via the Internet.

The MSRB shall establish an annual subscription fee for access to the Daily Comprehensive Report in the amount of $2,000. The proposed annual fee is structured approximately to defray the Board's costs for production of daily data sets, operation of telecommunication lines, and subscription maintenance.[5] Prior to formalizing a subscription, MSRB shall make a single day's transactional data available to prospective users without charge, so that they may determine whether they wish to subscribe.

The Commission believes the proposed rule change to Rule G–14 is consistent with the protection of investors and the public interest on account that it facilitates the MSRB's long-standing policy to increase price transparency in the municipal securities market. Both MSRB and the Commission believe the proposed Daily Comprehensive Report provides a mechanism to disseminate comprehensive and contemporaneous pricing data with the intent to promote just and equitable principles of trade and foster an open market in municipal securities. Additionally, the Commission believes that the proposed rule change will not impose any burden on competition, since it equally applies to all brokers, dealers and municipal securities dealers.

The Commission must approve a proposed MSRB rule change if the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that govern the MSRB.[6] The Commission finds that the proposed rule change meets this standard. In particular, the Commission finds that the proposed rule is consistent with the requirements of Section 15B(b)(2)(C) of the Act,[7] which requires, that the MSRB's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national system, and, in general, to protect investors and the public interest.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. MSRB–2001–06) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–44735 (August 22, 2001), 66 FR 46045.

[4] *See* ''Real-Time Reporting of Municipal Securities Transactions,'' *MSRB Reports,* Vol. 21, No. 2 (July 2001) at 31–36.

[5] The subscription fee for the current monthly report is also $2,000 annually. Subscribers to the monthly report who prefer the fresher data of the proposed Daily Comprehensive Report will have the option to switch subscriptions to the latter.

[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78o–4(b)(2)(C).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44893; File No. SR–Phlx–2001–85]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Elimination of Equity Option Transaction Charges for Facilitation Transactions

October 2, 2001.

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 August 31, 2001, 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 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 eliminate its equity option transaction

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

charges for certain off-floor member organizations engaging in facilitation transactions.[3] Facilitation transactions by off-floor member firms designated as ''firm/proprietary''[4] for purposes of the Summary of Equity Option Charges portion of the Exchange's schedule of dues, fees, and charges,[5] would not be subject to the Equity Option Transaction Charge.

The equity option transaction charge will continue to apply to facilitation transactions involving Exchange-traded options subject to licensing agreements.[6]

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 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 Exchange currently imposes a transaction charge on equity options transactions executed on the Exchange. The charges vary depending on whether the transaction involves a member organization,[7] Registered Options Trader (''ROT''), or specialist. Previously, equity option transaction charges were also imposed on customer executions, but on August 31, 2000, the Exchange eliminated all equity option transaction charges for customer executions.[8] Other exchanges also eliminated similar customer equity option fees.[9]

The Exchange believes that the elimination of the equity option transaction charge[10] in facilitation transactions by off-floor member firms designated as ''firm/proprietary'' would encourage member firms engaging in facilitation transactions to send such orders to the Exchange, thereby adding order flow to and increasing liquidity on the Exchange.

The Exchange believes that, absent the equity option transaction charge, member firms would be more inclined to facilitate customer orders on the Exchange, thereby attracting additional order flow and promoting a more liquid market.

The equity option transaction charge will continue to apply to facilitation transactions involving Exchange-traded options subject to licensing agreements.

2. Statutory Basis

The Phlx believes that the proposed rule change is consistent with Section 6 of the Act,[11] in general, and furthers the objectives of Sections 6(b)(4)[12] and 6(b)(5),[13] in particular, in that the Exchange believes that proposed rule change is designed to perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest, to promote just and equitable principles of trade, and to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other Exchange participants.[14] The Exchange believes that the proposed elimination of the equity option transactions by off-floor member firms designated as ''firm/proprietary'' should foster liquidity in the Exchange's markets, and enable the Exchange to remain competitive as a marketplace by attracting additional order flow in options traded on the Exchange.

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

The Phlx 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 solicited or received.

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

The foregoing rule change, which establishes or changes a due, fee, or other charge applicable to members of the Exchange, has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (f)(2) of Rule 19b–4 thereunder. At any time within 60 days of August 31, 2001, 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. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

[3] A facilitation transaction occurs when a Floor Broker holds an options order for a public customer and a contra-side order for the same option series and, after providing an opportunity for all persons in the trading crowd to participate in the transaction, executes both orders as a facilitation cross. A Floor Broker engaging in a facilitation transaction must announce that he/she holds an order subject to facilitation prior to the execution, and must market the floor ticket for the public customer's order with the legible ''F.'' *See* Exchange Rule 1064(b).

[4] A ''firm/proprietary'' transaction charge applies to orders for the proprietary account of any member or non-member broker-dealer that derives more than 35 percent of its revenues from commissions and principal transactions with customers. *See* Securities Exchange Act Release No. 43558 (November 14, 2000), 65 FR 69984 (November 21, 2000).

