

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53242; File No. SR-Phlx-2006-11)

February 7, 2006

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Quoting Obligations for Directed Streaming Quote Traders and Directed Remote Streaming Quote Traders and Changes to the Exchange's Opening Rule

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 February 3, 2006, 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 and II below, which Items have been prepared by the Exchange. On February 6, 2006, the Exchange filed Amendment No. 1.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Partial Amendment dated February 6, 2006 ("Amendment No. 1"). In Amendment No. 1, the Exchange amended the proposed rule text to provide that, whenever a Directed Streaming Quote Trader or Directed Remote Streaming Quote Trader enters a quotation in an option in which such trader is assigned, such trader must maintain continuous quotations for not less than 99% (instead of 100%) of the series of the option listed on the Exchange until the close of that trading day, and added clarifying language to the "Purpose" section of the proposed rule change to note that, in order to participate in a Directed Order that is received in a particular Streaming Quote Option, a Directed Streaming Quote Trader or Directed Remote Streaming Quote Trader must be quoting continuously in not less than 99% of the series of such Streaming Quote Option.

The Phlx proposes to amend Exchange Rule 1014(b)(ii)(D) and Exchange Rule 1017(b)(ii) to: (1) delete the requirement that Streaming Quote Traders (“SQTs”)⁴ and Remote Streaming Quote Traders (“RSQTs”)⁵ submit continuous electronic quotations in not less than 99% of the series in each Streaming Quote Option in which they receive Directed Orders;⁶ (2) establish a new quoting obligation for SQTs and RSQTs that receive Directed Orders; and, as a result of these changes, (3) establish that, if the specialist is not quoting at the opening, the system will nonetheless open a series when any two Phlx XL participants are quoting in such series within two minutes of the opening of the underlying security on the primary market for the underlying security (or such shorter time as determined by the Options Committee and disseminated to membership via Exchange Circular), or when one Phlx XL participant is quoting in such series thereafter.

The text of the proposed rule change is set forth below. Brackets indicate deletions; underlining indicates new text.

⁴ An SQT is an ROT who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. See Exchange Rule 1014(b)(ii)(A).

⁵ An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Exchange Rule 1014(b)(ii)(B).

⁶ 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. See Exchange Rule 1080(l)(i)(A).

The term “Order Flow Provider” (“OFP”) means any member or member organization that submits, as agent, customer orders to the Exchange. See Exchange Rule 1080(l)(i)(B).

Obligations and Restrictions Applicable to Specialists and Registered Options Traders

Rule 1014. (a) No change.

(b) ROT. (i) No change.

(ii) (A) – (C) No change.

(D) Market Making Obligations Applicable in Streaming Quote Options.

(1) In addition to the other requirements for ROTs set forth in this Rule 1014, an SQT and an RSQT shall be responsible to quote continuous, two-sided markets in not less than 60% of the series in each Streaming Quote Option (as defined in Rule 1080(k)) in which such SQT or RSQT is assigned, provided that, on any given day, a Directed SQT (“DSQT”) or a Directed RSQT (“DRSQT”) (as defined in Rule 1080(l)(i)(C)) shall be responsible to quote continuous, two-sided markets in not less than 99% of the series listed on the Exchange in at least 60% of the options in which such DSQT or DRSQT is assigned. Whenever a DSQT or DRSQT enters a quotation in an option in which such DSQT or DRSQT is assigned, such DSQT or DRSQT must maintain continuous quotations for not less than 99% of the series of the option listed on the Exchange until the close of that trading day.

[a Directed SQT or RSQT (as defined in Rule 1080(l)(i)(C)) shall be responsible to quote continuous, two-sided markets in not less than 99% of the series in each Streaming Quote Option in which they receive Directed Orders (as defined in Rule 1080(l)(i)(A))].

(2) The specialist shall be responsible to quote continuous, two-sided markets in not less than 99% of the series in each Streaming Quote Option in which such specialist is assigned.

(3) [(1) During a six month period commencing on the date of the initial deployment of Phlx XL (the "initial six-month period"), any SQT or RSQT assigned in a Streaming Quote Option (and the specialist assigned in such Streaming Quote Option) may submit electronic quotations with a size of fewer than 10 contracts for a period of sixty days after such option begins trading as a Streaming Quote Option. Beginning on the sixty-first day after such option begins trading as a Streaming Quote Option,] SQTs, RSQTs and the specialist assigned in such Streaming Quote Option shall submit electronic quotations with a size of not less than 10 contracts.

