

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56776; File No. SR-Phlx-2007-81)

November 9, 2007

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Exchange's Automated Opening System

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 October 16, 2007, 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 substantially prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)<sup>3</sup> of the Act and Rule 19b-4(f)(6) thereunder,<sup>4</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 from interested persons.

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

The Exchange proposes to amend Exchange Rule 1017 "Openings in Options" to establish additional criteria to determine the single opening price in a particular option series

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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> 15 U.S.C. 78s(b)(3)(A).

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

when the Exchange's system could open trading in such series at two or more prices.<sup>5</sup> The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and [www.phlx.com](http://www.phlx.com).

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. Phlx has substantially 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 Exchange states that the purpose of the proposed rule change is to ensure that the Exchange's opening price in a particular option series is established at a single price when two or more opening prices would satisfy the requirement in Exchange Rule 1017(c) that such price be the price at which the maximum quantity of contracts will trade. The Exchange believes that this proposal should facilitate fair and orderly markets on the opening of a particular option series on the Exchange at a single price.

Rule 1017(c) sets forth the methodology by which the Exchange's system establishes the opening price of a series. Generally, the opening price of a series is the price at which the

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<sup>5</sup> The Exchange has advised that it anticipates implementing the proposed rule change on December 1, 2007. The Exchange states that, if this date is delayed, it will inform its members through a circular. Telephone conversation among Richard Rudolph, Vice President and Counsel, Exchange, and Hong-Anh Tran and Michou H.M. Nguyen, Special Counsels, Division of Market Regulation, Commission on November 6, 2007.

maximum quantity of contracts will be traded. The Exchange notes that frequently, however, there will be more than one price that will satisfy the “maximum quantity” test in determining the opening price of a series. Accordingly, Rule 1017(c) lists a number of “tie-breakers” used by the system to determine the actual opening price of a series.

Currently, Rule 1017(c)(i) defines the opening price as the price at which the maximum quantity of contracts would be traded. The rule establishes a series of “tie-breakers,” which are additional criteria that the system follows in establishing the opening price when two or more prices would satisfy the maximum quantity criteria. Specifically, when the maximum quantity of contracts could be traded at two or more prices, the system establishes the opening price based on the following criteria, in the following order: (1) the price at which the greatest number of customer orders would be traded; (2) the price at which the maximum number of Phlx XL participants would trade; and (3) the price that is closest to the closing price from the previous trading session.<sup>6</sup>

The Exchange has observed that the existing “tie-breakers” in Rule 1017(c) can still result in the situation where two or more prices could satisfy the maximum quantity criteria. Accordingly, the Exchange proposes to add another “tie-breaker” to be used in determining the opening price when two or more prices satisfy the maximum quantity criteria.

Specifically, the Exchange proposes to amend Rule 1017(c) to provide that, after all existing “tie-breakers” have been exhausted, should there continue to be two or more prices that satisfy the maximum quantity criteria, the opening price will be the mid-point of the highest

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<sup>6</sup> For a complete description of the Exchange’s automated opening system, see Securities Exchange Act Release No. 52667 (October 25, 2005), 70 FR 65953 (November 1, 2005) (SR-Phlx-2005-25).

possible price and lowest possible price that satisfy the maximum quantity criteria (rounded as needed to the side of the market with the greatest number of Phlx XL participants).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, because 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 clarifying the single opening price in a particular series on the Exchange when two or more prices would result in the maximum number of contracts traded at the opening in such series.

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

The Exchange does not believe that the proposed rule change would 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 written comments on the proposed rule change.

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

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), the proposed

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>10</sup>

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 the 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2007-81 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.

All submissions should refer to File Number SR-Phlx-2007-81. 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

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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-2007-81 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>11</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).