

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50958; File No. SR-Phlx-2004-93)

January 4, 2005

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. to Eliminate the Maximum Order Delivery Size Over the AUTOM System

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 December 15, 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 is proposing to adopt amendments to Phlx Rules 1080(b)(i)(A), (B), and (C), Philadelphia Stock Exchange Automated Options Market (AUTOM)³ and Automatic Execution System (AUTO-X), reflecting a system change that would eliminate the maximum eligible order size of 5,000 contracts for delivery on the AUTOM System. Under the proposal, there would no longer be any limitation on the size of orders eligible for delivery via AUTOM.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 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 Exchange Rule 1080.

Below is the text of the proposed rule change. Proposed deletions are bracketed.

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

Rule 1080. (a) No change.

(b) Eligible Orders

(i) The following types of orders are eligible for entry into AUTOM:

(A) Agency orders [up to the maximum number of contracts permitted by the Exchange] may be entered. [Agency orders up to 5,000 contracts, depending on the option, are eligible for AUTOM order delivery, subject to the approval of the Options Committee.] The following types of agency orders are eligible for AUTOM; day, GTC, Immediate or Cancel (“IOC”), market, limit, all or none, or better, simple cancel, simple cancel to reduce size (cancel leaves), cancel to change price, cancel with replacement order, and possible duplicate orders.

(B) Respecting non-Streaming Quote Options, on-floor orders for the proprietary account(s) of non-SQT ROTs and specialists via electronic interface with AUTOM may be entered[, up to the maximum number of contracts permitted by the Exchange], subject to the restrictions on order entry set forth in Commentary .04 of this Rule. [Orders up to 5,000 contracts, depending on the option, are eligible for AUTOM order delivery.] The following types of orders for the proprietary account(s) of ROTs and specialists are eligible for entry via electronic interface with AUTOM: GTC, day limit and simple cancel.

(C) Off-floor broker-dealer limit orders[, up to the minimum number of contracts permitted by the Exchange], subject to the restrictions on order entry set forth in Commentary .05 of this Rule, may be entered. [Generally, orders up to 5,000 contracts, depending on the option, are eligible for AUTOM order delivery on an issue-by-issue basis, subject to the approval

of the Options Committee. The Options Committee may determine to increase the eligible order delivery size to an amount greater than 5,000 contracts, on an issue-by-issue basis.] The following types of broker-dealer limit orders are eligible for AUTOM: day, GTC, IOC, simple cancel, simple cancel to reduce size (cancel leaves), cancel to change price, cancel with replacement order. For purposes of this Rule 1080, 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.

(ii) and (iii) No change.

(c) - (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 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 that are eligible for delivery over the AUTOM System by eliminating the current 5,000 contract maximum size limitation on orders delivered via AUTOM.

Currently, Exchange Rules 1080(b)(i)(A), (B), and (C) establish a maximum eligible size of 5,000 contracts for orders delivered via AUTOM. Orders delivered via AUTOM with a size greater than 5,000 contracts are currently routed back to the point of origin of the order (i.e., to the member or member organization that delivered the order), or to a Floor Broker designated by the member or member organization that delivered the order. The proposed rule change would eliminate any limitation on the eligible size of AUTOM-delivered orders; thus, eligible orders of any size could be delivered via AUTOM.

The Exchange believes that the elimination of the 5,000 contract maximum eligible AUTOM order delivery size should result in a greater number of orders and contracts delivered via the AUTOM System, which should result in a greater number of orders received and handled electronically on the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act⁵ in particular, in that it is designed to perfect the mechanisms of a free and open market and the national market system,

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

protect investors and the public interest and promote just and equitable principles of trade, by eliminating the maximum size limitation for orders delivered via AUTOM, thus allowing eligible orders of any size to be delivered electronically to the Exchange via AUTOM.

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 by the Exchange.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁶ and Rule 19b-4(f)(5)⁷ thereunder. The Phlx has represented that the proposal effects a change in an existing order-entry or trading system of a self-regulatory organization that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system. At any time within 60 days of the filing of such 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 or for the protection of investors, or otherwise in furtherance of the purposes of the Act.

⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

⁷ 17 CFR 19b-4(f)(5).

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-2004-93 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-2004-93. 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. 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-2004-93 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.⁸

Jill M. Peterson
Assistant Secretary

⁸ 17 CFR 200.30-3(a)(12).