[(2) During a six month period commencing on the first day following the expiration of the initial six-month period, any SQT or RSQT assigned in a Streaming Quote Option (and the specialist assigned in such Streaming Quote Option) may submit electronic quotations with a size of fewer than 10 contracts for a period of thirty days after such option begins trading as a Streaming Quote Option. Beginning on the thirty-first day after such option begins trading as a Streaming Quote Option, SQTs, RSQTs and the specialist assigned in such Streaming Quote Option shall submit electronic quotations with a size of not less than 10 contracts.

(3) Thereafter, any SQT or RSQT assigned in a Streaming Quote Option that is newly deployed on Phlx XL (and the specialist assigned in such Streaming Quote Option) shall submit electronic quotations with a size of not less than 10 contracts beginning on the date on which such Streaming Quote Option begins trading on Phlx XL.]

(E) No change.

(c) – (h) No change.

Commentary: No change.

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Openings In Options

Rule 1017. (a) No change.

(b) The system will calculate an Anticipated Opening Price (“AOP”) and Anticipated Opening Size (“AOS”) when a quote or trade has been disseminated by the primary market for the underlying security, and under the conditions set forth below. The specialist assigned in the particular option must enter opening quotes not later than one minute following the dissemination of a quote or trade by the primary market for the underlying security. An AOP may only be calculated if: (i) the Exchange has received market orders, or the book is crossed (highest bid is higher than the lowest offer) or locked (highest bid equals the lowest offer); and (ii) either (A) the specialist’s quote has been submitted; (B) the quotes of at least two Phlx XL participants [that are required to submit continuous, two-sided quotes in 99% of the series in all option issues in which such Phlx XL participant is assigned (“99% participants”),] have been submitted within two minutes of the opening trade or quote on the primary market for the underlying security (or such shorter time as determined by the Options Committee and

disseminated to membership via Exchange Circular); or (C) if neither the specialist's quote nor the quotes of two [99%] Phlx XL participants have been submitted within two minutes of the opening trade or quote on the primary market for the underlying security (or such shorter time as determined by the Options Committee and disseminated to membership via Exchange circular), one [99%] Phlx XL participant has submitted their quote. A Phlx XL participant that submits a quote pursuant to this Rule 1017(b) in any series when the specialist's quote has not been submitted shall be required to submit continuous, two-sided quotes in such series until such time as the specialist submits his/her quote, after which the Phlx XL participant that submitted such quote shall be obligated to submit quotations pursuant to Rule 1014(b)(ii)(D).

In situations where an AOP may be calculated and there is an order/quote imbalance, the system will immediately send an imbalance notice indicating the imbalance side (buy or sell) and the AOP and AOS (an "Imbalance Notice") to Phlx XL participants provided that the primary market for the underlying security has disseminated the opening quote or trade. Phlx XL participants that have not submitted opening quotes will then submit their opening quotes, and Phlx XL participants that have submitted opening quotes may submit revised opening quotes; thereafter the system will disseminate an updated Imbalance Notice every five seconds (or such shorter period as determined by the Options Committee and disseminated to membership via Exchange Circular) until the series is open. If no imbalance exists, no Imbalance Notice will be sent, and the system will establish an opening price as described in paragraph (c) below.

(c) – (d) No change.

(e) The system will not open a series if one of the following conditions is met:

(i) there is no quote from the specialist or [a 99%] Phlx XL participants, as described in Rule 1017(b)(ii)(B) and (C) above;

(ii) – (iii) No change.

(f) – (j) 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 Exchange 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 III below. The Exchange 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

According to the Exchange, the purpose of the proposed rule change is to encourage Directed Orders by establishing a new quoting obligation for Directed SQTs (“DSQTs”) and Directed RSQTs (“DRSQTs”)⁷ that would require them to quote continuous, two-sided markets in not less than 99% of the series listed on the Exchange in at least 60% of the options in which such DSQT or DRSQT is assigned. The Exchange notes that, in order to participate in a Directed Order that is received in a particular option, a DSQT or DRSQT must be quoting continuously in not less than 99% of the series of such option.⁸ According to the Exchange, the

⁷ The term “Directed Specialist, RSQT, or SQT” means a specialist, RSQT, or SQT that receives a Directed Order. See Exchange Rule 1080(l)(i)(C).

