

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-50856; File No. SR-Phlx-2004-91)

December 14, 2004

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change to Establish a Directed Order Process for Orders Delivered to the Exchange Via AUTOM

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 December 9, 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. 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 1080, Philadelphia Stock Exchange Automated Options Market (AUTOM)<sup>3</sup> and Automatic Execution System (AUTO-X), and Phlx Rule 1014, Obligations And Restrictions Applicable To Specialists And Registered Options Traders, by adopting: (1) new Phlx Rule 1080(l), Directed Orders, under which Exchange specialists,

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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> 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, AUTO-X, 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. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. See Phlx Rule 1080.

Streaming Quote Traders (“SQTs”)<sup>4</sup> and Remote Streaming Quote Traders (“RSQTs”)<sup>5</sup> trading on the Exchange’s electronic options trading platform, Phlx XL,<sup>6</sup> would receive Directed Orders (as defined below); and (2) Phlx Rule 1014(g)(viii), which would set forth the trade allocation algorithm for electronically executed and allocated trades involving Directed Orders. Below is the text of the proposed rule change. Proposed new language is in italics.

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

**Rule 1080.** (a) – (k) No change.

(l) Directed Orders. For a one-year pilot period, beginning on the date of approval of this Rule by the Securities and Exchange Commission, respecting Streaming Quote Options traded on Phlx XL, specialists, RSQTs and SQTs may receive Directed Orders (as defined in this Rule) in accordance with the provisions of this Rule 1080(l).

(i)(A) The term “Directed Order” means any customer order to buy or sell which has been directed to a particular specialist, RSQT, or SQT by an Order Flow Provider, as defined below. To qualify as a Directed Order, an order must be delivered to the Exchange via AUTOM.

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<sup>4</sup> An SQT is an Exchange Registered Options Trader (“ROT”) who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. See Phlx Rule 1014(b)(ii)(A).

<sup>5</sup> An RSQT is a participant in the Exchange’s electronic trading system, “Phlx XL”, who has received permission from the Exchange to trade in options for his own account, and to generate and submit option quotations electronically from off the floor of the Exchange through AUTOM in eligible options to which such RSQT has been assigned.

<sup>6</sup> See Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR-Phlx-2003-59).

(B) The term “Order Flow Provider” (“OFP”) means any member or member organization that submits, as agent, customer orders to the Exchange.

(C) The term “Directed Specialist, RSQT, or SQT” means a specialist, RSQT, or SQT that receives a Directed Order.

(ii) When the Exchange’s disseminated price is the NBBO at the time of receipt of the Directed Order, and the Directed Specialist, SQT or RSQT is quoting at the Exchange’s disseminated price, the Directed Order shall be automatically executed and allocated in accordance with Rule 1014(g)(viii).

(iii) When the Exchange’s disseminated price is the NBBO, and the quotation disseminated by the Directed Specialist, RSQT, or SQT on the opposite side of the market from the Directed Order is inferior to the NBBO at the time of receipt of the Directed Order, the Directed Order shall be automatically executed and allocated to those quotations and orders at the NBBO in accordance with Exchange Rule 1014(g)(vii).

(iv) If the Exchange’s disseminated price is not the NBBO at the time of receipt of the Directed Order, the Directed Order shall be handled by the specialist in accordance with Exchange rules.

**Commentary:** No change.

### **Obligations And Restrictions Applicable To Specialists And Registered Options Traders**

**Rule 1014.** (a) – (f) No change.

(g)(i) – (vii) No change.

(viii) For a one year pilot period, beginning on the date of approval of this Rule by the Securities and Exchange Commission, Directed Orders (as defined in Rule 1080(l)(i)(A)) that are executed electronically shall be automatically allocated as follows:

(A) First, to customer limit orders resting on the limit order book at the execution price.

