

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51064; File No. SR-Phlx-2004-73)

January 21, 2005

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendments No. 1 and 2 thereto to Require the Immediate Display of Customer Options Limit Orders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on November 3, 2004, the Philadelphia Stock Exchange, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been substantially prepared by the Exchange. Phlx filed Amendment No. 1 to the proposed rule change on January 13, 2005,<sup>3</sup> and filed Amendment No. 2 to the proposed rule change on January 19, 2005.<sup>4</sup> The Commission is publishing this notice to solicit comment on the proposed rule change, as amended, from interested persons, and at the same time is granting accelerated approval to the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to amend Phlx Rules 1014, 1063 and 1080, and to delete Option Floor Procedure Advice A-1, to: (1) reflect that the Exchange’s Automated Options Market

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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 Amendment No. 1, dated January 13, 2005, submitted by Richard S. Rudolph, Director and Counsel, Phlx (“Amendment No. 1”). In Amendment No. 1, Phlx proposes clarifying language to be included in the previously submitted proposed rules.

<sup>4</sup> See Amendment No. 2, dated January 19, 2005, submitted by Richard S. Rudolph, Director and Counsel, Phlx (“Amendment No. 2”). In Amendment No. 2, Phlx proposes a minor modification to the previously submitted proposed rules.

(“AUTOM”) System,<sup>5</sup> and not the specialist, will immediately display the full price and size of any limit order that establishes the Exchange’s disseminated price or increases the size of the Exchange’s disseminated bid or offer, subject to certain exemptions; and (2) establish new rules that require Exchange Registered Options Traders (“ROTs”) and Floor Brokers to place limit orders on the limit order book electronically.

The text of the proposed rule change, as amended, follows. Additions are in italics. Deletions are in [brackets].

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**Rule 1014. Obligations And Restrictions Applicable To Specialists And Registered Options Traders**

(a) – (h) No Change.

***Commentary:***

.01 - .17 No change.

.18. An ROT who wishes to place a limit order on the limit order book must submit such a limit order electronically.

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**Rule 1063. Responsibilities of Floor Brokers**

(a) – (e) No change.

***Commentary:***

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<sup>5</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.

.01. A Floor Broker who wishes to place a limit order on the limit order book must submit such a limit order electronically through the Options Floor Broker Management System.

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**Rule 1080. Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X)**

(a)-(b) No change

(c) AUTO-X. \* \* \*

(i) – (iii) No change.

(iv) Except as otherwise provided in this Rule, in the following circumstances, an order otherwise eligible for automatic execution will instead be manually handled by the specialist:

(A) – (C) No change.

(D) when the [specialist posts] Exchange's best [a] bid or offer is represented by a limit order on the book [that is better than the specialist's own bid or offer] (except with respect to orders eligible for "Book Sweep" as described in Rule 1080(c)(iii) above, and "Book Match" as described in Rule 1080(g)(ii) below);

(E) – (H) No change.

(d)-(k) No change

***Commentary:***

.01 No change.

.02 The Electronic Order Book is the Exchange's automated [specialist] limit order book, which automatically routes all unexecuted AUTOM orders to the book and displays orders real-time in order of price/time priority. [Orders not delivered through AUTOM may also be entered onto the Electronic Order Book.]

(a) (i) Except as provided in sub-paragraph (a)(ii) below, the AUTOM System will immediately display the full price and size of any limit order that establishes the Exchange's disseminated price or increases the size of the Exchange's disseminated bid or offer.

(ii) The AUTOM System will not display:

(A) an order executed upon receipt;

(B) an order where the customer who placed it requests that it not be displayed, and upon representation of such order in the trading crowd the Floor Broker announces in public outcry the information concerning the order that would be displayed if the order were subject to being displayed;

(C) a customer limit order for which, immediately upon receipt, a related order for the principal account of the specialist, reflecting the terms of the customer order, is routed to another options exchange;

(D) orders received before or during a trading rotation, however, such limit orders will be displayed immediately upon conclusion of the applicable rotation if they represent the Exchange's best bid or offer;

(E) the following order types as defined in Rule 1066: Contingency Orders; One-Cancels-the-Other Orders; Hedge Orders (e.g., spreads, straddles, combination orders); Synthetic Options;

(F) Immediate or Cancel ("IOC") orders.

