

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51768; File No. SR-Phlx-2005-35)

May 31, 2005

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend until June 5, 2006, a Pilot Program for Listing Options on Selected Stocks Trading Below \$20 at One-Point Intervals

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 May 16, 2005, 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. The Phlx filed the proposal pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ 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 Commentary .05 to Phlx Rule 1012, "Series of Options Open for Trading," to extend until June 5, 2006, its pilot program for listing options series on selected stocks trading below \$20 at one-point intervals (“Pilot Program”). As set forth in Phlx Rule 1012, Commentary .05, the Pilot Program allows the Phlx to list options classes overlying five individual stocks with strike price intervals of \$1.00 where, among other things, the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The Phlx has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. See Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii).

underlying stock closes below \$20 on its primary market on the day before the Phlx selects the stock for the Pilot Program. The Phlx also may list \$1 strike prices on any options classes selected by other options exchanges that have adopted similar pilot programs.⁶ The text of the proposed rule change is available on the Phlx's Web site (<http://www.phlx.com>), at the Phlx's principal office, and at 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

⁶ The Commission approved the Phlx's Pilot Program on June 11, 2003, and extended it through June 5, 2005. See Securities Exchange Act Release Nos. 48013 (June 11, 2003), 68 FR 35933 (June 17, 2003) (order approving File No. SR-Phlx-2002-55) (approving the Pilot Program through June 5, 2004) ("Phlx Approval Order"); and 49801 (June 3, 2004), 69 FR 32652 (June 10, 2004) (notice of filing and immediate effectiveness of File No. SR-PHLX-2004-38) (extending the Pilot Program through June 5, 2005) ("Phlx Pilot Extension"). The other options exchanges have similar pilot programs that likewise were extended through June 5, 2005. See, e.g., Securities Exchange Act Release Nos. 49813 (June 4, 2004), 69 FR 33088 (June 14, 2004) (notice of filing and immediate effectiveness of File No. SR-Amex-2004-45) (extending the \$1 strike price pilot program of the American Stock Exchange LLC, through June 5, 2005); 49799 (June 3, 2004), 69 FR 32542 (June 10, 2004) (notice of filing and immediate effectiveness of File No. SR-CBOE-2004-34) (extending the \$1 strike price pilot program of the Chicago Board Options Exchange, Incorporated, through June 5, 2005); 50060 (July 22, 2004), 69 FR 45864 (July 30, 2004) (notice of filing and immediate effectiveness of File No. SR-ISE-2004-26) (extending the \$1 strike price pilot program of the International Securities Exchange, Inc., through June 5, 2005); and 50152 (August 5, 2004), 69 FR 49931 (August 12, 2004) (order approving File No. SR-PCX-2004-61) (extending the \$1 strike price pilot program of the Pacific Exchange, Inc., through June 5, 2005).

1. Purpose

The purpose of the proposed rule change is to extend the Pilot Program for one year so that the Exchange may continue to list options at \$1 strike price intervals within the parameters specified in Phlx Rule 1012, Commentary .05.

Because of the large number of stocks that have precipitously declined in price over the last four years and the increasing number of options overlying this lowest tier of stocks, the Commission approved the Pilot Program and extended it through June 5, 2005.⁷ The Exchange proposes to extend the Pilot Program for a period of one year, through June 5, 2006. The Pilot Program will remain unchanged so that, under the terms of the Pilot Program, the Phlx may establish \$1 strike price intervals on options classes overlying no more than five individual stocks designated by the Exchange where the underlying stock closes below \$20 on its primary market on the trading day before the Exchange selects the stock for the Pilot Program. Under the terms of the Pilot Program, the strike prices listed pursuant to the Pilot Program must be between \$3 and \$20 and may be no more than \$5 above or below the closing price of the underlying stock on the preceding day. In addition, strike prices listed pursuant to the Pilot Program may not be listed within \$.50 of an existing \$2.50 strike price, and \$1 strike prices are not applied to long term options series (“LEAPS”). Pursuant to the Pilot Program, the Exchange may list \$1 strike prices on options classes selected by other options exchanges for inclusion in their \$1 strike price pilot programs.

In July 2003, the Phlx chose and listed five options classes with \$1 strike price intervals, and thereafter listed \$1 strike prices in options classes selected by other options exchanges for inclusion in their \$1 strike price pilot programs. The Phlx currently lists 22 options classes with

⁷ See Phlx Approval Order and Phlx Pilot Extension, supra note 6.