(B) Thereafter, contracts remaining in the Directed Order, if any, shall be allocated automatically as follows:

(1) The Directed Specialist (where applicable), shall be allocated a number of contracts that is the greater of:

(a) the proportion of the aggregate size at the NBBO associated with such Directed Specialist's quote, SQT and RSQT quotes, and non-SQT ROT limit orders entered on the book via electronic interface at the disseminated price represented by the size of the Directed Specialist's quote;

(b) the Enhanced Specialist Participation as described in Rules 1014(g)(ii) – (iv); or

(c) 40% of the remaining contracts.

(d) Thereafter, SQTs and RSQTs quoting at the disseminated price, and non-SQT ROTs that have placed limit orders on the limit order book via electronic interface at the Exchange's disseminated price shall be allocated contracts according to the following formula:

<u>Equal percentage based on the</u>		<u>Pro rata percentage</u>	
<u>Number of SQTs, RSQTs and</u>		<u>based on size of SQT,</u>	
<u>Non-SQT ROTs quoting or</u>	+	<u>RSQT and non-SQT quotes</u>	x <u>Remaining</u>
<u>with limit orders at BBO</u>		<u>and limit orders</u>	<u>Order Size</u>
<u>(Component A)</u>		<u>(Component B)</u>	

Where:

Component A: The percentage to be used for Component A shall be an equal percentage, derived by dividing 100 by the number of SQTs, RSQTs and non-SQTs quoting or with limit orders at the BBO.

Component B: Size Pro Rata Allocation. The percentage to be used for Component B of the allocation algorithm formula is that percentage that the size of each SQT, RSQT or non-SQT ROT's quote or limit order at the best price represents relative to the total number of contracts in the disseminated quote.

Final Weighting: The final weighting formula shall be determined by a three-member special committee of the Board of Governors, chaired by the Chairman of the Board, and including the Chairman of the Options Committee and one on-floor Governor (the "Special Committee"), and shall be a weighted average of the percentages derived for Components A and B multiplied by the size of the incoming order.

(2) (a) A Directed RSQT or SQT (where applicable) shall be allocated a number of contracts that is the greater of the proportion of the aggregate size at the NBBO associated with such Directed SQT or RSQT's quote, the specialist's quote, other SQT and RSQT quotes, and non-SQT ROT limit orders entered on

the book via electronic interface at the disseminated price represented by the size of the Directed RSQT or SQT's quote at the NBBO, or

(b) 40% of the remaining contracts.

(c) Thereafter, the specialist, SQTs and RSQTs (excluding the Directed SQT or RSQT) quoting at the disseminated price, and non-SQT ROTs that have placed limit orders on the limit order book via electronic interface at the Exchange's disseminated price, shall be allocated a number of contracts according to the following formula:

<u>Equal percentage based on the</u>		<u>Pro rata percentage</u>	
<u>number of SQTs, RSQTs, specialist</u>		<u>based on size of SQT,</u>	
<u>and Non-SQT ROTs quoting or</u>	<u>±</u>	<u>RSQT, specialist and non-SQT</u>	<u>× Remaining</u>
<u>with limit orders at BBO</u>		<u>quotes and limit orders</u>	<u>Order Size</u>
<u>(Component A)</u>		<u>(Component B)</u>	

Where:

Component A: The percentage to be used for Component A shall be an equal percentage, derived by dividing 100 by the number of SQTs, RSQTs (other than the Directed SQT or RSQT) specialist and non-SQTs quoting or with limit orders at the BBO.

Component B: Size Pro Rata Allocation. The percentage to be used for Component B of the allocation algorithm formula is that percentage that the size of each SQT, RSQT, RSQTs (other than the Directed SQT or RSQT), specialist or non-SQT ROT's quote or limit order at the best price represents relative to the total number of contracts in the disseminated quote.

Final Weighting: The final weighting formula shall be determined by a three-member special committee of the Board of Governors, chaired by the Chairman of the Board, and including the Chairman of the Options Committee and one on-floor Governor (the “Special Committee”), and shall be a weighted average of the percentages derived for Components A and B multiplied by the size of the incoming order.

