

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54312; File No. SR-Phlx-2006-28)

August 14, 2006

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments No. 1, 2, and 3 There to Relating to the Deletion of Obsolete Provisions from Exchange Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on April 28, 2006, 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 Phlx. On June 15, 2006, July 19, 2006, and August 10, 2006, the Exchange filed Amendments No. 1,<sup>3</sup> 2,<sup>4</sup> and 3,<sup>5</sup> respectively. The Exchange has designated the proposed rule change, as amended, as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,<sup>6</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

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

<sup>3</sup> Amendment No. 1 replaced the original filing in its entirety.

<sup>4</sup> Amendment No. 2 replaced the original filing and Amendment No. 1 in their entirety.

<sup>5</sup> Amendment No. 3 made clarifying changes to the rule text by retaining a description of Auto-X and clarifying that the term Auto-X is currently applied to include Book Match and Book Sweep in the Exchange’s rules, including those rules concerning the engagement and disengagement of Auto-X.

<sup>6</sup> 17 CFR 240.19b-4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend various Exchange rules to delete obsolete provisions relating to trading systems and practices that are no longer in effect on the Exchange, particularly as the new options system, Phlx XL, replaced the old "AUTO-X" provisions.<sup>7</sup> The text of the proposed rule change, as amended, is available on the Exchange's Web site at <http://www.phlx.com>, at the Exchange's Office of the Secretary, and the Commission's Public Reference Room.

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

The purpose of the proposed rule change is to delete provisions in the Exchange's rules that no longer apply because of technological advancements or obsolete trading practices. Specifically, the following amendments are proposed:

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<sup>7</sup> In July 2004, the Exchange began trading equity options on Phlx XL, followed by index options in December 2004. Phlx XL was completely rolled out by February 2005, such that all options are now "Streaming Quote Options." See Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR-Phlx-2003-59).

Quotation Size: The Phlx XL rules originally provided in Exchange Rule 1014(b) that electronic quotations submitted on Phlx XL could be submitted with a quotation size of fewer than 10 contracts for a specific period of time following the initial deployment of Phlx XL. The maximum time period during which such a quotation size was permitted was one year following the deployment of Phlx XL, after which all electronic quotations submitted on Phlx XL had to be for a size of at least 10 contracts. Because it has been more than one year since the initial deployment of Phlx XL, the rule is now obsolete. Quotations submitted on Phlx XL currently must have a size of at least 10 contracts. Additionally, quotations made by non-SQT ROTs in open outcry in response to a request for a market were originally permitted to quote with a size fewer than 10 contracts during this period. Non-SQT ROTs must now provide such quotations with a size of at least 10 contracts.

Continuous Open Outcry Quoting Obligation: Currently, Exchange Rule 1014(b)(ii)(E)(1)(C) describes the open outcry quoting obligation applicable to non-SQT ROTs in response to a request for a quote by a Floor Broker, specialist, Floor Official, or other ROT (including an SQT). The Exchange proposes to delete the portion of the rule that describes the minimum quote size for such a quotation during various phases of the rollout of Phlx XL. Because Phlx XL is now deployed floor-wide, and the rollout periods described in the rule have all expired, that portion of the rule is no longer necessary.

Definition of “Remainder of the Order”: Currently, Exchange Rule 1014(g)(i)(A)(1) defines “Remainder of the Order” as, respecting non-Streaming Quote Options, the portion of an Initiating Order that remains following the allocation of contracts to customers that are on parity in accordance with Rule 1014(g)(i). The term

“Remainder of the Order” is used in the Exchange’s rules concerning the allocation of contracts traded in open outcry and allocated in the crowd.<sup>8</sup> During the rollout period of Phlx XL, some options traded as “Streaming Quote Options” on the Phlx XL platform, while others continued to trade as “non-Streaming Quote Options.” Currently, all options traded on the Exchange are traded on Phlx XL as “Streaming Quote Options.” Exchange Rule 1014(g)(i)(A)(1) originally contemplated that non-Streaming Quote Options would generally be traded and allocated in open outcry. Thus, now that there are no longer any non-Streaming Quote Options, the Exchange proposes to amend Exchange Rule 1014(g)(i)(A)(1) such that the definition of “Remainder of the Order,” in that subparagraph would apply only to transactions that are executed and allocated in open outcry by a participant other than the specialist.<sup>9</sup>

