

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54267; File No. SR-Phlx-2006-42)

August 3, 2006

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Priority for In-Crowd Participants Respecting Crossing, Facilitation and Solicited Orders in Open Outcry Transactions

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4² thereunder, notice is hereby given that on July 10, 2006, 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. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6)⁴ thereunder, which renders the proposed rule change 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 Phlx proposes to amend Phlx Rule 1014, Commentary .05(c), to afford priority to in-crowd participants over out-of-crowd Streaming Quote Traders (“SQTs”)⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ An SQT is an Exchange Registered Options Trader (“ROT”) who has received permission from the Exchange to generate and submit option quotations electronically through the Automated Options Market (“AUTOM”) in eligible options to which such SQT is assigned. An SQT may only submit such quotations

and Remote Streaming Quote Traders (“RSQTs”)⁶ in crossing,⁷ facilitation⁸ and solicited⁹ orders. The proposed rule change would apply only to such orders that are represented in open outcry with a size of at least 500 contracts on each side. The text of the proposed rule change is set forth below. Proposed new language is in italics.

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Obligations and Restrictions Applicable to Specialists and Registered Options Traders

Rule 1014. (a) - (h) No change.

Commentary:

.01 - .04 No change.

.05 (a) – (b) No change

while such SQT is physically present on the floor of the Exchange. See Phlx Rule 1014(b)(ii)(A).

⁶ An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Phlx Rule 1014(b)(ii)(B).

⁷ A crossing order occurs when an options Floor Broker holds orders to buy and sell the same option series. Such a Floor Broker may cross such orders, provided that the trading crowd is given an opportunity to bid and offer for such option series in accordance with Exchange rules. See Phlx Rule 1064(a).

⁸ A facilitation order occurs when an options Floor Broker holds an options order for a public customer and a contraside order. Such a Floor Broker may execute such orders as a facilitation order, provided that such Floor Broker proceeds in accordance with Exchange rules concerning facilitation orders. See Phlx Rule 1064(b).

⁹ A solicitation occurs whenever an order, other than a cross, is presented for execution in the trading crowd resulting from an away-from-the-crowd expression of interests to trade by one broker dealer to another. See Phlx Rule 1064(c).

(c) Non-Electronic Orders. (i) In the event that a Floor Broker or specialist presents a non-electronic order in a Streaming Quote Option in which an RSQT is assigned, and/or in which an SQT assigned in such Streaming Quote Option is not a crowd participant, such SQT and/or RSQT may not participate in trades stemming from such a non-electronic order unless such non-electronic order is executed at the price quoted by the non-crowd participant SQT and/or RSQT at the time of execution.

(ii) Notwithstanding the foregoing, respecting crossing, facilitation and solicited orders (as defined in Rule 1064) with a size of at least 500 contracts on each side that are represented and executed in open outcry, priority shall be afforded to in-crowd participants over RSQTs and out-of crowd SQTs. Such orders shall be allocated in accordance with Exchange rules.

(iii) The specialist and/or SQTs participating in a trading crowd may, in response to a verbal request for a market by a floor broker, state a bid or offer that is different than their electronically submitted bid or offer, provided that such stated bid or offer is not inferior to such electronically submitted bid or offer, except when such stated bid or offer is made in response to a floor broker's solicitation of a single bid or offer as set forth in Rule 1033(a)(ii).

(iv) For purposes of this Rule, an SQT or non-SQT ROT shall be deemed to be participating in a crowd if such SQT is, at the time an order is represented in the crowd, physically located in a specific "Crowd Area." A Crowd Area shall consist of a specific physical location marked with specific, visible physical boundaries on the options floor, as determined by the Options Committee. An SQT or non-SQT ROT who is physically present in such Crowd Area may engage in options transactions in assigned issues as a

crowd participant in such a Crowd Area, provided that such SQT or non-SQT ROT fulfills the requirements set forth in this Rule 1014. An SQT or non-SQT ROT shall be deemed to be participating in a single Crowd Area.

.06 - .19 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 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. 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 Exchange proposes to amend Phlx Rule 1014, Commentary .05 by affording priority to in-crowd participants over out-of-crowd SQTs and RSQTs in crossing, facilitation and solicited orders represented and executed in open outcry in order to encourage order flow providers to send such orders to the Exchange.