⁸ See Amendment No. 1.

proposed rule change is similar to the quoting obligation for participants that receive Directed Orders on other exchanges.⁹

Deletion of 99% Quoting Requirement for Directed SQTs/RSQTs

Currently, Exchange Rule 1014(b)(ii)(D) requires DSQTs and DRSQTs to quote continuous, two-sided markets in not less than 99% of the series in each Streaming Quote Option in which they are assigned.¹⁰ According to the Exchange, for competitive reasons, the proposed rule change would amend that quoting requirement applicable to DSQTs and DRSQTs.¹¹ Instead, DSQTs and DRSQTs, would be obligated to submit quotations under proposed Exchange Rule 1014(b)(ii)(D)(1), described below. This obligation would be similar to that of other exchanges with Directed or Preferred Order flow programs.¹² The Exchange stated that it is now concerned that the current quoting obligation is impeding Directed Order flow to the Exchange.

⁹ The Exchange notes that the International Securities Exchange, Inc. (“ISE”) currently has rules in effect concerning “Preferred Orders” that are virtually identical to the Exchange’s rules concerning Directed Orders (See ISE Rule 713, Supplementary Material .03). The quoting obligation applicable to ISE Competitive Market Makers, including those that receive “Preferred Orders” is contained in ISE Rule 804(e)(2). See also, Securities Exchange Act Release No. 51818 (June 10, 2005), 70 FR 35146 (June 16, 2005) (SR-ISE-2005-18). The instant proposed rule change, which tracks ISE Rule 804, is intended to enable the Exchange to compete for Directed Orders by establishing a quoting obligation for Directed SQTs and RSQTs that is virtually identical to the quoting obligation applicable to ISE Competitive Market Makers that receive “Preferred Orders.”

¹⁰ Telephone call by and between Edith Hallahan, Senior Vice President and Deputy General Counsel, Phlx; and David Hsu, Special Counsel, Division of Market Regulation, Commission, on February 7, 2006.

¹¹ Id.

¹² See, e.g., ISE Rule 804(e)(2). See also, Securities Exchange Act Release No. 51818 (June 10, 2005), 70 FR 35146 (June 16, 2005) (SR-ISE-2005-18).

New Quoting Obligation for DSQs and DRSQs

The proposed rule change would provide that, on any given day, a DSQT or a DRSQT would be responsible to quote continuous, two-sided markets in not less than 99% of the series listed on the Exchange of at least 60% of the options in which such DSQT or DRSQT is assigned. The Exchange believes that this new quoting obligation for DSQs and DRSQs should encourage member organizations to send Directed Orders to DSQs and DRSQs on the Exchange.

In order to ensure continuity of quoting, the proposed rule change would provide that, whenever a DSQT or DRSQT enters a quotation in an option in which such DSQT or DRSQT is assigned, such DSQT or DRSQT must maintain continuous quotations for not less than 99% of the series of the option listed on the Exchange until the close of that trading day. The Exchange believes that this should promote liquidity on the Exchange.

Amendments to Rule 1017, Openings in Options

Currently, Exchange Rule 1017(b) provides that a series may open when: (i) the Exchange has received market orders, or the book is crossed (highest bid is higher than the lowest offer) or locked (highest bid equals the lowest offer); and (ii) either (A) the specialist's quote has been submitted; (B) the quotes of at least two Phlx XL participants that have the 99% quoting obligation ("99% participants") have been submitted within two minutes of the opening trade or quote on the primary market for the underlying security (or such shorter time as determined by the Options Committee and disseminated to membership via Exchange Circular); or (C) if neither the specialist's quote nor the quotes of two 99% participants have been submitted within two minutes of the opening trade or quote on the primary market for the

underlying security (or such shorter time as determined by the Options Committee and disseminated to membership via Exchange Circular), one 99% participant has submitted their quote.

Because proposed Exchange Rule 1014(b)(ii)(D) modifies the quoting obligations of the 99% participants,¹³ the Exchange proposes to amend Exchange Rule 1017(b) to establish that, if the specialist is not quoting at the opening, the system will open a series when any two Phlx XL participants are quoting within two minutes of the opening on the primary market for the underlying security, or when any single Phlx XL participant has submitted his/her quote thereafter, thus eliminating the requirement that such Phlx XL participants must be 99% participants in order for the series to open.