The term “Remainder of the Order” also appears in Exchange Rule 1014(g)(i)(A)(2) respecting orders that are executed manually by the specialist. Because the specialist is responsible as agent for limit orders on the limit order book, Exchange Rule 1014(g)(i)(A)(2) requires the specialist to allocate to customer orders, and next to off-floor broker-dealer limit order first. “Remainder of the Order” in this situation means the portion of the initiating order that after the specialist makes such an allocation. The Exchange is proposing a corresponding amendment to Options Floor Procedure Advice (“OFPA”) B-6, Priority of Options Orders for Equity Options and Index Options by Account Type.

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<sup>8</sup> See Exchange Rule 1014(g)(v).

<sup>9</sup> The Exchange notes that both Streaming Quote Options and Non-Streaming Quote Options have been executed in open outcry since the initial deployment of Phlx XL.

ROT Access: Prior to the deployment of Phlx XL, Exchange specialists and ROTs were permitted to submit price improving limit orders onto the limit order book electronically in non-Streaming Quote options. Specialists and ROTs that submitted such price-improving limit orders were entitled to receive a special allocation. The program, known as “ROT Access” and codified in Exchange Rule 1014(g)(i)(B), applied to options that did not trade on Phlx XL because it was, before Phlx XL, the only way for ROTs to enter trading interest independently and electronically. Currently, all options traded on the Exchange are traded on Phlx XL, thus obviating the need for ROT Access.<sup>10</sup>

Exchange Rule 1014(g)(i)(B) is therefore proposed to be deleted. The introductory phrase “[r]especting Streaming Quote Options” in Exchange Rule 1014(g)(i)(A)(2) and the caption “Assignment in Streaming Quote Options” in Exchange Rule 1014 Commentary .05(b) are deleted as unnecessary because all equity and index options now trade as Streaming Quote Options.

During the development and deployment of Phlx XL, the Exchange adopted Commentary .04 to Exchange Rule 1080, which among other things describes when Phlx XL would be deployed following Commission approval of the rules applicable to Phlx XL, and actions to be taken by the Exchange in the event that Phlx XL was not deployed for all options trading on the Exchange by April 30, 2005. Because Phlx XL was deployed for all options trading on the Exchange prior to April 30, 2005, these portions of Commentary .04 are moot and thus proposed to be deleted.

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<sup>10</sup> The Exchange notes that the proposed rule change would not affect the ability of a non-SQT ROT (i.e., an on-floor Exchange ROT that does not submit electronic quotes) to place limit orders onto the limit order book via electronic interface.

Assignment in Non-Streaming Quote Options: Exchange Rule 1014,  
Commentary .05(a) currently describes assignments in non-Streaming Quote Options. Because all options on the exchange currently trade on Phlx XL (and thus there are no non-Streaming Quote Options), Exchange Rule 1014, Commentary .05(a) is proposed to be deleted.

AUTO-X: Exchange Rule 1080(c) currently includes references to the antiquated notion of an artificial “AUTO-X guarantee” and a minimum and maximum guaranteed AUTO-X size. Because the Exchange’s Phlx XL automatic execution features (Book Match<sup>11</sup> and Book Sweep<sup>12</sup>) currently provide for automatic executions up to the disseminated size (for which the responsible brokers or dealers that are quoting are firm), there is no longer an artificial “AUTO-X guarantee” for which the Exchange will provide automatic executions. Therefore, the Exchange proposes to delete the relevant sections

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<sup>11</sup> Book Match is an automatic execution feature of the Exchange’s systems that automatically executes inbound marketable orders against limit orders on the book or specialist, RSQT and/or SQT electronic quotes (“electronic quotes”) at the disseminated price where: (1) the Exchange’s disseminated size includes limit orders on the book and/or electronic quotes at the disseminated price; and (2) the disseminated price is the National Best Bid or Offer. See Exchange Rule 1080(g)(i)(B).