(3) If any contracts remain to be allocated after the specialist, SQTs, RSQTs and non-SQT ROTs with limit orders on the limit order book have received their respective allocations, off-floor broker-dealers (as defined in Rule 1080(b)(i)(C)) that have placed limit orders on the limit order book which represent the Exchange’s disseminated price shall be entitled to receive a number of contracts that is the proportion of the aggregate size associated with off-floor broker-dealer limit orders on the limit order book at the disseminated price represented by the size of the limit order they have placed on the limit order book.

(C) If the Directed Order is for a size that is greater than the Exchange’s disseminated size, remaining contracts shall be allocated manually in accordance with Exchange Rule 1014(g)(v).

(D) A Directed Specialist, RSQT, or SQT shall not be entitled to receive a number of contracts that is greater than the size associated with their quotation. Non-SQT ROTs and off-floor broker-dealers shall not be entitled to receive a number of contracts that is greater than the size associated with their limit order.

(h) No change.

**Commentary:** 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 expand the appeal of Phlx XL by establishing rules that permit specialists, SQTs and RSQTs assigned in options trading on the Phlx XL system (“Streaming Quote Options”) to receive Directed Orders, and to establish a trade allocation algorithm for electronically executed and allocated trades involving Directed Orders that rewards Directed Specialists, SQTs and RSQTs for attracting such order flow to the Exchange.

On July 27, 2004, the Commission approved the Exchange’s proposed rules relating to Phlx XL, an electronic options trading platform in which a new category of Exchange ROT, known as an SQT, is permitted to stream proprietary electronic options quotations into the AUTOM System in options designated as “Streaming Quote Options” (i.e., traded on Phlx XL).<sup>7</sup> Recently, the Exchange filed a proposed rule change to expand the scope of Phlx XL by creating a new category of Phlx XL market making participant, known as an RSQT, who would be

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<sup>7</sup>

See id.

permitted to stream quotations in Streaming Quote Options from off the floor of the Exchange.<sup>8</sup>

Together with that proposed rule change, the Exchange herein proposes to provide a participation guarantee to a Phlx XL participant (i.e., a specialist, SQT or RSQT) that receives a Directed Order from an Order Flow Provider.

### Definitions

Proposed Phlx Rule 1080(l)(i)(A) would define the term “Directed Order” to mean any customer order to buy or sell which has been directed to a particular specialist, RSQT, or SQT by an Order Flow Provider, as defined below. To qualify as a Directed Order, an order must be delivered to the Exchange via AUTOM. The term “Order Flow Provider” (“OFP”) under proposed Phlx Rule 1080(l)(i)(B) would mean any member or member organization that submits, as agent, customer orders to the Exchange. Proposed Phlx Rule 1080(l)(i)(C) defines the term “Directed Specialist, RSQT, or SQT” as a specialist, RSQT, or SQT that receives a Directed Order.<sup>9</sup>

### NBBO Requirement

The Exchange’s AUTOM System currently functions to provide automatic executions in Streaming Quote Options only when the Exchange’s disseminated bid or offer is the National Best Bid or Offer (“NBBO”).<sup>10</sup> Therefore, in order to participate in automatic executions of Directed Orders, a Directed Specialist, SQT or RSQT would be required to be quoting the

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<sup>8</sup> See SR-Phlx-2004-90.

<sup>9</sup> The word “Directed” modifies all three; that is, it is referring to a Directed Specialist, Directed SQT and Directed RSQT.

<sup>10</sup> The Exchange’s automatic execution features under Phlx XL, Book Sweep and Book Match, respectively, are designed to execute trades automatically only when the Exchange’s disseminated bid or offer is at or equal to the NBBO. See Phlx Rules 1080(c)(iii) and 1080(g)(ii).

NBBO at the time the Directed Order is received. The proposed rule change addresses various situations where, at the time of receipt of the Directed Order, the Exchange's disseminated price is at the NBBO, is not the NBBO, and where the Exchange's disseminated price is the NBBO but the Directed Specialist, SQT or RSQT is not quoting at the Exchange's disseminated price.

