May 27, 2003

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: File No. SR-Phlx-2003-16, Amendment No. 2; Release No. 34-47750

Dear Mr. Katz:

The Philadelphia Stock Exchange, Inc. ("Phlx") proposes to charge higher fees for trades executed in the intermarket options linkage ("Linkage") than for similar trades executed on the Phlx outside of Linkage. For the reasons discussed below, we believe that you should not approve the filing.

By way of background, the Phlx initially proposed Linkage fees for Principal Orders that expressly paralleled the Phlx's then-existing charges for broker-dealer orders.[1] Generally, the fee for both Linkage trades and non-auto-execution floor trades was $.35 per contract. The Phlx then amended its general fee schedule to reduce its broker-dealer charge to a sliding scale of $.20 to $.35 per contract, while not similarly lowering the Linkage fees.[2]   The current Proposal amends the Original Filing only to clarify that the Linkage fee for P Orders "is no longer consistent with other fees charged by the [Phlx] for non-Linkage Orders."

We believe that it is critical for Linkage fees not to be greater than the fees an exchange charges for orders that come to the exchange through the "front door," that is, outside of Linkage and through regular order-routing systems. The purpose of Linkage is to facilitate the execution of order flow between exchanges, thus protecting customer orders and facilitating the creation of a national market system. The Linkage provides broker-dealers with access to an exchange's automated trading systems and other efficiencies that may not be available in a non-Linkage context. By charging more for Linkage access than front-door access, the Phlx is imposing inappropriate barriers to members of other exchanges

During the formulation of the Linkage Plan, the five exchange participants discussed the issue of fees at great length. They decided to incorporate in the Plan a specific provision prohibiting the imposition of fees on Satisfaction Orders.[3] While not formally addressing other fees in the Plan, the general consensus and understanding of

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[1] File No. SR-Phlx-2003-16; Release No. 34-47561 (March 21, 2003) ("Original Filing").
[2] File No. SR-Phlx-2003-26; Release No. 34-47715 (April 22, 2003).
[3] Section 8(a) of the Plan.

the parties was that Linkage fees would be no greater than fees charged to professional traders outside of Linkage. Indeed, the other four exchanges have proposed, and the Commission has approved, such limited fees for all the other options exchanges.[4]

The Phlx is the only exchange proposing to discourage use of the Linkage through its fee schedule. This will require members on the other exchanges to pay a premium for access to the efficiencies of Linkage. This is contrary to the requirement in the Securities Exchange Act of 1934 (the "Act") that exchange rules be designed "to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest . . . ."[5] It is also contrary to the requirement that an exchange "provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its services."[6] Finally, the proposal would result in "unfair discrimination" on broker-dealer access, also prohibited by the Act.[7]

We urge the Commission not to approve the Proposal, and generally not to permit any exchange to charge higher fees for Linkage trades than for front-door access. If you have any questions on our comments, please do not hesitate to call.

Sincerely,

Michael J. Simon
Senior Vice President and Secretary

cc: Annette Nazareth

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[4] *See* File Nos. SR-ISE-2003-11, Release No. 34-47484 (March 11, 2003); SR-Amex-2003-14, Release No. 34-47562 (March 21, 2003); SR-CBOE-2003-11, Release No. 34-47515 (March 17, 2003); and SR-PCX-2003-8, Release No. 34-47560 (March 21, 2003)

[5] Section 6(b)(5) of the Act. We recognize that the Phlx does not charge fees for the execution of Principal Acting as Agent Orders, which are orders that represent customer orders on the sending exchange. However, Principal Orders also are tools that exchange members use to protect and represent customer orders, either by clearing away erroneous market quotations that may be impeding effective pricing of customer orders, or by laying off positions accumulated in the handling of customer orders.

[6] Section 6(b)(4) of the Act.

[7] Section 6(b)(5) of the Act.