

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51640; File No. SR-Phlx-2005-20)

April 29, 2005

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, by the Philadelphia Stock Exchange, Inc. Relating to the Elimination of the Prohibition Against the Entry of Multiple Orders in an Option Within Any 15-Second Period for an Account or Accounts of the Same Beneficial Owner

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 March 24, 2005, the Philadelphia Stock Exchange, Inc. (“Phlx” or the “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 April 11, 2005, the Phlx filed Amendment No. 1 to the proposed rule change.³ 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 Phlx proposes to amend Exchange Rule 1080, Philadelphia Stock Exchange Automated Options Market (“AUTOM”) System,⁴ to eliminate the limitation contained in the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange revised the statutory section under which the proposed rule change was filed from Section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A), to Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2).

⁴ AUTOM is the Exchange’s electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM’s automatic execution features, Book Sweep and Book Match. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. See Exchange Rule 1080.

rule providing that Order Entry Firms (as defined below) may neither enter nor permit the entry of multiple orders in an option within any 15-second period for an account or accounts of the same beneficial owner, and to remove a similar provision relating to orders submitted by off-floor broker-dealers (as defined below). The text of the proposed rule change is available on the Phlx's Web site (<http://www.phlx.com>), at the principal office of the Phlx, and at the Commission's Public Reference Room. The text of the proposed rule change also appears below. Deletions are [bracketed].

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

Rule 1080. (a) - (b) No change.

(c) ***

(i) No change.

(ii) Order Entry Firms and Users

(A) No change.

(B) Obligations of Order Entry Firms. Order Entry Firms shall:

(1) - (2) No change.

[(3) Neither enter nor permit the entry of multiple orders in call options and/or put options in the same option issue within any 15-second period for an account or accounts of the same beneficial owner.]

(iii) - (iv) No change.

(d) - (k) No change.

Commentary:

.01 - .04 No change.

.05 Off-floor broker-dealer limit orders delivered through AUTOM must be represented on the Exchange Floor by a floor member. Off-floor broker-dealer orders delivered via AUTOM shall be for a minimum size of one (1) contract. Off-floor broker-dealer limit orders are subject to the following other provisions:

(i) - (ii) No change.

[(iii) Off-floor broker-dealer limit orders that are eligible for automatic execution entered via AUTOM for the account(s) of the same beneficial owner may not be entered in options on the same underlying security more frequently than every 15 seconds.]

.06 - .07 No change.

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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 proposal and discussed any comments it received on the proposed rule change, as amended. 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

1. Purpose

The purpose of the proposed rule change is to increase the number of orders handled electronically on the Exchange by eliminating the Exchange's current prohibition against the entry via AUTOM of multiple orders for an account or accounts of the same beneficial owner in the same option within any 15-second period.

In August, 2001, the Exchange adopted Rule 1080(c)(ii)(B)(3) providing that an Order Entry Firm⁵ may neither enter nor permit the entry of multiple orders in an option into the AUTOM System within any 15-second period for an account or accounts of the same beneficial owner.⁶ In April, 2002, the Exchange adopted, on a six-month pilot basis, rules allowing the entry via AUTOM of off-floor broker-dealer⁷ limit orders (including Commentary .05(iii) to Rule 1080 – a similar 15-second rule applicable to such off-floor broker-dealer limit orders).⁸ The Commission approved the pilot rules on a permanent basis in October, 2002.⁹

The original purpose of the rules was to assist Exchange specialists and Registered Options Traders (“ROTs”) in managing their risk, and to protect investors and other market participants from the potential negative consequences that might result from Order Entry Firms or off-floor broker-dealers engaging in prohibited conduct.

Since the time of the adoption of the rules, the Exchange’s electronic trading systems have been substantially enhanced such that the risk associated with multiple orders in the same option delivered for the account of the same or an affiliated beneficial account holder has become more

⁵ The Exchange defines an “Order Entry Firm” as a member organization of the Exchange that is able to route orders to AUTOM. See Exchange Rule 1080(c)(ii)(A)(1).

⁶ See Securities Exchange Act Release No. 44687 (August 13, 2001), 66 FR 43287 (August 17, 2001) (SR-Phlx-2001-58).

⁷ The term “off-floor broker-dealer” means a broker-dealer that delivers orders from off the floor of the Exchange for the proprietary account(s) of such broker-dealer, including a market maker located on an exchange or trading floor other than the Exchange’s trading floor who elects to deliver orders via AUTOM for the proprietary account(s) of such market maker. See Exchange Rule 1080(b)(i)(C).

⁸ See Securities Exchange Act Release No. 45758 (April 15, 2002), 67 FR 19610 (April 22, 2002) (SR-Phlx-2001-40).

⁹ See Securities Exchange Act Release No. 46660 (October 15, 2002), 67 FR 64951 (October 22, 2002) (SR-Phlx-2002-50).

manageable through electronic means.¹⁰ For example, the Exchange has developed its fully electronic trading system, Phlx XL, which has been deployed for all equity and index options trading on the Exchange. Phlx XL and its automatic execution features, Book Match and Book Sweep, provide fully electronic executions and trade reports, and specialists and Streaming Quote Traders (“SQTs”)¹¹ submitting proprietary electronic quotations through Phlx XL are able to revise their quotations electronically, which the Exchange believes substantially reduces the risk of multiple executions of orders delivered in rapid succession before the specialist or SQT is able to revise their quotation.

The Exchange believes that the advent of Phlx XL and the substantial increase in automated option order handling obviate the need for the 15-second prohibition currently included in Exchange Rule 1080(c)(ii)(B)(3), and the similar prohibition concerning the delivery of proprietary orders by off-floor broker-dealers contained in Commentary .05(iii) to Exchange Rule 1080. The Exchange further believes that the removal of the 15-second prohibition should increase the number of orders handled electronically on the Exchange. Accordingly, the Exchange has determined to eliminate both of these rules.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹² in general, and furthers the objectives of Section 6(b)(5) of the Act¹³ in particular, in that it is

¹⁰ The 15-second restriction is strictly rule based, and the Exchange’s systems do not include an electronic “governor.”

¹¹ An SQT is an ROT who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with the AUTOM System via an Exchange approved proprietary electronic quoting device in eligible options to which the SQT is assigned. See Exchange Rule 1014(b)(ii)(A).

¹² 15 U.S.C. 78s(b).

¹³ 15 U.S.C. 78s(b)(5).

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 market system, and to protect investors and the public interest by increasing the number of orders handled electronically on the Exchange through the elimination of the prohibition against the entry into AUTOM of multiple orders by the same beneficial account owner within a 15-second period.

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

The Phlx 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

No written comments were solicited or 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 Exchange consents, the Commission shall:

- (a) by order approve such proposed rule change; 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. Please include File Number SR-Phlx-2005-20 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-2005-20. 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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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. Copies of such 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-2005-20 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.¹⁴

Jill M. Peterson
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).