\$1 strike prices.⁸ According to the Phlx, the Exchange's ability to list options at \$1 strike price intervals pursuant to the Pilot Program has given investors the opportunity to more closely and effectively tailor their options investments to the price of the underlying stock, has allowed the Exchange to take advantage of competitive opportunities to list options at \$1 strike prices, and has stimulated price competition among the options exchanges in these options.

In its notice extending the Pilot Program through June 5, 2005, the Commission indicated that if the Phlx sought to extend, expand, or request permanent approval of the Pilot Program, it would be required to include a Pilot Program report with its filing.⁹ The Phlx's Pilot Program Report ("Pilot Program Report"), included as Exhibit 3 to the proposal, reviews the Exchange's experience with the Pilot Program. According to the Phlx, the Pilot Program Report clearly supports the Exchange's belief that extension of the Pilot Program is proper. Among other things, the Phlx believes that the Pilot Program Report shows the strength and efficacy of the Pilot Program on the Exchange, as reflected by the increase in the percentage of \$1 strikes in comparison to total options volume traded on the Phlx (from 37.23% in the 2004 report to 51.59% in 2005 Pilot Program Report) and the continuing robust open interest of options traded on the Phlx at \$1 strike price intervals. The Phlx believes that the Pilot Program Report establishes that the Pilot Program has not created and in the future should not create capacity problems for the systems of the Exchange or the Options Price Reporting Authority ("OPRA"). In addition, the Pilot Program Report explains that most delistings of \$1 strike price options series occurred to ensure that the chosen \$1 strike price issues remained within the parameters of the Pilot Program.

⁸ The Phlx continues to list the \$1 strike prices in the options classes that it initially chose for the Pilot Program: TYCO International, LTD (TYC), Micron Tech. (MU), Oracle Co. (ORQ), Brocade Comm. (UBF), and Juniper Networks (JUP).

⁹ See Phlx Pilot Extension, supra note 6.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5),¹¹ in particular, in that it is designed to perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest, and to promote just and equitable principles of trade. The Phlx believes the proposal would achieve this by allowing the continued listing of options at \$1 strike price intervals within certain parameters, thereby stimulating customer interest in options overlying the lowest tier of stocks and creating greater trading opportunities and flexibility and providing customers with the ability to more closely tailor investment strategies to the precise movement of the underlying stocks.

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 either solicited or received.

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

The Phlx has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹² and subparagraph (f)(6) of Rule 19b-4 thereunder.¹³ Because the foregoing proposed 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) by its terms does not become

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

operative for 30 days after the date of this filing, 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 and Rule 19b-4(f)(6) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Phlx has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay to allow the Exchange to continue listing \$1 strike prices without a lapse in the operation of the Pilot Program.

The Commission waives the five-day pre-filing notice requirement. In addition, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will permit the Pilot Program to continue without interruption through June 5, 2006.¹⁴ For this reason, the Commission designates that the proposal become operative on June 5, 2005.¹⁵

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁵ As set forth in the Commission's initial approval of the Pilot Program, if the Phlx proposes to: (1) extend the Pilot Program; (2) expand the number of options eligible for inclusion in the Pilot Program; or (3) seek permanent approval of the Pilot Program, it must submit a Pilot Program report to the Commission along with the filing of its

At any time within 60 days of the filing of the 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. 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 No. SR-Phlx-2005-35 on the subject line.

Paper comments:

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

proposal to extend, expand, or seek permanent approval of the Pilot Program. The Phlx must file any such proposal and the Pilot Program report with the Commission at least 60 days prior to the expiration of the Pilot Program. The Pilot Program report must cover the entire time the Pilot Program was in effect and must include: (1) data and written analysis on the open interest and trading volume for options (at all strike price intervals) selected for the Pilot Program; (2) delisted options series (for all strike price intervals) for all options selected for the Pilot Program; (3) an assessment of the appropriateness of \$1 strike price intervals for the options the Phlx selected for the Pilot Program; (4) an assessment of the impact of the Pilot Program on the capacity of the Phlx's, OPRA's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the Pilot Program and how the Phlx addressed them; (6) any complaints that the Phlx received during the operation of the Pilot Program and how the Phlx addressed them; and (7) any additional information that would help to assess the operation of the Pilot Program. See Phlx Approval Order, *supra* note 6.

All submissions should refer to File No. SR-Phlx-2005-35. 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 Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also 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 No. SR- Phlx-2005-35 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.¹⁶

Margaret H. McFarland
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).