First, proposed Phlx Rule 1080(l)(ii) would provide that, when the Exchange's disseminated price is the NBBO at the time of receipt of the Directed Order, and the Directed Specialist, SQT or RSQT is quoting at the Exchange's disseminated price, the Directed Order would be automatically executed and allocated in accordance with Phlx Rule 1014(g)(viii), which contains the allocation algorithm for Directed Orders described more fully below.

Second, proposed Phlx Rule 1080(l)(iii) would provide that, when the Exchange's disseminated price is the NBBO, and the quotation disseminated by the Directed Specialist, RSQT, or SQT on the opposite side of the market from the Directed Order is inferior to the NBBO at the time of receipt of the Directed Order, the Directed Order would be automatically executed and allocated to those quotations and orders at the NBBO in accordance with Phlx Rule 1014(g)(vii), which is the trade allocation rule applicable to contracts executed on Phlx XL that are not Directed Orders.<sup>11</sup>

Finally, proposed Phlx Rule 1080(l)(iv) would provide that, when the Exchange's disseminated price is not the NBBO at the time of receipt of the Directed Order, the Directed Order would be handled manually by the specialist in accordance with Exchange rules. In this

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<sup>11</sup> Phlx Rule 1014(g)(vii) sets forth the allocation algorithm applicable to orders that are automatically executed on Phlx XL. Phlx Rule 1014(g)(vii) would continue to apply to orders other than Directed Orders that are automatically executed on Phlx XL. Proposed Phlx Rule 1014(g)(viii) would apply to Directed Orders that are executed automatically on Phlx XL.

situation, the Directed Specialist, SQT or RSQT would not be entitled to receive the participation guarantee contemplated in proposed Phlx Rule 1014(g)(viii), discussed more fully below, because that allocation algorithm applies only to Directed Orders that are executed electronically.

As stated above, one primary purpose of the proposal is to reward Directed Specialists, SQTs and RSQTs for establishing relationships with OFPs that result in a greater number of orders sent to, and executed on, the Exchange. The Exchange believes that the requirement that a Directed Order be executed automatically at the NBBO, and that the Directed Specialist, SQT or RSQT must be quoting the NBBO at the time of receipt of the Directed Order, ensures that the customer order sent by the OFP will receive the best price available.

#### Trade Allocation

Because one of the main purposes of the proposed rule change is to provide incentives and rewards for specialists, SQTs and RSQTs who enter into relationships with OFPs that result in the delivery of Directed Orders to the Exchange, proposed Phlx Rule 1080(g)(viii) would provide a participation guarantee to Directed Specialists, SQTs and RSQTs who establish such relationships and receive Directed Orders in options in which they are assigned.

Quoting Requirement. In order to be entitled to receive the participation guarantee, Directed Specialists, SQTs and RSQTs would have to fulfill the quoting requirements contained in Phlx Rule 1014(b)(ii)(B). Currently, SQTs and RSQTs (as proposed) are responsible to quote continuous, two-sided markets in not less than 60% of the series in each Streaming Quote Option traded on Phlx XL in which such SQT is assigned, while the specialists is required to quote continuous, two-sided markets in not less than 100% of the series in each Streaming Quote

Option in which such specialist is assigned.<sup>12</sup> Like the specialist, however, a Directed SQT or RSQT would be responsible to quote continuous, two-sided markets in not less than 100% of the series in each Streaming Quote Option in which they receive Directed Orders.

Directed Specialist. Under the proposal, a Directed Specialist, where applicable, would be allocated a number of contracts that is the greater of: (1) the proportion of the aggregate size at the NBBO associated with such Directed Specialist's quote, SQT and RSQT quotes, and non-SQT ROT limit orders entered on the book via electronic interface at the disseminated price represented by the size of the Directed Specialist's quote (i.e., their size pro rata share); (2) the Enhanced Specialist Participation as described in Phlx Rules 1014(g)(ii) – (iv);<sup>13</sup> or (3) 40% of the contracts to be allocated.

