

volume is greater than that required for a member with relatively low average monthly trading volume.

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

Nasdaq 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*

Nasdaq did not solicit or receive written comments on the proposed rule change.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>10</sup> and Rule 19b-4(f)(2) thereunder,<sup>11</sup> in that it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of such 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. 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 NASD. All submissions should refer to File No.

SR-NASD-2001-30 and should be submitted by June 8, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Jonathan G. Katz,**  
*Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44296; File No. SR-NYSE-2001-09]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Increase the Fee for Administering the Compliance Official Qualification Examination ("Series 14")**

May 11, 2001.

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 May 3, 2001, the New York Stock Exchange, Inc. ("NYSE" 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 NYSE. 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 proposed rule change seeks to increase the fee charged by the NYSE for the Compliance Official Qualification Examination ("Series 14 Examination") from \$200 to \$300.

#### **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

Exchange Rule 342 ("Offices—Approval, Supervision and Control") requires each member and member organization to designate a person to direct-to-day compliance activity. Such persons, as well as those compliance supervisors who direct ten or more persons engaged in compliance activity, must have overall knowledge of securities laws and Exchange rules and must pass the Series 14 Examination that was initially implemented in September 1989.

The fee for the Series 14 Examination has been \$200 since its inception in 1989. The Exchange now seeks to increase the fee to \$300. The fee increase will defray expenses incurred in developing, updating, and administering the Series 14 Examination.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>3</sup> in that the proposed rule change is designed to provide for the equitable allocation of reasonable dues, fees and other charges among the Exchange members, issuers and other persons using its facilities.

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

The Exchange believes that the proposed rule change will not 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 comments on the proposed rule change.

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

The Exchange has designated the proposed rule change as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>4</sup> and subparagraph (f) of Rule 19b-4 thereunder.<sup>5</sup> Accordingly, the proposed rule change has become effective upon filing. At any time within 60 days of the filing of such proposed

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

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

<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.

<sup>3</sup> 15 U.S.C. 78f(b)(4).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f).

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. 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 the File Number SR-NYSE-2001-09 and should be submitted by June 8, 2001.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.<sup>6</sup>

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44292; File No. SR-Phlx-2001-49]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Adopting a Monthly Credit of up to \$1,000 to Qualified Members for an Aggregate Period of 36 Months

May 11, 2001.

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 April 24,

2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, 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 Phlx, pursuant to Rule 19b-4 under the Act, proposes to adopt for an aggregate period of 36 months ("permanently adopt")<sup>3</sup> its current pilot program that allows a monthly credit of up to \$1,000 to be applied against fees, dues, charges and other amounts as may from time to time be owed to the Exchange that month (collectively referred to as "credit-eligible fees")<sup>4</sup>, except fines, late fees, out-of-pocket expenses,<sup>5</sup> pass-through costs,<sup>6</sup> capital funding fees,<sup>7</sup> payment for order flow fees,<sup>8</sup> any fees paid by equity trading

<sup>3</sup> This total period of 36 months includes the time period that the previous pilot programs were in effect. The first pilot program became effective upon filing on May 16, 2000 and lasted six months, expiring on November 16, 2000. See Securities Exchange Act Release No. 42791 (May 16, 2000), 65 FR 33606 (May 24, 2000) (SR-Phlx-00-44). The pilot program was then extended for an additional six-month period through May 16, 2001. See Securities Exchange Act Release No. 43567 (November 15, 2000), 65 FR 71187 (November 29, 2000) (SR-Phlx-00-100). Therefore, the credit program will be in effect from May 16, 2000 until May 16, 2003.

<sup>4</sup> The credit-eligible fees are fees assessed on members and include transaction as well as trading floor fees. Transaction fees include equity transaction value charges, equity floor brokerage transaction fees, option comparison charges and option transaction charges. Trading floor fees include charges for trading post/booth, controller space, shelf space, transmission, execution/communication charge and floor facility fees. Fees assessed on foreign currency options participants are not considered credit-eligible fees.