(b) Limit orders may only be placed on the limit order book by: (i) an ROT via electronic interface with AUTOM pursuant to Rule 1014, Commentary .18; (ii) a Floor Broker using the Options Floor Broker Management System (as described in Commentary .06 below); or (iii) the AUTOM System for eligible customer and off-floor broker-dealer limit orders.

(c) A limit order to be executed manually by the specialist pursuant to Rule 1080(c)(iv) will be displayed automatically by the AUTOM System until such limit order is executed or cancelled. If such limit order is partially executed, the AUTOM System will automatically display the actual number of contracts remaining in such limit order.

.03 No change.

.04 ROT Limit Orders. \* \* \*

Not later than ten days following approval by the Securities and Exchange Commission of the rules applicable to the Exchange's electronic trading platform, Phlx XL, the Exchange will commence the initial deployment of Phlx XL by allowing specialists and ROTs who are Streaming Quote Traders ("SQTs," as defined in the Phlx XL rules) to submit electronic quotations in Streaming Quote Options (as defined in the Phlx XL rules), and ROTs who are not SQTs to submit limit orders onto the limit order book via electronic interface with AUTOM [or manually through a Floor Broker or the Specialist]. Eligible incoming orders and quotations will automatically execute against quotations of specialists and SQTs and orders of ROTs in accordance with the functionality of the Phlx XL system, as set forth in the Phlx XL rules.

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.05 - .07 No change.

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**Option Floor Procedure Advices. A-1: Reserved [Responsibility of Displaying Best Bids and Offers**

(a) A Specialist shall use due diligence to ensure that the best available bid and offer is displayed for those option series in which he is assigned.

Bids and offers for the Specialist's own account, bids and offers on the book, and bids and offers established in the crowd are deemed available for display purposes.

(b) After voicing a bid/offer, the Floor Broker or ROT shall use due diligence to inform the Specialist when s/he is no longer bidding/offering at that price. Specifically, the Floor Broker or ROT must immediately inform the Specialist when s/he is “out” of that bid/offer, including due to an execution or departure from the crowd.

FINE SCHEDULE (Implemented on a two-year running calendar basis)

A-1

1st Occurrence	\$250.00
2nd Occurrence	\$500.00
3rd Occurrence	\$1,000.00
4th Occurrence and Thereafter	Sanction is discretionary with Business Conduct Committee]

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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, as amended, 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 III 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, as amended, is to establish Phlx rules that reflect the immediate, automatic display of limit orders (with certain exemptions as described below), and to require that Phlx ROTs and Floor Brokers who wish to place limit orders on the limit order book do so electronically.

Currently, Exchange Options Floor Procedure Advice (“OFPA”) A-1<sup>6</sup> requires the specialist to use due diligence to ensure that the best available bid and offer is displayed for those option series in which he is assigned, including limit orders that represent the Exchange’s best bid or offer. However, due to the recently enhanced display functionality of the AUTOM System, the Exchange is proposing to remove this responsibility from the specialist and to fully automate that process. Accordingly, the proposal would delete OFPA A-1 in its entirety.

The Exchange also proposes to adopt Commentary .02(a) to Phlx Rule 1080 to provide generally that the AUTOM System will immediately<sup>7</sup> display the full price and size of any limit order that establishes the Exchange’s disseminated price or increases the size of the Exchange’s disseminated bid or offer. The proposal would delete the current provision in Commentary .02 that states that orders not delivered through AUTOM may also be entered onto the Electronic Order Book, because this can no longer be done manually.

Consistent with the full automation of the display of limit orders on the limit order book, the Exchange proposes to adopt Commentary .02(b) to clarify that limit orders may be placed on the limit order book only by: (i) an ROT via electronic interface with AUTOM pursuant to Phlx Rule 1080, Commentary .18;<sup>8</sup> (ii) a Floor Broker using the Options Floor Broker Management

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<sup>6</sup> See Securities Exchange Act Release Nos. 21760 (February 14, 1985), 50 FR 7248 (February 21, 1985) (SR-Phlx-84-13); 39754 (March 13, 1998), 63 FR 13901 (March 23, 1998) (SR-Phlx-97-53); and 44537 (July 11, 2001), 66 FR 37511 (July 18, 2001) (SR-Phlx-2001-36).