In order to ensure the continuity of quotations in series that are opened when the specialist has not submitted his or her quotation, the proposed rule change would provide that a Phlx XL participant that submits a quote pursuant to the proposed rule in any series when the specialist's quote has not been submitted would be required to submit continuous, two-sided quotes in such series until such time as the specialist submits his/her quote, after which the Phlx XL participant that submitted such quote would be obligated to submit quotations as described above under proposed Exchange Rule 1014(b)(ii)(D).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁵ in particular, in that it is

¹³ See supra note 10.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

designed to promote just and equitable principles of trade, 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, by enabling the Exchange to compete for order flow in Directed Orders by establishing a new quoting obligation applicable to DSQTs and DRSQTs.

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

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit comments on the proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. 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-2006-11 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2006-11. 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-2006-11 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 the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act¹⁶ and the rules and regulations thereunder applicable to a national securities exchange,¹⁷ and, in particular, the requirements of

¹⁶ 15 U.S.C. 78f.

¹⁷ 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).

Section 6(b)(5) of the Act.¹⁸ Section 6(b)(5) requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, 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.

The Commission previously approved, on a one-year pilot basis expiring May 27, 2006, rules that permit each specialist, DSQT, or DRSQT assigned in options trading on the Phlx XL system to receive a Directed Order, provided that such specialist, DSQT, or DRSQT is quoting at the National Best Bid or Offer at the time the Directed Order is received by the Exchange.¹⁹ In addition, the Directed Order Rules Release noted that, like specialists, DSQTs or DRSQTs would be required 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.²⁰ While the current proposal would reduce the quoting obligations of a DSQT or DRSQT to not less than 99% of the series listed on the Exchange of at least 60% of the Stream Quote Options in which such DSQT or DRSQT is assigned, the Commission notes the current proposal would not reduce the quoting obligations of a DSQT and DRSQT in Streaming Quote Options in which a DSQT or DRSQT participates in a Directed Order. Specifically, the proposed rule change would require a DSQT

¹⁸ 15.U.S.C. 78f(b)(5).

¹⁹ See Securities Exchange Act Release No. 51759 (May 27, 2005), 70 FR 32860 (June 6, 2005) (the “Directed Order Rules Release”). This order does not affect the expiration date of the Directed Order rules.

²⁰ In connection with the adoption of the Exchange’s Risk Monitor Mechanism, the 100% quoting obligation was reduced to 99%. See Securities Exchange Act Release No. 53166 (January 23, 2006), 71 FR 4625 (January 27, 2006).

or DRSQT to maintain continuous quotations in not less than 99% of the series of any Streaming Quote Options in which it participates in a Directed Order.²¹

In addition, the Commission notes that the proposed amendments to Exchange Rule 1017(b) would continue to permit the system to open upon the quote or quotes of DSQTs or DRSQTs, and thus may continue to facilitate an expedited opening of options on the Exchange and thereby improve market efficiency for all market participants. The Commission also notes that a Phlx XL participant that submits a quote pursuant to the Opening Amendment in any series when a specialist's quote has not been submitted would be required to submit continuous, two-sided quotes in such series until such time as the specialist submits his/her quote.

The Exchange has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the Federal Register. The Commission notes that the proposed rule change relating to DSQT and DRQST quoting obligations is substantially similar to ISE Rule 804,²² which was previously approved by the Commission after notice and comment, and therefore the proposed rule change relating to DSQT and DRSQT quoting obligations does not raise any new regulatory issues. The Commission does not believe that the proposed amendments to Exchange Rule 1017(b) would significantly impact the current opening process because any Phlx XL participant that submits a quote pursuant to proposed rule would be required to submit continuous, two-sided quotes in such series until such time as the specialist submits his/her quote. Accordingly, the Commission

²¹ See proposed Exchange Rule 1014(ii)(D)(1)..

²² See supra note 9.

finds good cause, consistent with Section 19(b)(2) of the Act,²³ for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the Federal Register.

²³

15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁴ that the proposed rule change (SR-Phlx-2006-11) and Amendment No. 1 are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁵

Nancy M. Morris
Secretary

²⁴ 15 U.S.C. 78s(b)(2).

²⁵ 17 CFR 200.30-3(a)(12).