Currently, Commentary .05 to Phlx Rule 1014 provides that, in the event that a Floor Broker or specialist presents a non-electronic order in a Streaming Quote Option in which an RSQT is assigned, and/or in which an SQT assigned in such Streaming Quote Option is not a crowd participant, such SQT and/or RSQT may not participate in trades stemming from such a non-electronic order unless such non-electronic order is executed

at the price quoted by the non-crowd participant SQT and/or RSQT at the time of execution.

The proposal would carve out crossing, facilitation, and solicited orders from the rule. Specifically, the proposed rule would state that, respecting crossing, facilitation and solicited orders with a size of at least 500 contracts on each side that are represented and executed in open outcry, priority would be afforded to in-crowd participants over RSQTs and out-of crowd SQTs. Such orders would be allocated in accordance with Exchange rules.¹⁰ The proposed rule would apply only to crossing, facilitation and solicited orders represented in open outcry, and would not apply to orders submitted electronically via the Exchange's electronic options trading platform, Phlx XL,¹¹ to which other priority rules apply.¹²

Recently, the Exchange adopted another exception to its normal priority rules¹³ concerning open outcry orders, affording priority to in-crowd participants over RSQTs and out-of crowd SQTs in split-price transactions, even when the bid/ask differential is one minimum trading increment.¹⁴

The Exchange believes that the proposed rule should provide greater incentive for order flow providers to submit crossing, facilitation and solicited orders to the Exchange,

¹⁰ The Commentary to Phlx Rule 1064 defines participation guarantees in crossing and facilitation orders, and Phlx Rule 1014(g) sets forth the in-crowd trade allocation algorithm for other orders.

¹¹ See Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR-Phlx-2003-59).

¹² See, e.g., Phlx Rules 1014(g)(vii) and (viii).

¹³ See, e.g., Phlx Rules 119 and 120.

¹⁴ See Securities Exchange Act Release No. 54050 (June 27, 2006), 71 FR 38199 (July 5, 2006) (SR-Phlx-2006-37). See also, Securities Exchange Act Release No. 53874 (May 25, 2006), 71 FR 32171 (June 2, 2006) (SR-Phlx-2006-18).

thus enabling the Exchange to compete with another exchange that has similar rules in effect.¹⁵

The proposed rule would apply only to crossing, facilitation and solicited orders with a size of at least 500 contracts on each side that are represented and executed in open outcry.¹⁶

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁸ in particular, in that 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 adopting a limited exception to the Exchange's priority rules concerning certain order types represented and executed in open outcry.

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

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

¹⁵ See Securities Exchange Act Release No. 51366 (March 14, 2005), 70 FR 13217 (March 18, 2005) (SR-CBOE-2004-75)(CBOE Rule 6.45A affords priority over out-of-crowd participants in all open outcry situations).

¹⁶ Phlx has clarified that the proposed rule change would not provide priority to in-crowd participants' orders over orders on the limit order book, including those orders of non-public customers. Telephone conference on July 18, 2006 among Richard S. Rudolph, Vice President and Counsel, Phlx and Nancy Sanow, Assistant Director, Ira Brandriss, Special Counsel and Mitra Mehr, Special Counsel, Division of Market Regulation, Commission.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 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

No written comments were either solicited or received.

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

Because the foregoing 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 from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act,¹⁹ and Rule 19b-4(f)(6) thereunder.²⁰ 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 furtherance of the purposes of the Act.

A proposed rule change filed under Rule 19b-4(f)(6)²¹ normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),²² the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f)(6).

²¹ 17 CFR 240.19b-4(f)(6).

²² 17 CFR 240.19b-4(f)(6)(iii).

Commission to waive the 30-day pre-operative delay. The Commission believes that such waiver is consistent with the protection of investors and the public interest because it would allow the Phlx to compete with another exchange that provides priority to in-crowd participants.²³ For this reason, the Commission designates the proposed rule change to be effective upon filing with the Commission.²⁴

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. Please include File Number SR-Phlx-2006-42 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-2006-42. This file number should be included on the subject line if e-mail is used. To help the Commission process and

²³ At the Exchange's request, the Commission has waived the five-day pre-notice filing requirement for "non-controversial" proposals. See 17 CFR 240.19b-4(f)(6)(iii).

²⁴ For purposes only of accelerating the operative date of this proposal, the Commission has considered the rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

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. 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-2006-42 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.²⁵

Nancy M. Morris
Secretary

²⁵ 17 CFR 200.30-3(a)(12).