<sup>7</sup> The Exchange represents that, for the purposes of this rule, “immediately” display means that the AUTOM System will display eligible orders not subject to an exemption automatically and instantaneously upon receipt. Telephone call between Rick Rudolph, Director and Counsel, Phlx, and Nathan Saunders, Attorney, Division of Market Regulation (“Division”), Commission, November 8, 2004.

<sup>8</sup> In November, 2002, the Commission approved the Exchange's proposal to allow on-floor, in-crowd ROTs to place electronic price improving limit orders on the limit order book via electronic interface with AUTOM (“ROT Access”). See Securities Exchange

System pursuant to Phlx Rule 1063, Commentary .01;<sup>9</sup> or (iii) the AUTOM System for eligible customer and off-floor broker-dealer limit orders.<sup>10</sup> In conjunction with this rule, the Exchange proposes to adopt Commentary .18 to Phlx Rule 1014, to require an ROT who wishes to place a limit order on the limit order book to submit such a limit order electronically, and Commentary .01 to Phlx Rule 1063, to establish that a Floor Broker who wishes to place a limit order on the limit order book must submit such a limit order electronically through the Options Floor Broker Management System. The proposed rule change would delete the provision currently contained in Commentary .04 to Phlx Rule 1014 that an ROT may place a limit order onto the limit order book manually through a Floor Broker or the specialist.

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Act Release No. 46763 (November 1, 2002), 67 FR 68898 (November 13, 2003) (SR-Phlx-2002-04). The rules governing ROT Access were amended in July 2004 in the Phlx XL proposal by eliminating the requirement that ROT limit orders placed on the limit order book under ROT Access be price-improving limit orders. See Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR-Phlx-2003-59).

<sup>9</sup> The Options Floor Broker Management System is a component of AUTOM designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. The Options Floor Broker Management System also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. See Phlx Rule 1080, Commentary .06.

<sup>10</sup> Off-floor broker-dealers may deliver limit orders for entry onto the limit order book via AUTOM. See Phlx Rule 1080(b)(i)(C). The Exchange represents that orders that are not eligible for routing through the AUTOM System would be rejected and sent back either (a) to the firm that submitted the order, for reentry, or (b) to the Floor Broker who submitted the order, to be represented using the Options Floor Broker Management System. Telephone call between Rick Rudolph, Director and Counsel, Phlx, and Nathan Saunders, Attorney, Division, Commission, November 8, 2004.



Additionally, because the specialist would no longer have the ability to post a limit order, the Exchange proposes to amend Phlx Rule 1080(c)(iv)(D), which currently provides that an order otherwise eligible for automatic execution is instead handled manually by the specialist “when the specialist posts a bid or offer that is better than the specialist’s own bid or offer.” Currently, Phlx Rule 1080(c)(iv)(D) states that the specialist will handle an order otherwise eligible for automatic execution manually in this situation, except with respect to orders eligible for Book Sweep, where an automatic execution occurs when a contra-side quotation that matches a limit order on the book results in an execution at the NBBO,<sup>11</sup> and Book Match, where an automatic execution occurs when an inbound contra-side order that matches a limit order on the book results in an execution at the NBBO.<sup>12</sup> To accurately reflect that the specialist can no longer “post” a bid or offer (as described above), the Exchange proposes to amend Phlx Rule 1080(c)(iv)(D) to provide that an order otherwise eligible for automatic execution would instead be handled manually by the specialist when the Exchange’s best bid or offer is represented by a limit order on the book. While generally a limit order on the book would be eligible for automatic execution by way of Book Match or Book Sweep, Phlx Rule 1080(c)(iv)(D) is still necessary, because the specialist still would handle an order manually when a ROT or a Floor Broker in the trading crowd verbally announces to the specialist that he/she intends to trade against the limit order on the book representing the Exchange’s best bid or offer. While the specialist no longer has the ability to “post” a limit order on the limit order book, the specialist would continue to have the ability to execute such an order, once it is placed on the limit order book electronically, against the ROT or Floor Broker’s order, by pointing and clicking on the

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<sup>11</sup> See Phlx Rule 1080(c)(iii).

<sup>12</sup> See Phlx Rule 1080(g)(ii).

limit order on the book and entering the contra-side account number against which the limit order on the book will trade.

