

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50342; File No. SR-Phlx-2004-16)

September 9, 2004

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, by the Philadelphia Stock Exchange, Inc. Relating to Exchange Rules 1083(g) and (h), to Modify the Definitions of “Firm Customer Quote Size” and “Firm Principal Quote Size”

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 February 13, 2004, the Philadelphia Stock Exchange, Inc. (“Phlx” or “Exchange”) submitted to 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 August 11, 2004, the Phlx 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 Phlx proposes to amend its rules relating to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (“Linkage Plan”).

The text of the proposed rule change, as amended, is below. Proposed additions are in italics. Proposed deletions are in [brackets].

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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 Letter from Richard S. Rudolph, Phlx, Director and Counsel to Deborah Lassman Flynn, Assistant Director, Division of Market Regulation, Commission, dated August 10, 2004 (“Amendment No. 1”). In Amendment No. 1, the Phlx amended the proposed rule text to clarify that the general requirement that the Exchange’s Firm Customer Quote Size (“FCQS”) and Firm Principal Quote Size (“FPQS”) be at least 10 contracts would not apply if the Phlx were disseminating a quotation of fewer than 10 contracts. In that case, the Exchange may establish a FCQS or FPQS equal to its disseminated size.

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**Intermarket Linkage****Rule 1083.****Definitions**

The following terms shall have the meaning specified in this Rule solely for the purpose of Rules 1083 through 1087:

- (a) – (f) (No change).
- (g) "Firm Customer Quote Size" with respect to a P/A Order means the lesser of (a) the number of option contracts that the Participant Exchange sending a P/A Order guarantees it will automatically execute at its disseminated price in a series of an Eligible Option Class for Public Customer orders entered directly for execution in that market; or (b) the number of option contracts that the Participant Exchange receiving a P/A Order guarantees it will automatically execute at its disseminated price in a series of an Eligible Option Class for Public Customer orders entered directly for execution in that market. This number shall be at least 10, unless the receiving Participant is disseminating a quotation of less than 10 contracts, in which case this number may equal such quotation size.
- (h) "Firm Principal Quote Size" means the number of options contracts that a Participant Exchange guarantees it will execute at its disseminated price for incoming Principal Orders in an Eligible Option Class. This number shall be at least 10[.], however if the Participant is disseminating a

quotation size of less than 10 contracts, this number may equal such quotation size.

(i) – (u) (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 had 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 purpose of the proposed rule change is to eliminate the requirement that the Phlx members that participate in the Linkage Plan be firm for incoming Principal and Principal Acting as Agent (“P/A”) Orders for a size of at least 10 contracts where the Exchange’s disseminated size is less than 10 contracts. The proposed rule change would allow Phlx members that participate in the Linkage Plan to execute inbound Principal and P/A Orders at their actual disseminated size as opposed to a minimum quote size.<sup>4</sup>

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<sup>4</sup> At the request of the Exchange, this paragraph has been modified to make clear that the proposed rule change applies exclusively to Phlx members. Telephone conversation between Richard S. Rudolph, Director and Counsel, Phlx, and Tim Fox, Attorney, Division of Market Regulation (“Division”), Commission, on September 7, 2004.

The proposed rule change represents another step towards the execution of all order types at the Exchange's disseminated price up to its actual disseminated size, rather than the execution of orders at the Exchange's disseminated price up to an artificially designated size. The Commission has approved several Exchange rule amendments that require Phlx responsible brokers or dealers to be firm for their actual disseminated size,<sup>5</sup> as well as amendments providing automatic executions at the Exchange's disseminated size, rather than a pre-set "AUTO-X guarantee."<sup>6</sup>

The purpose of the instant proposed rule change is to eliminate the artificial 10 contract minimum contained in the definition of "FCQS" and "FPQS" in the Exchange's rules. Specifically, the proposed rule change would allow Phlx members that participate in the Linkage Plan to execute inbound P/A and Principal Orders at the actual size of the disseminated quote.<sup>7</sup> Currently, Exchange Rules 1083(g) and (h) impose the obligation on the Phlx specialist to execute an order at a minimum guaranteed size of 10 contracts despite the fact that the actual disseminated size may be less than 10 contracts.<sup>8</sup> The proposed rule change would permit the

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<sup>5</sup> See Securities Exchange Act Release No. 47646 (April 8, 2003), 68 FR 27610 (May 20, 2003) (SR-Phlx-2003-18).

<sup>6</sup> See Securities Exchange Act Release No. 46886 (November 22, 2002), 67 FR 72015 (December 3, 2002) (SR-Phlx-2002-39).

<sup>7</sup> At the Exchange's request, this sentence was modified to make clear that the proposed rule change would permit the execution of Principal and P/A Orders at the actual disseminated size as opposed to the size of the order. Telephone conversation between Richard S. Rudolph, Director and Counsel, Phlx, and Tim Fox, Attorney, Division, Commission, on September 7, 2004.

<sup>8</sup> Currently, for example, if the Exchange's disseminated size is for 3 contracts and the Phlx receives an inbound eligible P/A or Principal Order with a size of 10 contracts, then Rule 1083 requires that the specialist must execute 10 contracts despite the fact that the Exchange's disseminated size is only 3 contracts.

Phlx to execute inbound Linkage orders at the Exchange's actual disseminated size. The proposed rule change would eliminate the artificial minimum guaranteed size of 10 contracts, and would therefore require Phlx specialists to be firm at the Exchange's disseminated price for their actual disseminated size.

The Exchange believes that executions of Principal and P/A Orders at the Exchange's actual disseminated size should enhance the ability of participants of the Linkage Plan that send Principal and P/A Orders to the Exchange to ascertain the actual number of contracts available at the Exchange's disseminated price, thus resulting in more transparency in the marketplace.

## 2. Statutory Basis

The Phlx believes that the proposed rule is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>10</sup> in particular in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade, by permitting Exchange specialists to provide executions for Linkage Orders at the Exchange's actual disseminated size.

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

The Phlx 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 solicited or received with respect to the proposed rule change.

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

<sup>10</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, 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 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-2004-16 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-2004-16. 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, 450 Fifth Street, NW, Washington, DC 20549. 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-2004-16 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>

Margaret H. McFarland  
Deputy Secretary

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