<sup>12</sup> Book Sweep is an automatic execution feature of the Exchange’s systems that, respecting non-Streaming Quote Options, allowed certain orders resting on the limit order book to be automatically executed when the bid or offer generated by the Exchange’s system or by the specialist’s proprietary quoting system locks (i.e., \$ 1.00 bid, \$ 1.00 offer) or crosses (i.e., \$ 1.05 bid, \$ 1.00 offer) the Exchange's best bid or offer in a particular series as established by an order on the limit order book. Orders in non-Streaming Quote Options executed by the Book Sweep feature were allocated among crowd participants participating on the Wheel. Book Sweep is being retained for Streaming Quote Options. See Exchange Rule 1080(c)(iii). Telephone conversation between Richard Rudolph, Vice President and Counsel, Exchange, and Terri Evans, Special Counsel, Division, Commission, on August 9, 2006 (clarifying that Book Sweep is being retained).

of Rule 1080(c) discussing an artificial AUTO-X guarantee. In addition, the Options Committee's ability to restrict the use of AUTO-X and increase the size of eligible orders is being deleted, as automatic execution processes, Book Match and Book Sweep, are described in other parts of the rule.

Exchange Rule 1080(c)(iii)(A) currently describes the Exchange's "Book Sweep" automatic execution and Wheel allocation functionality respecting non-Streaming Quote Options. Because there are no longer any non-Streaming Quote Options and the Wheel is obsolete, the Exchange proposes to delete the current text of Exchange Rule 1080(c)(iii)(A). The current text of Exchange Rule 1080(c)(iii)(B) respecting the Book Sweep functionality applicable to Streaming Quote Options, which are allocated automatically pursuant to Exchange Rule 1014(g)(vii), and not on the "Wheel," would be retained and renumbered accordingly.

The Wheel: Prior to the floor-wide deployment of Phlx XL, contra-side participation for AUTO-X automatic execution in non-Streaming Quote Options rotated among Wheel participants (the specialist and ROTs signed onto the Wheel) in accordance with Exchange Rule 1080(g)(i)(A). Trades executed on the Wheel were allocated in accordance with the algorithm set forth in OFPA F-24. Because all options on the Exchange are traded on Phlx XL, and because the Wheel is no longer in use in the Exchange's trading system, Exchange Rule 1080(g)(i)(A) and OFPA F-24 are proposed to be deleted.

Additionally, Exchange Rule 1080(g)(i) currently provides that the contra-side to automatically executed orders may be a Wheel Participant. There are no longer any Wheel Participants on the Exchange; therefore the Exchange proposes to amend

Exchange Rule 1080(g)(i) to provide that the contra-side to automatically executed orders may be an electronic quotation,<sup>13</sup> which reflects the current system that has been in place for Streaming Quote Options since the deployment of Phlx XL. Finally, for accuracy, the Exchange proposes to delete the reference to AUTO-X from the title of Exchange Rule 1080(g).

Collective Crowd Quote/Firm Quotations: Exchange Rule 1080, Commentary .01(b)(ii) currently provides that, respecting non-Streaming Quote Options, specialists determine which model to select per option and may change models during the trading day, and that the specialist may, but is not required to (a) consult with and/or (b) agree with the trading crowd in setting these parameters or selecting a model, but the members of the trading crowd are not required to provide input in these decisions, and in all cases, the specialist has the responsibility and authority to make the final determination. Because all options on the Exchange trade on Phlx XL, and each Phlx XL participant submits independent quotations, the rule is obsolete and is proposed to be modified.<sup>14</sup>

Exchange Rule 1080, Commentary .01(c) states that with respect to non-Streaming Quote Options, the disseminated market (whether by Auto-Quote or specialized quote feed) is deemed to represent the quotations of all ROTs in that option unless a ROT has expressly indicated otherwise in a clear and audible manner, respecting either a specific series, the class or the option (specifying LEAPS), and with sufficient time for the specialist to take action to update the quote if necessary. Because there are

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<sup>13</sup> See supra note 10.