The proposed rule change also includes in Commentary .02(c) a provision that limit orders to be executed manually by the specialist pursuant to Phlx Rule 1080(c)(iv)<sup>13</sup> would be displayed automatically by the AUTOM system until the limit order is executed or cancelled. If a limit order is partially executed, the AUTOM System would automatically display the actual number of contracts remaining in the limit order.

Finally, the proposed rule change would establish certain exemptions, or partial exemptions, to the limit order display rule. The proposed exemptions provide that AUTOM will not display: (a) limit orders executed upon receipt; (b) a limit order where the customer who placed it requests that it not be displayed, and upon representation of such order in the trading crowd the Floor Broker announces in public outcry the information concerning the order that would be displayed if the order were subject to being displayed; (c) a customer limit order for which, immediately upon receipt, a related order for the principal account of the specialist, reflecting the terms of the customer order, is routed to another options exchange; (d) a limit order received before or during a trading rotation<sup>14</sup> (however, such limit orders will be displayed immediately upon conclusion of the applicable rotation if they represent the Exchange's best bid or offer); (e) certain contingent and complex order types defined in Phlx Rule 1066, as discussed more fully below; and (f) immediate or cancel limit orders.

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<sup>13</sup> Phlx Rule 1080(c)(iv) enumerates a variety of circumstances under which orders otherwise eligible for automatic execution are instead handled manually by the specialist.

<sup>14</sup> During a trading rotation, the specialist attempts to find the opening price and until the opening price is established, there is no disseminated market. Once the trading rotation ends and regular trading begins, limit orders received before or during the trading rotation that are not executed at the opening price and remain on the limit order book will be displayed if they represent the Exchange's best bid or offer.

Generally, Phlx has proposed exemptions or partial exemptions for certain types of contingent and complex orders because these order types, by definition, are priced in a way that is dependent on a condition or another variable, such that displaying the price of such an order without the other information would not accurately reflect that trading interest.

**Contingency Orders (Phlx Rule 1066(c)):** These orders are contingent upon a condition being satisfied, and are not executable until the prerequisite condition is satisfied. Phlx Rule 1066(c) contains the following types of contingency orders eligible for delivery via AUTOM that would not be immediately displayed under the proposal: stop (stop-loss), stop-limit, all-or-none, market-on-close, and cancel-replacement orders.

**Stop (Stop-Loss) and Stop Limit Orders (Phlx Rule 1066(c)(1)):** These orders are not executable until the market reaches a specified price that “elects” the order, at which point they convert to a market order. As such, they are not available to trade and have no standing in the quoted markets until the specified price is reached. A trade or a quote can be the “triggering” event for the election of a stop order. Because they convert to market orders upon the triggering event, stop orders cannot then be subject to the display requirement.

A stop-limit order is not "triggered" until the option contract trades or is bid (offered) at or above (below) the stop price, at which point it converts to a limit order. As such, a stop-limit order has no standing in the quoted markets until the specified price trigger is reached. Once triggered, the stop-limit order converts to a limit order, and thus would be subject to display.

**All-or-None Orders (Phlx Rule 1066(c)(4)):** While an all-or-none order can be a limit order, instructions require the order be executed in its entirety or not at all. The Commission's

Display Rule, applicable to customer limit orders received in the equity market, also provides an exemption for all-or-none orders.<sup>15</sup>

**Market-on-Close Orders (Phlx Rule 1066(c)(6)):** These orders may have a limit price attached, but are not eligible for representation until the close of trading is imminent. Regardless of the time at which a market-on-close order is entered, the floor broker is required to hold such an order, and is precluded from representing it, until as near as possible to the close of trading. Furthermore, because representation and execution of these orders must occur on or as near to the close of trading as possible, it would be difficult if not impossible to determine whether members met an appropriate display standard for such orders.

**Cancel-Replacement Order (Phlx Rule 1066(c)(7)):** A cancel-replacement order is a contingency order consisting of two or more parts which require the immediate cancellation of a previously received order prior to the replacement of a new order with new terms and conditions. If the previously placed order is already filled partially or in its entirety, the replacement order is automatically canceled or reduced by the number of contracts partially filled. AUTOM would not immediately display all parts of the cancel-replacement order, but rather would display only the order that remains after the previously received order is cancelled.

In addition to contingency orders, the Exchange also proposes to establish an exemption for one-cancels-the-other orders, hedge orders and synthetic options.

