

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52175; File No. SR-Phlx-2005-26)

July 29, 2005

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to the Exchange's Trade-Through and Locked Markets Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 26, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx") 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. On July 21, 2005, the Phlx filed Amendment No. 1 to the proposed rule change.³ 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 two of its rules relating to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Plan").⁴ Specifically, Phlx

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Form 19b-4 dated July 21, 2005 ("Amendment No. 1"). In Amendment No. 1, the Phlx revised the rule text to use terms consistent with Phlx's current rules and to be consistent with the language of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage, and made clarifying changes in the description of the substance of the proposed rule change and the purpose and statutory basis sections.

⁴ See Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001) (Amendment to Plan to Conform to the Requirements of Securities Exchange Act Rule 11Ac1-7); 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (Order approving the Phlx as a Participant in the Plan); and 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (Approval of the Plan).

Rule 1083(t) concerning the definition of “Trade-Through” would be amended to reflect that a Participant in the Plan (“Participant Exchange”)⁵ may trade an order at a price that is one-tick inferior to the National Best Bid or Offer (“NBBO”) if a Linkage Order⁶ is transmitted to the Participant Exchange(s) that are disseminating the NBBO to satisfy all interest at the NBBO price (“trade and ship”).

The Phlx further proposes to amend Phlx Rule 1086, Locked and Crossed Markets, to provide that the rule requiring an Eligible Market Maker⁷ or a member other than an Eligible

⁵ Phlx Rule 1083(o) defines a “Participant Exchange” as a registered national securities exchange that is a party to the Plan.

⁶ The term “Linkage Order” means an Immediate or Cancel order routed through the Linkage as permitted under the Plan. There are three types of Linkage Orders:

- (i) “Principal Acting as Agent (“P/A”) Order,” which is an order for the principal account of a specialist (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent;
- (ii) “Principal Order,” which is an order for the principal account of an Eligible Market Maker and is not a P/A Order; and
- (iii) “Satisfaction Order,” which is an order sent through the Linkage to notify a member of another Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

See Phlx Rule 1083(k).

⁷ Phlx Rule 1083(e) defines an “Eligible Market Maker” as, with respect to an Eligible Option Class, a specialist or Registered Options Trader (“ROT”) that:

- (i) is assigned to, and is providing two-sided quotations in, an Eligible Option Class;
- (ii) is in compliance with the requirements of Rule 1087 (concerning the limitation on Principal Order access);
- (iii) is participating in the Exchange’s AUTOM system in such Eligible Option Class; and
- (iv) has a clearing arrangement with a clearing firm that is a member of the exchange to which such specialist or ROT sends a Linkage Order.

Market Maker, that locks or crosses a market to unlock/uncross the market does not apply to the situation where an Eligible Market Maker or a member other than an Eligible Market Maker, books an order that would lock a market and contemporaneously sends through the Linkage⁸ a P/A Order or Principal Order to such other market for the full size of the bid or offer that was locked (“book and ship”). The text of the proposed rule change is available on the Phlx’s Web site (<http://www.phlx.com>), at the Phlx’s Office of the Secretary, and at the Commission’s Public Reference Room.

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 provide that (i) a Participant Exchange may trade an order at a price that is one-tick inferior to the NBBO provided a Linkage Order is contemporaneously transmitted to the NBBO market(s) to satisfy all interest at the NBBO price; and (ii) an Eligible Market Maker or a member other than an Eligible Market Maker may book

⁸ Phlx Rule 1083(j) defines “Linkage” as the systems and data communications network that link electronically the Participant Exchanges for the purposes specified in the Plan.

an order that would lock a market if a Linkage Order is sent contemporaneously through the Linkage for the full size of the bid or offer that was locked.

i. Trade and Ship

The proposed amendment to Phlx Rule 1083(t) would exclude the trade and ship concept from the definition of “Trade-Through.”⁹ Under trade and ship, any execution received from the NBBO market must (pursuant to agency obligations) be reassigned to the customer order that is underlying the Linkage Order that was transmitted to “take out” the NBBO market.

Trade and Ship Example. Participant Exchange A is disseminating an offer of \$2.00 for 100 contracts. Participant Exchange B is disseminating the national best offer of \$1.95 for 10 contracts. No other market is at \$1.95. Participant Exchange A receives a 100-contract customer buy order to pay \$2.00. Under this proposal, Participant Exchange A could execute 90 contracts (or 100 contracts) of the customer order at \$2.00 provided Participant Exchange A simultaneously transmits a 10-contract P/A Order to Participant Exchange B to pay \$1.95. Assuming an execution is obtained from Participant Exchange B, the customer would receive an execution to buy 10 contracts at \$1.95 and 90 contracts at \$2.00 (if the customer order was originally filled in its entirety at \$2.00, an adjustment would be required to provide the customer with the \$1.95 price for 10 contracts reflecting the P/A Order execution). Under this proposal, this would not be deemed a Trade-Through.

ii. Book and Ship

Currently, Phlx Rule 1086, Locked and Crossed Markets, requires an Eligible Market

⁹ “Trade-Through” means a transaction in an options series at a price that is inferior to the NBBO. See Phlx Rule 1083(t).

Maker or a member other than an Eligible Market Maker that creates a locked market or a crossed market to unlock or uncross the market. The proposed amendment to Phlx Rule 1086 would provide that the provisions of this rule relating to locked markets would not apply in situations where an Eligible Market Maker or a member other than an Eligible Market Maker books an order that would lock a market and contemporaneously sends through the Linkage a P/A Order or Principal Order for the full size of the bid or offer that was locked.

Book and Ship Example. Participant Exchange A is disseminating a \$1.85 – \$2.00 market. Participant Exchange B is disseminating a \$1.80- \$1.95 market. The \$1.95 offer is for 10 contracts. No other market is disseminating an offer of \$1.95. Participant Exchange A receives a customer order to buy 100 contracts at \$1.95. Under this proposal, Participant Exchange A could book 90 contracts of the customer buy order at \$1.95 provided Participant Exchange A simultaneously transmitted a 10-contract P/A Order to Participant Exchange B to pay \$1.95. Assuming an execution is obtained from Participant Exchange B, the customer would receive an execution to buy 10 contracts and the rest of the customer’s order will be displayed as a \$1.95 bid on Participant Exchange A. The national best offer would likely be \$2.00. As proposed, this would not be deemed a “locked” market for purposes of the Plan.

2. Statutory Basis

The Phlx believes that the proposed rule change is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act¹¹ in particular, in that the proposed rule change is designed to perfect the mechanism of a free and open market and a

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

national market system, protect investors and the public interest, and promote just and equitable principles of trade.

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.

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, as amended, 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-2005-26 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-Phlx-2005-26. 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-2005-26 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.¹²

Jill M. Peterson
Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).