<sup>5</sup> Out-of-pocket expenses include charges for wireless telephone services, postage, ILX machines and Dow Jones News Service.

<sup>6</sup> Pass-through costs include charges for member health insurance and parcel delivery services.

<sup>7</sup> Capital funding fees are those fees assessed on owners to provide for funding for technological improvements and other capital needs. On June 29, 2000, the Commission permanently approved the capital funding fee. See Securities Exchange Act Release No. 4 2993 (June 29, 2000) 65 FR 42415 (July 10, 2000) (SR-Phlx-99-510).

<sup>8</sup> Payment for order flow fees are those fees imposed on transactions by Phlx specialists and Registered Options Traders in the Top 120 Options on the Phlx. See Securities Exchange Act Release Nos. 43177 (August 18, 2000), 65 FR 51889 (August 25, 2000) (SR-Phlx-00-77); 43480 (October 25, 2000), 65 FR 66275 (November 3, 2000) (SR-Phlx-00-86 and SR-Phlx-00-87); 43481 (October 25, 2000), 65 FR 66277 (November 3, 2000) (SR-Phlx-00-88 and SR-Phlx-00-89); and 44237 (April 30, 2001) (SR-Phlx-01-43).

permit holders respecting any trading permits the Exchange may issue, the fee for electronic communications networks,<sup>9</sup> and the fee for the print subscription of the Phlx Guide<sup>10</sup> by members who own the membership by which they are a member ("member-owners") and certain other categories of members described below. The Exchange's current pilot program<sup>11</sup> is in effect through May 16, 2001.

In addition to member-owners, a monthly credit of up to \$1,000 may be applied against credit-eligible fees incurred by the following persons, who are so closely connected to the owners that the Exchange believes they should be treated as member-owners: (1) all members who are parties to an A-B-C Agreement<sup>12</sup> with a member organization who owns that membership; or (2) all members who are lessees if: (a) the member is also an owner of a different membership; (b) the member is an immediate family member of the owner of that membership;<sup>13</sup> (c) the member is associated with a member organization in which the owner of that membership has an interest of at least ten percent; (d) the member leases from an owner or a related entity of the owner who provides order flow to the Exchange through the member or member organization consisting of at least 5,000 equity trades over the preceding twelve months or 50,000 option contracts over the preceding twelve months; or (e) the member leases from a clearing firm or a related entity of the clearing firm that provides clearing services to the leasing member. The aforementioned categories

<sup>9</sup> An ECN fee is currently a \$2,500 monthly fee, imposed on a one-year pilot basis, for ECNs that are member organizations and send order flow to the Exchange's equity trading floor. See Securities Exchange Act Release No. 44155 (April 5, 2001), 66 FR 19274 (April 13, 2001) (SR-Phlx-01-09).

<sup>10</sup> See Securities Exchange Act Release No. 44198 (April 18, 2001), 66 FR 21035 (April 26, 2001) SR-Phlx-2001-47).

<sup>11</sup> See Securities Exchange Act Release No. 43567 (November 15, 2000), 65 FR 71187 (November 29, 2000) (SR-Phlx-00-100). This credit is part of the Exchange's long-term financing plan, which separately includes a \$1,500 capital funding fee. See *supra* note 7. The Exchange reserves the right to suspend the credit at any time.

<sup>12</sup> Pursuant to Phlx Rule 940, the parties to an A-B-C Agreement are an employee, general partner, or officer and the member organization with which such person is associated. The member organization provides all or part of the funds for the purchase of a membership of which the legal title is placed in the member and the equitable title is placed in the member organization.

<sup>13</sup> Immediate family member is defined as a member's spouse, parents, stepmother, stepfather, mother-in-law, father-in-law, brothers, sons-in-law, brothers-in-law, stepbrothers, sisters, daughters-in-law, sisters-in-law, stepsisters, children, stepchildren or any other person living with the member for whom the member provides at least 50 percent of his/her financial support per year.

<sup>6</sup> 17 CFR 200.3-3(a)(12).

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

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