**One-Cancels-the-Other Orders (Phlx Rule 1066(e)):** A one-cancels-the-other order is comprised of two or more orders treated as a collective unit. The execution of any one of the component orders cancels the other(s). If the specialist cannot execute any of the orders upon receipt, then none can be displayed or booked as doing so could result in the approximate

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<sup>15</sup> See 17 CFR 240.11Ac1-4(c)(7).

simultaneous execution of more than one component order, in direct contravention of the primary order condition.

**Hedge Orders (Phlx Rule 1066(f)) and Synthetic Options (Phlx Rule 1066(g)):**

Hedge orders (e.g., spreads, straddles, and combination orders) and synthetic options are orders that specify instructions to trade more than one options series or product as a package, typically (with respect to hedge orders) at a specified net debit or credit, as opposed to a specific limit price for each leg involved. Therefore, there is no specified limit price for each series involved to display in the quotes. Moreover, the Options Price Reporting Authority (“OPRA”) does not accept complex order quotes at net prices. Therefore, these orders would not be displayed. Each component of these complex orders is, in essence, itself contingent on the ability to execute the other components of the order. Since there is no guarantee that all components will become executable at the same time, if at all, the immediate display of all components could result in the execution of less than all components of the order.

**Immediate or Cancel Orders:** An immediate or cancel order is a market or limit order which is to be executed in whole or in part as soon as such order is represented in the trading crowd. Any portion not executed is to be cancelled, which means it cannot be displayed. An immediate or cancel order shares most of the same characteristics of an all-or-none order, which is exempt from the Commission's Display Rule.<sup>16</sup> Given the similarity between these order types, the Exchange believes that immediate or cancel orders should also be exempt from the requirements of the Exchange’s limit order display rule.

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<sup>16</sup> See supra note 15 and accompanying text.

## 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 promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest, by establishing rules requiring the immediate automated display of limit orders on the Exchange, and by requiring ROTs and Floor Brokers to place limit orders on the book electronically, which should enhance transparency on the Exchange and should enhance the Exchange's ability to provide an electronic audit trail respecting the immediate display of limit 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 either solicited or received.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether they are consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic comments:

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

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

- 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-2004-73 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-2004-73. 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 such filing also will be available for inspection and copying at the principal office of the Exchange. 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-2004-73 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>19</sup> and, in particular, the requirements of Section 6(b)(5) of the Act,<sup>20</sup> which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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. Specifically, the Commission believes that the immediate display of customer options limit orders that improve the price or size of the best disseminated Phlx quote should promote transparency and enhance the quality of executions of customer limit orders on the Phlx.

The proposed amendments to Phlx rules introduce requirements for limit order display that are comparable to the requirements of the Commission's Display Rule, Rule 11Ac1-4 under the Act,<sup>21</sup> which is applicable to customer limit orders received in the equity market. The Exchange has represented that immediate display of limit orders by the AUTOM system means that eligible limit orders will be displayed automatically and instantaneously, as soon as the order is received on the Exchange. Proposed commentaries .02(b) to Phlx Rule 1080, .18 to Phlx Rule 1014, and .01 to Phlx Rule 1063 provide that the only way limit orders may be sent to the Exchange will be electronically via AUTOM, either by an ROT via electronic interface with

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<sup>19</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>20</sup> 15 U.S.C. 78f(b)(5).

<sup>21</sup> 17 CFR 240.11Ac1-4.



AUTOM, by a Floor Broker via the Options Floor Broker Management System component of AUTOM, or by off-floor broker-dealers who transmit orders via AUTOM. Thus, under Phlx's system, all limit orders subject to display must be delivered electronically to the Exchange, and would then be displayed automatically and instantaneously.

The Commission believes that the Exchange's proposal to exempt all-or-none and immediate or cancel orders from the Phlx's limit order display rule is reasonable since these order types are either identical or substantially similar to order types exempt from the Commission's Display Rule.

The Commission also believes that it is consistent with the Act for the Phlx to exempt from the limit order display requirements under its rules stop-limit and stop or stop-loss orders. These orders are contingent orders that are subject to a particular triggering event and, thus, are not available for execution until the triggering event occurs. A stop-loss order becomes a market order when triggered and thus is not subject to the Phlx's limit order display rule because such an order would then be immediately executable. A stop-limit order becomes a limit order when the triggering event occurs. This limit order would be subject to display under the Phlx's rules.