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<sup>12</sup> See Phlx Rule 1014(b)(ii)(B).

<sup>13</sup> Phlx Rules 1014(g)(ii) - (iv) govern the Enhanced Specialist Participation, under which the specialist is entitled to receive a guaranteed number of contracts in situations where the specialist is on parity (i.e., simultaneously bidding or offering at the same price) with one or more "controlled accounts," defined in Phlx Rule 1014(g)(i)(A) to include any account controlled by or under common control with a broker-dealer. If three or more controlled accounts are on parity with the specialist, the specialist is entitled to receive 30% of the contracts to be allocated. If two controlled accounts are on parity with the specialist, the specialist is entitled to receive 40%, and if only one controlled account is on parity with the specialist, the specialist is entitled to receive 60%.

Another Enhanced Specialist Participation program on the Phlx, originally adopted in May 1994 and embodied in current Phlx Rule 1014(g)(iii), is designed to encourage the establishment of new specialist units to trade options classes that have never been listed on the Exchange. See Securities Exchange Act Release No. 34109 (May 25, 1994), 59 FR 28570 (June 2, 1994) (SR-Phlx-93-29). For a period of six months following the commencement of trading in such a new options class, the new specialist unit is entitled to 50% of an order when one controlled account is on parity with the specialist, and 40% when two or more controlled accounts are on parity with the specialist.

Under Phlx Rule 1014(g)(iv), a specialist who develops and trades a new product is entitled to receive an Enhanced Specialist Participation of 40% when three or more controlled accounts are on parity, and 60% if fewer than three controlled accounts are on parity. Currently, in either of these situations, if a customer is on parity, the customer

Directed SQT or RSQT. A Directed RSQT or SQT, where applicable, would be allocated a number of contracts that is the greater of: (1) their size pro rata share; or (2) 40% of the contracts to be allocated.

Allocation of Remaining Contracts. Remaining contracts (after the Directed Specialist, SQT or RSQT has received their respective allocation) would be allocated in accordance with a formula contained in the rule that substantially tracks the trade allocation formula for contracts executed and allocated automatically in Streaming Quote Options that do not involve Directed Orders. Specifically, part of the contracts remaining after customer orders are filled and after the Directed Specialist, SQT or RSQT has received their guaranteed participation would be allocated on an equal basis among remaining participants on parity, and part of the contracts allocated on a size pro rata basis, and on a weighted basis to be determined by the special ad hoc subcommittee appointed by the Board.<sup>14</sup>

In the case of a trade allocation involving a Directed Specialist, contracts remaining after customer orders at the execution price are executed, and after the Directed Specialist is allocated their guaranteed number of contracts (the “Remaining Order Size”) would be allocated according to the following formula:

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may not receive a smaller participation than any other crowd participant, including the specialist.

<sup>14</sup> See Securities Exchange Act Release No. 50788 (December 3, 2004), 69 FR 71860 (December 10, 2004) (SR-Phlx-2004-57).

Equal percentage based on the		Pro rata percentage	
Number of SQTs, RSQTs and		based on size of SQT,	
Non-SQT ROTs quoting or	+	RSQT and non-SQT quotes	x Remaining
with limit orders at BBO		and limit orders	Order Size
(Component A)		(Component B)	

The percentage to be used for Component A would be an equal percentage, derived by dividing 100 by the number of SQTs, RSQTs and non-SQTs quoting or with limit orders at the BBO. The percentage to be used for Component B of the allocation algorithm formula is the percentage that the size of each SQT, RSQT or non-SQT ROT's quote or limit order at the best price represents relative to the total number of contracts in the disseminated quote.