[5] Equity Option Charges are comprised of the Option Comparison Charge, Option Transaction Charge, Option Floor Brokerage Assessment and the Floor Brokerage Transaction Fee.

[6] For example, lists and trades options overlying the Nasdaq-100 Index Tracking Stock℠ (''QQQ℠''). The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares℠, Nasdaq-100 Index Tracking Stock℠, and QQQ℠ are trademarks or service marks of The Nasdaq Stock Market, Inc. (''Nasdaq'') and have been licensed for use for certain purposes by the Philadelphia Stock Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (''Index'') is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust℠, or the beneficial owners of Nasdaq-100 Shares℠. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

[7] Telephone conversation between Richard S. Rudolph, Counsel, Phlx, and Frank N. Genco, Attorney Advisor, Division of Market Regulation, Commission, September 26, 2001 (''Telephone conversation with Phlx, September 26, 2001'').

[8] *See* Securities Exchange Act Release No. 43343 (September 26, 2000), 65 FR 59243 (October 4, 2000).

[9] *See* Securities Exchange Act Release Nos. 42676 (April 13, 2000), 65 FR 21223 (April 20, 2000); 42850 (May 30, 2000), 65 FR 36187 (June 7, 2000); and 43115 (August 3, 2000), 65 FR 49280 (August 11, 2000). *See also* Securities Exchange Act Release No. 43020 (July 10, 2000), 65 FR 44558 (July 18, 2000).

[10] The current charge applicable to accounts designated as ''firm/proprietary'' for transactions in equity options is $.08 per contract.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78f(b)(5).

[14] Telephone conversation with Phlx, September 26, 2001.

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–2001–85 and should be submitted by October 30, 2001.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44892; File No. SR–Phlx–2001–83)

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

October 1, 2001.

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 August 31, 2001, the Phildelphia 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 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 currently imposes a ''shortfall fee'' of $0.35 per contract upon a specialist in a ''Top 120 Option'' for each contract in which trading on the Exchange for a month's time period falls below 10% of the total monthly contract volume in that option nationwide (''10% volume threshold'').[3] The Exchange proposes to amend its schedule of dues, fees, and charges to provide for an options specialist to earn a credit of $0.35 per contract toward previously imposed ''shortfall fees'' in eligible issues for each contract traded in excess of the 10% volume threshold during a subsequent monthly time period commencing September 1, 2001. Such a credit may be applied against shortfall fees imposed within the preceding six months for the same issue, provided that, in the month the deficit occurred, the issue traded in excess of ten million contracts nationwide.[4]

Below is the text of the proposed rule change. Proposed new language is *italicized*.

* * * * *

OPTIONS SPECIALIST 10% DEFICIT (Shortfall) FEE CREDIT

A credit of $0.35 per contract may be earned by options specialists for all contracts traded in excess of the 10% volume threshold 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.

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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 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 provide a credit earning opportunity, under specified circumstances, for options specialists in Top 120 Options when trading in their issues falls below the 10% volume threshold in one month, and exceeds the threshold in a subsequent month.

This proposal recognizes the difficulty in attracting order flow in an intensely competitive trading environment and provides further incentive to maximize performance in attracting order flow in such issues to the Exchange. Credits may be earned offsetting previously imposed shortfall fees only to the extend they may be owed, due, or paid within the previous six months, and solely in eligible issues.[5]

While the proposed credit is potentially a zero sum financial measure for the eligible issues over the previous six month period, the Phlx believes that it is important to recognize that it will be perceived as a more competitive factor in the marketplace, as the performance in excess of the 10% volume threshold reflects positively on the abilities of the Exchange, its option specialists, and registered options traders to compete for and draw order flow.

The Exchange believes it is necessary to continue to attract order flow to the Exchange in order to remain competitive. The Phlx believes that the proposed credit earning opportunity should further encourage options specialists to vigorously compete for order flow, which not only enhances the specialist's role, but also provides potential additional revenues to the Exchange. Moreover, the Exchange expects the specialists efforts to exceed the 10% volume threshold should contribute the deeper, more liquid markets and tighter spreads, thereby enhancing competition and important auction market principles.

2. Statutory Basis

The Phlx believes that the proposed rule change is consistent with Section 6 of the Act,[6] in general, and furthers the

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43201 (August 23, 2000), 65 FR 56363 (August 29, 2000). A Top 120 Option is defined as an option that was one of the top 120 most actively traded equity options in terms of the total number of contracts that were traded nationally for a specified month and which was listed after January 1, 1997.

[4] Nationwide trading figures are based on the national monthly contract volume reflected by the Options Clearing Corporation. Telephone conversation between Murray L. Ross, Secretary, Phlx, and Frank N. Genco, Attorney Advisor, Division of Market Regulation (''Division''), Commission, September 28, 2001.

[5] Telephone conversation between Murray L. Ross, Secretary, Phlx; and Ira L. Brandriss, Special Counsel, Division, Commission, and Frank N. Genco, Attorney Advisor, Division, Commission, September 21, 2001.

[6] 15 U.S.C. 78f.