

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50752; File No. SR-Phlx-2004-71)

November 29, 2004

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Extension Through April 30, 2005, of a Pilot Program to Disengage the Automatic Execution Feature (AUTO-X) of the Exchange's Automated Options Market (AUTOM)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on November 3, 2004, 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 November 24, 2004, the Exchange filed 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 from interested persons, and granting accelerated approval to the proposal to extend the pilot period through April 30, 2005.

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

The Phlx proposes to extend, through April 30, 2005, its pilot program concerning AUTO-X, whereby AUTO-X is disengaged for a period of 30 seconds after the number of contracts automatically executed in a given class of non-Streaming Quote Options,<sup>4</sup>

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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 proposes to modify the proposed rule change to correct a typographical error in the proposed rule text.

<sup>4</sup> In a telephone conversation between Richard Rudolph, Director and Counsel, Phlx, and Kim Allen, Attorney, Division of Market Regulation ("Division"), Commission, on

meets the specified disengagement size for the option (the "pilot"). The pilot expires November 30, 2004.

The text of amended Exchange Rule 1080 is set forth below.

Brackets indicate deletions; italics indicate additions.

**Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X)**

**Rule 1080.**

(a) – (b) No change.

(c)(i) – (iii) No change.

(iv) (A) – (H) No change.

(I) respecting non-Streaming Quote Options, when the number of contracts automatically executed within a 15 second period in an option (subject to a Pilot program [until November 30, 2004]through April 30, 2005) exceeds the specified disengagement size, a 30 second period ensues during which subsequent orders are handled manually. If the Exchange's disseminated size exceeds the specified disengagement size and an eligible order is delivered for a number of contracts that is greater than the specified disengagement size, such an order will be automatically executed up to the disseminated size, followed by an AUTO-X disengagement period of 30 seconds. If the specialist revises the quotation in such an option prior to the expiration of such 30-second period, eligible orders in such an option shall again be executed automatically.

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November 23, 2004, the Exchange clarified that the pilot applies only to option classes known as non-Streaming Quote Options, defined in Phlx Rule 1014, Commentary .05 as those classes not eligible to be traded by Streaming Quote Traders pursuant to Phlx Rule 1014(b)(ii)(A).

The Exchange's systems are designed and programmed to identify the conditions that cause inbound orders to be ineligible for automatic execution.

Once it is established that inbound orders are ineligible for automatic execution, Exchange staff has the ability to determine which of the above conditions occurred.

(d) - (k) No change.

Commentary:

No change.

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 pilot through April 30, 2005, which is the date that the Exchange plans to have rolled out all options in the Exchange's electronic options trading platform, Phlx XL.<sup>5</sup> When that roll out is complete there will no longer be any need to continue this pilot program because pursuant to Phlx Rule 1082, with respect to Streaming Quote Options ("SQO"), if the Exchange's

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<sup>5</sup> See Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR-Phlx-2003-59).

disseminated size in a particular series in a SQO is exhausted, the Exchange shall disseminate the next best available quotation.<sup>6</sup> If no specialist or "Streaming Quote Trader" has revised their quotation immediately following the exhaustion of the Exchange's disseminated size, the Exchange shall automatically disseminate the specialist's most recent disseminated price prior to the time of such exhaustion with a size of one contract.<sup>7</sup>

The pilot was originally approved on a six-month basis for a limited number of eligible options<sup>8</sup> and extended for an additional six-month period.<sup>9</sup> Subsequently, the number of options eligible for the pilot was expanded to include all Phlx-traded options.<sup>10</sup> In December 2001, the pilot was extended again for an additional six-month period;<sup>11</sup> and was extended again in May 2002,<sup>12</sup> November 2002,<sup>13</sup> May 2003,<sup>14</sup> and November 2003 (for a

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<sup>6</sup> Pursuant to a telephone conversation between Richard Rudolph, Director and Counsel, Phlx, and Kim Allen, Attorney, Division, Commission, on November 23, 2004, the Exchange clarified that there will be no non-Streaming Quote Options when the roll out for options in Phlx XL is completed.

<sup>7</sup> See Phlx Rule 1082(a)(ii)(C)(2).

<sup>8</sup> See Securities Exchange Act Release No. 43652 (December 1, 2000), 65 FR 77059 (December 8, 2000) (SR-Phlx-00-96).

<sup>9</sup> See Securities Exchange Act Release No. 44362 (May 29, 2001), 66 FR 30037 (June 4, 2001) (SR-Phlx-2001-56).