Cancel-replacement orders may be reduced in size if the order intended to be cancelled and replaced has already been filled partially or in its entirety. Thus, a cancel-replacement order would not be immediately displayed, but would be subject to display only after any necessary adjustments were made as a result of the contingency.

Market-on-close orders may not be represented, displayed or booked until as near as possible to the close of trading, and, therefore, the Commission believes it is reasonable to exempt such orders from the Phlx's limit order display rule. Hedge orders (e.g., spread, straddle, and combination orders), synthetic options and one-cancels-the-other orders are complex orders with more than one component and, thus are not suitable for display.

In addition, during a trading rotation, Phlx systems attempt to set an opening price for the series. Until that opening price is established, there is no disseminated market. Therefore, it is reasonable to exempt orders received during a trading rotation from the Exchange's limit order display rule. The Commission notes, however, that once the trading rotation ends, any orders not executed would then be subject to display.

Finally, the Exchange proposes to exempt from its limit order display rule customer limit orders for which, immediately upon receipt, a related order for the principal account of the specialist, reflecting the terms of the customer order, is routed to another options exchange. The Commission believes it is reasonable to exempt such orders since they are subject to execution upon receipt at the other options exchange. Moreover, the Exchange represents that if the order delivered to the other options exchange were canceled, in whole or in part, by the other exchange, then, immediately upon receipt of the cancellation notice, the original customer order would be subject to the Exchange's limit order display rule and automatically displayed.<sup>22</sup>

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the proposal is published in the Federal Register, pursuant to Section 19(b)(2) of the Act.<sup>23</sup> The Commission notes that the proposed rule change, which provides for immediate display of limit orders that better the Exchange's disseminated quote, is substantially identical to the proposals filed by the Chicago Board Options Exchange ("CBOE")<sup>24</sup> and the

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<sup>22</sup> Telephone conversation between Richard S. Rudolph, Director and Counsel, Phlx, and Nathan Saunders, Attorney, Division, Commission, January 14, 2005.

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</sup> See Securities Exchange Act Release No. 49916 (June 25, 2004), 69 FR 40422 (July 2, 2004) (SR-CBOE-2004-35).

American Stock Exchange (“Amex”),<sup>25</sup> although the form of Phlx’s proposed rule differs slightly.<sup>26</sup> Phlx also proposes several exemptions to its limit order display rule. The Commission notes that these exemptions, discussed above, are substantially identical to exemptions proposed by CBOE and Amex in their options limit order display proposals. The Amex and CBOE proposals were recently noticed for full 21-day comment periods.<sup>27</sup> No comments were received on the CBOE or Amex proposal.

Accelerated approval of the proposed rule change will permit the Exchange to implement the proposal in an expeditious manner, *i.e.*, simultaneously with the implementation of the similar proposals by CBOE, Amex and the Pacific Exchange, Inc. (“PCX”), which we also approve today.<sup>28</sup> The Commission, therefore, believes that good cause exists, consistent with Section 6(b)(5)<sup>29</sup> and Section 19(b)<sup>30</sup> of the Act, to accelerate approval of the proposed rule change.

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<sup>25</sup> See Securities Exchange Act Release No. 50188 (August 12, 2004), 69 FR 51495 (August 19, 2004) (SR-Amex-00-27).

<sup>26</sup> CBOE and Amex seek to place an affirmative display obligation on their Designated Primary Market-makers and Specialists respectively, whereas Phlx’s proposed rule provides for automatic display via the AUTOM system.

<sup>27</sup> See *supra* notes 24 and 25.

<sup>28</sup> See Securities Exchange Act Release Nos. 51063 (January 21, 2005) (order approving SR-CBOE-2004-35); 51062 (January 21, 2005) (order approving SR-Amex-00-27); and 51061 (January 21, 2005) (order approving SR-PCX-00-15).

<sup>29</sup> 15 U.S.C. 78f(b)(5).

<sup>30</sup> 15 U.S.C. 78s(b).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>31</sup> that the proposed rule change, as amended (File No. SR-Phlx-2004-73), be approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>32</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>31</sup> Id.

<sup>32</sup> 17 CFR 200.30-3(a)(12).