<sup>14</sup> Telephone conversation between Richard Rudolph, Vice President and Counsel, Exchange, and Terri Evans, Special Counsel, Division, Commission, on August 9, 2006 (clarifying that the rule is being modified and not deleted).

no longer any non-Streaming Quote Options and there is no collective quote (rather, there are independent quotations), the Exchange proposes to modify Exchange Rule 1080, Commentary .01, to reflect that specialists, SQTs and RSQTs submit individual quotations. For the same reason, a similar modification concerning a collective quoting requirement is proposed to Exchange Rule 1082.

Disseminated Size: Exchange Rule 1082(a)(ii)(A) defines “disseminated size” as it applies to non-Streaming Quote Options. Because there are no longer any non-Streaming Quote Options, Exchange Rule 1082(a)(ii)(A) is proposed to be deleted. The phrase “[w]ith respect to non-Streaming Quote Options” is deleted from Exchange Rule 1082(b)(i) as obsolete.<sup>15</sup> The introductory phrases “respecting Streaming Quote Options” and “[w]ith respect to Streaming Quote Options” are deleted from Exchange Rule 1082(a)(ii)(B) and Exchange Rule 1082(b)(ii) respectively as unnecessary, since all equity and index options are now Streaming Quote Options.

The Exchange is proposing a corresponding amendment to OFPA F-7, Size of Exchange’s Disseminated Bid or Offer.

Firm Quote Rule Citation: Exchange Rule 1082(a)(iii) currently provides that the term “SEC Quote Rule” shall mean Rule 11Ac1-1 under the Securities Exchange Act of 1934, as amended (the “Act”). Recently, Regulation NMS under the Act was

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<sup>15</sup> The remaining text of Exchange Rule 1082(b) concerning the firm quote obligations of a responsible broker or dealer acting as agent on behalf of a limit order would be retained, since Floor Brokers still may represent limit orders in the crowd and would be the “responsible broker or dealer” in that situation.

promulgated, and the SEC Quote Rule was re-designated as Rule 602 of Regulation NMS.<sup>16</sup> The proposal would amend Rule 1082(a)(iii) accordingly.

Specified Disengagement Size: Commentary .07 to Exchange Rule 1080 contains references to the “specified disengagement size” that applied to the Exchange’s “rapid fire” mechanism prior to the deployment of Phlx XL. Because that “rapid fire” program no longer exists and has been replaced with Exchange Rule 1093, Phlx XL Risk Monitor Mechanism,<sup>17</sup> Commentary .07 is proposed to be deleted.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>18</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>19</sup> in particular, in that it is designed to promote just and equitable principles of trade, 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, by removing rule provisions which have become obsolete due to changes in technology, trading practices, or other changes that make such provisions obsolete. According to the Exchange, eliminating the obsolete provisions is in the public interest because it will eliminate possible confusion regarding the Exchange’s current practices.

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<sup>16</sup> 17 CFR 242.602.

<sup>17</sup> See Securities Exchange Act Release No. 53166 (January 23, 2006), 71 FR 4625 (January 27, 2006) (SR-Phlx-2006-05).

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

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

Written comments were neither solicited nor received.

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

Because the foregoing 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 on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>20</sup> and Rule 19b-4(f)(6) thereunder.<sup>21</sup>

The Exchange has requested that the Commission waive the 5-day pre-filing notice requirement<sup>22</sup> and the 30-day operative delay. The Commission has determined to waive the 5-day pre-filing notice requirement. Also, the Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative delay to allow the deletion of obsolete or unnecessary rules to take effect

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f)(6).

<sup>22</sup> Telephone conversation between Richard Rudolph, Vice President and Counsel, Exchange, and Terri Evans, Special Counsel, Division, Commission, on August 9, 2006.

immediately, which should allow the Exchange to immediately reflect the currently applicable rules in its rule book. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>23</sup> 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.<sup>24</sup>

#### 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. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2006-28 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

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<sup>23</sup> For purposes of waiving 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).

<sup>24</sup> For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change, as amended, to have been filed on August 10, 2006, when Amendment No. 3 was filed.

All submissions should refer to File Number [SR-Phlx-2006-28](#). 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number [SR-Phlx-2006-28](#) and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>25</sup>

Nancy M. Morris  
Secretary

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<sup>25</sup> 17 CFR 200.30-3(a)(12).