

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52072; File No. SR-Phlx-2005-33)

July 20, 2005

Self-Regulatory Organizations; The Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change, and Amendments No. 1 and 2 Thereto, Relating to Sending Principal Orders Via the Intermarket Options Linkage

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 May 6, 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, II, and III below, which Items have been prepared by the Exchange. On May 11, 2005, the Phlx submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> On July 8, 2005, the Exchange filed Amendment No. 2.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend Phlx Rule 1087, Limitation on Principal Order Access, relating to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (“Linkage Plan”).<sup>5</sup> Specifically, the proposed rule change, as amended,

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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> See Amendment No. 1 dated May 11, 2005 (“Amendment No. 1”). Amendment No. 1 corrected a pagination error in the original filing.

<sup>4</sup> See Amendment No. 2 dated July 8, 2005 (“Amendment No. 2”). Amendment No. 2 made a minor technical change to the proposed rule text.

<sup>5</sup> On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage (“Linkage”) proposed by the American Stock Exchange, LLC, Chicago Board Options Exchange, Inc. and the International Securities Exchange, Inc. See

would establish an exemption to the so called “80/20 Test,” which provides that specialists and Registered Options Traders (“ROTs”) effecting transactions that represent 20 percent or more of their contract volume in a particular calendar quarter by sending Principal Orders<sup>6</sup> to other exchanges via the Linkage may not send Principal Orders in that option during the following calendar quarter. The proposed exemption would apply to specialists and ROTs that have total contract volume of less than 1,000 contracts in an option for such calendar quarter. The text of the proposed rule, as amended, is available at the Exchange’s website at [http://www.phlx.com/exchange/phlx\\_rule\\_fil.html](http://www.phlx.com/exchange/phlx_rule_fil.html) 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 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

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Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx, the Pacific Exchange, Inc. and the Boston Stock Exchange, Inc. joined the Linkage Plan. See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

<sup>6</sup> The Exchange defines a “Linkage Order” as an Immediate or Cancel order routed through the Linkage as permitted under the Plan. There are three types of Linkage Orders: (i) “Principal Acting as Agent (“P/A”) Order,” which is an order for the principal account of a specialist (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent; (ii) “Principal Order,” which is an order for the principal account of an Eligible Market Maker and is not a P/A Order; and (iii) “Satisfaction Order,” which is an order sent through the Linkage to notify a member of another Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through. See Phlx Rule 1083(k).

the places specified in Item IV below. The Exchange 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 this proposed rule change, as amended, is to implement proposed Joint Amendment No. 17 to the Linkage Plan. Joint Amendment No. 17, together with this proposed rule change, will modify the 80/20 Test set forth in Section 8(b)(iii) of the Linkage Plan and Phlx Rule 1087.

In particular, the purpose of this proposed rule change, as amended, is to modify Phlx Rule 1087 to establish an exemption from the provision in the rule that states that a specialist or ROT that effected 20 percent or more of its volume in a particular option by sending Principal Orders through the Linkage in a calendar quarter is prohibited from sending Principal Orders via the Linkage in such option during the following calendar quarter.

According to the Exchange, applying this prohibition has resulted in anomalies for specialists and ROTs with limited quarterly volume in an option. Specifically, if a specialist or ROT has very little overall trading volume in an option, the execution of one or two Principal Orders during a calendar quarter could result in the specialist or ROT trading more than 20 percent of his or her contract volume in a given option based on relatively insignificant contract volume in such option. This would bar the specialist or ROT from sending Principal Orders in such option via Linkage for the following calendar quarter. The Exchange does not believe that it was the intent of participants in the Plan (i.e., the six U.S. options exchanges) to bar participants with limited volume from

sending Principal Orders through the Linkage in these circumstances since such trading clearly was not a primary aspect of their business.

The proposed rule change would create an exemption from the prohibition for specialists and ROTs that have total contract volume of less than 1,000 contracts in an option for a calendar quarter. The Exchange believes that this exemption will reduce the number of instances in which specialists and ROTs with limited contract volume in a particular option are prohibited from sending Principal Orders via the Linkage for a calendar quarter.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, 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 perfect the mechanisms of a free and open market and a national market system, protect investors and the public interest, and promote just and equitable principles of trade by creating an exemption from the prohibition against effecting transactions that represent 20 percent or more of their contract volume in a particular calendar quarter in certain options, in conformity with the Linkage Plan.

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

The Exchange does not believe that the proposed rule change, as amended, 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

Written comments were neither solicited nor received.

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

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

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Phlx consents, the Commission will:

- (A) by order approve such proposed rule change; or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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 at <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-2005-33 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-Phlx-2005-33. 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 Room. 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 publicly available. All submissions should refer to File Number SR-Phlx-2005-33 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>9</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).