<sup>10</sup> See Securities Exchange Act Release No. 44760 (August 31, 2001), 66 FR 47253 (September 11, 2001) (SR-Phlx-2001-79).

<sup>11</sup> See Securities Exchange Act Release No. 45090 (November 21, 2001), 66 FR 59834 (November 30, 2001) (SR-Phlx-2001-100).

<sup>12</sup> See Securities Exchange Act Release No. 45862 (May 1, 2002), 67 FR 30990 (May 8, 2002) (SR-Phlx-2002-22).

<sup>13</sup> See Securities Exchange Act Release No. 46840 (November 15, 2002), 67 FR 70473 (November 22, 2002) (SR-Phlx-2002-59).

<sup>14</sup> See Securities Exchange Act Release No. 47955 (May 30, 2003), 68 FR 34458 (June 9, 2003) (SR-Phlx-2003-29).

one-year period).<sup>15</sup> The instant proposed rule change would extend the pilot through April 30, 2005.

The pilot currently includes the following features:

- Once an automatic execution occurs via AUTO-X in an option, the system begins a "counting" program, which counts the number of contracts executed automatically for that option up to a certain size,<sup>16</sup> which such size causes AUTO-X to become disengaged for that option.
- When the number of contracts executed automatically for that option exhausts the specified disengagement size for the specific option within a 15-second time frame, the system ceases to automatically execute for that option, and drops all AUTO-X eligible orders in that option for manual handling by the specialist for a period of 30 seconds to enable the specialist to refresh quotes in that option.
- Upon the expiration of 30 seconds, automatic executions resume, the "counting" program is set to zero, and it begins counting the number of contracts executed automatically within a 15 second time frame again, up to the specified disengagement size.

Again, when the number of contracts automatically executed exhausts the specified disengagement size within a 15-second time frame, the system drops all subsequent AUTO-X eligible orders for manual handling by the specialist for a period of

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<sup>15</sup> See Securities Exchange Act Release No. 48851 (November 26, 2003), 68 FR 68442 (December 8, 2003) (SR-Phlx-2003-77).

<sup>16</sup> Exchange Rule 1080(c)(iv)(I) provides that, when the number of contracts automatically executed within a 15-second period in an option exceeds the "specified disengagement size," a 30-second period ensues during which subsequent orders are handled manually. The specified disengagement size is determined by the specialist and subject to the approval of the Exchange's Options Committee. The specified disengagement size for each option is listed on the Exchange's Website.

30 seconds. The system then continues to reset the "counting" program and drop to manual, etc. If the disseminated size exceeds the specified disengagement size, and an eligible order is delivered for a number of contracts that is greater than the specified disengagement size, the order will be automatically executed up to the disseminated size, followed by an AUTO-X disengagement period of 30 seconds. If the specialist revises the quote in such an option prior to the expiration of the 30-second period, AUTO-X will be automatically re-engaged.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>17</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>18</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 providing automatic executions for eligible orders up to the Exchange's disseminated size, while continuing to enable Exchange specialists to maintain fair and orderly markets during periods of peak market activity.

### 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

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<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

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-2004-71 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.

All submissions should refer to File Number SR-Phlx-2004-71. 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 the filing also will 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 Number SR-Phlx-2004-71 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

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.<sup>19</sup> In particular, the Commission finds that the proposed rule change 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 to protect investors and the public interest.<sup>20</sup>

The Commission believes that the extension of the pilot should assist specialists in maintaining fair and orderly markets during periods of peak market activity. The Commission believes that an extension of the pilot program through April 30, 2005 should allow the Exchange to continue its efforts to deploy its fully automated Phlx XL

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<sup>19</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>20</sup> 15 U.S.C. 78f(b)(5).



system. Moreover, according to the Phlx, no complaints from customers, floor traders, or member firms have been received during the entire period of the pilot program.<sup>21</sup>

Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>22</sup> for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. The Commission believes that granting accelerated approval to extend the pilot program through April 30, 2005 raises no new issues of regulatory concern and should allow Phlx to continue, without interruption, the existing operation of its AUTO-X system.

#### VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>23</sup> that the proposed rule change (SR-Phlx-2004-71) is hereby approved on an accelerated basis, as a pilot, scheduled to expire on April 30, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>24</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>21</sup> Telephone conversation between Richard Rudolph, Director and Counsel, Phlx, and Kim Allen, Attorney, Division, Commission, on November 23, 2004.

<sup>22</sup> 15 U.S.C. 78s(b)(2).

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</sup> 17 CFR 200.30-3(a)(12).