In the case of a trade allocation involving a Directed SQT or RSQT, contracts remaining after customer orders at the execution price are executed, and after the Directed SQT or RSQT is allocated their guaranteed number of contracts (the Remaining Order Size), would be allocated among the specialist, SQTs and RSQTs (excluding the Directed SQT or RSQT) quoting at the disseminated price, and non-SQT ROTs that have placed limit orders on the limit order book via electronic interface at the Exchange's disseminated price according to the following formula:

Equal percentage based on the		Pro rata percentage	
number of SQTs, RSQTs, specialist		based on size of SQT,	
and Non-SQT ROTs quoting or	+	RSQT, specialist and non-SQT	x Remaining
with limit orders at BBO		quotes and limit orders	Order Size
(Component A)		(Component B)	

The percentage to be used for Component A would be an equal percentage, derived by dividing 100 by the number of SQTs, RSQTs (other than the Directed SQT or RSQT), specialist and non-SQTs quoting or with limit orders at the BBO. The percentage to be used for

Component B of the allocation algorithm formula is the percentage that the size of each SQT, RSQT (other than the Directed SQT or RSQT), specialist or non-SQT ROT's quote or limit order at the best price represents relative to the total number of contracts in the disseminated quote.

In each situation, the final weighting formula as among Component A and Component B would be determined by a three-member special committee of the Board of Governors, chaired by the Chairman of the Board, and including the Chairman of the Options Committee and one on-floor Governor, and shall be a weighted average of the percentages derived for Components A and B multiplied by the size of the incoming order.

Off-Floor Broker-Dealers. If any contracts remain to be allocated after the specialist, SQTs, RSQTs and non-SQT ROTs with limit orders on the limit order book have received their respective allocations, off-floor broker-dealers (as defined in Phlx Rule 1080(b)(i)(C)) that have placed limit orders on the limit order book at the disseminated price would be allocated contracts on a size pro rata basis.

Orders for a size greater than the Exchange's disseminated size. Proposed Phlx Rule 1014(g)(viii)(C) would establish that, if the Directed Order is for a size that is greater than the Exchange's disseminated size, remaining contracts would be allocated in accordance with Phlx Rule 1014(g)(v).<sup>15</sup>

Quotation and limit order size. Proposed Phlx Rule 1014(g)(viii)(D) would provide that a Directed Specialist, RSQT, or SQT would not be entitled to receive a number of contracts that is greater than the size associated with their quotation. Non-SQT ROTs and off-floor broker-

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<sup>15</sup> Phlx Rule 1014(g)(v) sets forth the rules and contract allocation algorithm for trades that are executed in the trading crowd.

dealers shall not be entitled to receive a number of contracts that is greater than the size associated with their limit order.

One-Year Pilot Basis. The proposal would be effective on a one-year pilot basis, beginning on the date of Commission approval of proposed Phlx Rules 1080(l) and 1014(g)(viii).<sup>16</sup>

The Exchange believes that the participation guarantees included in proposed Phlx Rule 1014(g)(viii) should reward specialists, SQTs and RSQTs that actively engage in marketing activities and establish relationships with OFPs that generate Directed Orders sent to the Exchange by such OFPs. The Exchange expects such marketing activities and relationships would result in additional order flow to the Exchange, thus adding depth and liquidity to the Exchange's markets, and enabling the Exchange to continue to compete effectively with other options exchanges for order flow.

## 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 the national market system, protect investors and the public interest and promote just and equitable principles of trade, by permitting specialists, SQTs and RSQTs trading options on Phlx XL participants to receive Directed

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<sup>16</sup> The Exchange notes that another options exchange has filed a proposed rule change to establish a "preferred" market maker order type, which would afford participation guarantees to such "preferred" market maker, on a one-year pilot basis. See Securities Exchange Act Release No. 50732 (November 23, 2004), 69 FR 69967 (December 1, 2004) (SR-CBOE-2004-71).

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

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

Orders, and by encouraging the capture of order flow on the Exchange by rewarding Directed Order recipients with a participation guarantee in trades involving Directed Orders.

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 solicited or received with respect to the proposed rule change.

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; or
- (B) institute proceedings to determine whether the proposed rule change 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-2004-91 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-2004-91. 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 publicly available. All submissions

should refer to File Number SR-Phlx-2004-91 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>19</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).