

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52425; File No. SR-Phlx-2005-27)

September 14, 2005

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Modification of the Definition of Firm Customer Quote Size and the Removal of Certain Restrictions on Sending Secondary P/A Orders Under the Linkage Plan

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 April 26, 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 Phlx. On September 2, 2005, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</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 its rules governing the operation of the intermarket option linkage to conform with a proposed amendment<sup>4</sup> to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (“Linkage Plan”).<sup>5</sup> The Exchange is proposing to amend:

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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> In Amendment No. 1, the Exchange made clarifying changes to the proposed rule text relating to the availability of Participant exchanges’ automatic execution system.

<sup>4</sup> See Securities Exchange Act Release No. 52401 (September 9, 2005) (File No. 4-429).

<sup>5</sup> On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket option market linkage proposed by the American Stock Exchange, LLC, Chicago Board Options Exchange, Incorporated, and International Securities Exchange, Inc. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, upon separate requests by the Phlx, Pacific Exchange, Inc. and Boston Stock Exchange, Inc. the Commission issued

(i) Exchange Rule 1083 by modifying the definition of Firm Customer Quote Size (“FCQS”), and (ii) Exchange Rule 1084 by deleting certain restrictions on sending secondary Principal Acting as Agent Orders (“P/A Orders”)<sup>6</sup> pursuant to the Linkage Plan. The text of the proposed rule change, as amended, is available on Phlx’s Web site at ([www.phlx.com](http://www.phlx.com)), at the Phlx’s Office of the Secretary, 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, as amended, 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 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 the proposed rule change is to amend the definition of FCQS to reflect current practices of the respective Linkage Plan participants (“Participants”)<sup>7</sup> relating to

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orders to permit these exchanges to participate in the Linkage Plan. See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000), 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000) and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

<sup>6</sup> A P/A Order 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. See Exchange Rule 1083(k)(i).

<sup>7</sup> Section 2(24) of the Linkage Plan defines “Participant” as an Eligible Exchange whose participation in the Linkage Plan has become effective pursuant to Section 4(c) of the Linkage Plan.

disseminated size that were not in existence at the time the Linkage Plan was originally adopted. At the time the Linkage Plan was originally adopted, options quote sizes generally were not disseminated through the Options Price Reporting Authority and most Participants employed automatic execution systems that guaranteed automatic executions of orders under a certain contract size (which was generally a static number). At that time, the FCQS was calculated based on the number of contracts the sending and receiving Participants guaranteed they would automatically execute. Now that all Participants disseminate dynamic quotes with size, the Exchange believes that it is appropriate to calculate the FCQS based on the size of the disseminated quotation of the Participant receiving the P/A Order. Accordingly, the Exchange proposes to amend Exchange Rule 1083(g) to define FCQS as the size of the disseminated quotation of the Participant receiving the P/A Order.

Another purpose of the proposed rule change is to eliminate a 15-second waiting period for sending a secondary P/A Order pursuant to Exchange Rule 1084(c)(2), which governs the manner in which a P/A Order larger than the FCQS can be broken into smaller P/A Orders. Currently, an initial P/A Order can be sent to the Participant whose disseminated price that is the National Best Bid or Offer (“NBBO”) for a size that is the FCQS. If the receiving Participant that is disseminating the NBBO continues to disseminate the same price after 15 seconds from the execution of the initial P/A Order, a secondary P/A Order can be sent for at least the lesser of: (i) the size of the disseminated quote; (ii) 100 contracts; or (iii) the remainder of the customer order underlying the P/A Orders. The Exchange proposes to eliminate the 15-second wait period because the dynamic quotes with size now employed by the Participants obviate the need for a manual quote refresh period for P/A Orders. The Exchange also proposes to amend Exchange

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Rule 1084 to clarify that an automatic execution of a P/A Order is not required if the P/A Order is larger than the Firm Customer Quote Size, and that automatic execution will be provided for P/A orders at or below the FCQS, if automatic execution is available.<sup>8</sup>

2. Statutory Basis

The Exchange believes that its proposed rule change, as amended, is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>10</sup> in particular, in that 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 amending the definition of FCQS to reflect current practices of the Participants relating to disseminated size, and by eliminating the 15-second wait period for the sending of secondary P/A Orders to reflect current systems in place on the various Participants.

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

The Exchange does not believe that the proposed rule change, as amended, would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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<sup>8</sup> The Commission made technical corrections to this sentence pursuant to a telephone conversation with Phlx, as noted herein. Telephone call between Tim Fox, Special Counsel, Commission, and Richard Rudolph, Vice President and Counsel, Phlx on September 12, 2005.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

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

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, as amended; or
- B. institute proceedings to determine whether the proposed rule change, as amended, 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, 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-2005-27 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Phlx-2005-27. 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-2005-27 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>

Jonathan G. Katz  
Secretary

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