

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- 50070; File No. SR-Phlx-2004-46)

July 23, 2004

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to a Pilot Program to Deploy the Options Floor Broker Management System

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4² thereunder, notice is hereby given that on July 20, 2004, 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 and II 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 and to approval the proposal, on an accelerated basis.

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

The Exchange proposes to extend its pilot program pertaining to the Options Floor Broker Management System (the “System”) from August 2, 2004 until March 1, 2005.³ The

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On July 31, 2003, the Exchange filed a proposed rule change to implement a pilot program to deploy the Exchange’s new System. The proposed rule change was noticed, and accelerated approval was granted thereto, on July 31, 2003. The pilot was scheduled to expire on August 29, 2003. See Securities Exchange Act Release No. 48266 (July 31, 2003), 68 FR 152 (August 7, 2003) (SR-Phlx-2003-56). On August 29, the Commission extended the pilot to September 12, 2003. See Securities Exchange Act Release No. 48425 (August 29, 2003), 68 FR 53210 (September 9, 2003) (SR-Phlx-2003-60). On September 12, 2003, the Commission extended the pilot again until November 14, 2003. See Securities Exchange Act Release No. 48490 (September 12, 2003), 68 FR 54926 (September 19, 2003) (SR-Phlx-2003-64). On December 18, 2003, the Commission extended the pilot until February 6, 2004. See Securities Exchange Act Release No. 48947 (December 18, 2003), 68 FR 75012 (December 29, 2003) (SR-Phlx-2003-81). On February 3, 2004, the Commission extended the pilot until August 2, 2004. See Securities Exchange Act Release No. 49178 (February 3, 2004), 69 FR 6360 (February 10, 2004) (SR-Phlx-2004-10). In order to avoid a lapse in the effectiveness of this pilot, the Commission now is approving the Exchange’s proposal to extend the rule from August 2, 2004 until March 1, 2005. The Exchange has also filed for permanent approval of the proposed rules. See Securities Exchange Act Release No. 48265 (July 31, 2003), 68 FR 47137 (August 7,

System is a new component of the Exchange's Automated Options Market (AUTOM) and Automatic Execution (AUTO-X) System.⁴

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 III 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 extend the effectiveness of the rules governing the System through March 1, 2005, in order to continue to have rules in place concerning the System and to ensure that Floor Brokers using the System during the continuing deployment would not be in violation of current Exchange rules regarding ticket-marking requirements. The rules had previously been effective through August 29, 2003, extended through September 12, 2003, November 14, 2003, February 6, 2004 and August 2, 2004.⁵

2003) (SR-Phlx-2003-40). The Exchange acknowledges that SR-Phlx-2003-40 and Amendment No. 1 thereto are subject to public comment, which may result in amendments to the proposed rules.

⁴ AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO-X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. See Exchange Rule 1080.

⁵ See note 3, supra.

The System is designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. Floor Brokers or their employees access the System through an electronic Exchange-provided handheld device on which they have the ability to enter the required information as set forth in Phlx Rule 1063(e), either from their respective posts on the options trading floor or in the trading crowd. The System replaced the Exchange's Floor Broker Order Entry System ("FBOE"),⁶ and is currently in use floor-wide.

All of the rules pertaining to the System effective February 6, 2004 are proposed to be extended until March 1, 2005, including: Rules 1014(g), 1015, 1051, 1063, 1064, and 1080.06, as well as Option Floor Procedure Advices ("Advice") A-11, B-6, B-8, C-2, C-3, F-1, F-2, and F-4.

The Exchange believes that the System enables Floor Brokers to handle orders they represent more efficiently, and will further enable the Exchange to comply with the audit trail requirement for non-electronic orders required under the Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Sanctions.⁷

2. Statutory Basis

⁶ See Securities Exchange Act Release No. 41524 (June 14, 1999), 64 FR 33127 (June 21, 1999) (SR-Phlx-99-11). The FBOE, a component of AUTOM, currently provides a means for (but does not require) Floor Brokers to route eligible orders to the specialist's post, consistent with the order delivery criteria of the AUTOM System set forth in Exchange Rule 1080(b). The new System would include the same functionality as the FBOE, in addition to providing an electronic audit trail for non-electronic orders received by Floor Brokers by way of the entry of the required information in proposed Rule 1063(e).

⁷ See Securities Exchange Act Release No. 43268 (September 11, 2000) and Administrative Proceeding File 3-10282 (the "Order").

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act⁹ in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest, by providing a System that enables Floor Brokers to handle orders they represent more efficiently, while enabling the Exchange to comply with the requirement in the Order to provide an electronic audit trail for non-electronic orders entered on the Exchange.

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. 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. 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. Please include File Number SR-Phlx-2004-46 on the subject line.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-Phlx-2004-46. 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 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices 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-2004-46 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

securities exchange.¹⁰ In particular the Commission finds that the proposed rule to extend a pilot program establishing rules governing the use of the System by floor brokers on the Exchange is consistent with Section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national securities system, and protect investors and the public interest.¹¹

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of the publication of notice thereof in the Federal Register. The Commission believes that granting accelerated approval to the proposed rule change on a pilot basis will allow the Exchange to have enforceable rules governing use of the Exchange's new System in effect prior to permanent approval of the rules, and will help ensure that members are properly trained and familiar with the rules. In addition, that Commission is granting accelerated approval in order to prevent a lapse in the effectiveness of the Exchange's rules governing operation of the System to ensure continuity of the pilot.

¹⁰ In approving this proposed rule change, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(5).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-Phlx-2004-46) is approved on an accelerated basis on a pilot basis until March 1, 2005.

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

Margaret H. McFarland
Deputy Secretary

¹² 15 U.S.C. 78f(b)(2).

¹³ 17 CFR 200.30-3(a)(12).