

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49063; File No. SR-NYSE-2003-36]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to Interpretation of Rule 15A (ITS "Trade-Throughs" and "Locked Markets")

January 13, 2004.

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 November 18, 2003, the New York Stock Exchange, Inc. ("NYSE" 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 Exchange. On January 6, 2004, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> 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 proposed rule change is based on a long-standing interpretation of NYSE Rule 15A (ITS "Trade-Throughs" and "Locked Markets") that trading on the NYSE and sending contemporaneously an Intermarket Trading System ("ITS") commitment to trade to another participating market to fully satisfy the quote thereon constitutes full compliance with the Rule. A complaint under these circumstances is not valid, even if the commitment cancels/expires or there is more stock behind the quote on the other market. The text of the interpretation is below:

\* \* \* \* \*

Rule 15A. ITS "Trade-Throughs" and "Locked Markets"

(a)-(e) No Change.

#### Interpretation

i. *the terms "Exchange trade-through" and "Third participating market center trade-through" do not include the situation where a member who initiates the purchase (sale) of an ITS security at*

*a price which is higher (lower) than the price at which the security is being offered (bid) in another ITS participating market, sends contemporaneously through ITS to such ITS participating market a commitment to trade at such offer (bid) price or better and for at least the number of shares displayed with that market center's better-priced offer (bid); and*

ii. *a trade-through complaint sent in these circumstances is not valid, even if the commitment sent in satisfaction cancels or expires, and even if there is more stock behind the quote in the other market.*

\* \* \* \* \*

#### 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 NYSE 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 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

The Exchange is proposing to codify a long-standing interpretation of NYSE Rule 15A. NYSE Rule 15A uses certain defined terms as follows:

- An "Exchange trade-through", as that term is used in this Rule, occurs whenever a member on the Exchange initiates the purchase on the Exchange of a security traded through ITS (an "ITS Security") at a price which is higher than the price at which the security is being offered (or initiates the sale on the Exchange of such a security at a price which is lower than the price at which the security is being bid for) at the time of the purchase (or sale) in another ITS participating market center as reflected by the offer (bid) then being displayed on the Exchange from such other market center. The member described in the foregoing sentence is referred to in this Rule as the "member who initiated an Exchange trade-through."

- A "third participating market center trade-through", as that term is used in this Rule, occurs whenever a member on the Exchange initiates the purchase of an ITS Security by sending a

commitment to trade through the system and such commitment results in an execution at a price which is higher than the price at which the security is being offered (or initiates the sale of such a security by sending a commitment to trade through the System and such commitment results in an execution at a price which is lower than the price at which the security is being bid for) at the time of the purchase (or sale) in another ITS participating market center as reflected by the offer (bid) then being displayed on the Exchange from such other market center. The member described in the foregoing sentence is referred to in this Rule as the "member who initiated a third participating market center trade-through."

- A "trade-through," as that term is used in this Rule, means either an Exchange trade-through or a third participating market center trade-through.

The Exchange believes that the basic concept of the trade-through rule is that superior priced quotations in a security displayed from other participant markets should be protected/satisfied if, in another participant market, an execution in the security occurs at an inferior price (a trade-through). One of the remedies that NYSE Rule 15A provides is that, upon a valid complaint of a trade-through, a commitment to trade at the price, and for the number of shares in the disseminated quotation, must be sent to the other Participant market to fully satisfy such quotation. The Exchange believes that the proposed interpretation has long recognized that superior quotations are fully protected/satisfied if an ITS commitment is sent to trade with a bid/offer that would otherwise appear to have been traded-through. That is, a trade will not be considered a trade-through if an ITS commitment is sent contemporaneously from the participant executing the trade for the purpose of being executed against the better-priced displayed bid or offer. A complaint is not valid even if a commitment cancels or expires or there is more stock behind the away quote. Furthermore, the Exchange believes that the interpretation recognizes the impracticality of having to wait for the other market to revise its quotation as a result of trading with a satisfying commitment before trade activity may occur in other markets. Specifically, the interpretation states that:

i. The terms "Exchange trade-through" and "Third participating market center trade-through" do not include the

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See e-mail from Karen Lorentz, Director of Intermarket Relations, NYSE, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated January 6, 2004 ("Amendment No. 1"). In Amendment No. 1, the NYSE clarified that the proposed interpretation will be added as rule text immediately after NYSE Rule 15A.

situation where a member who initiates the purchase (sale) of an ITS security at a price which is higher (lower) than the price at which the security is being offered (bid) in another ITS participating market, sends contemporaneously through ITS to such ITS participating market a commitment to trade at such offer (bid) price or better and for at least the number of shares displayed with that market center's better-priced offer (bid); and

ii. A trade-through complaint sent in these circumstances is not valid, even if the commitment sent in satisfaction cancels or expires, and even if there is more stock behind the quote in the other market.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,<sup>4</sup> in general, and Section 6(b)(5) of the Act,<sup>5</sup> in particular, in that it will promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will 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*

Written comments on the proposed rule change were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act<sup>6</sup> and subparagraph (f)(1) of Rule 19b-4 thereunder,<sup>7</sup> because it is concerned solely with the interpretation of the meaning, administration or enforcement of existing NYSE Rule 15A. 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, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>8</sup>

## 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-NYSE-2003-36. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR-NYSE-2003-36 and should be submitted by February 11, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 04-1212 Filed 1-20-04; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49074; File No. SR-Phlx-2003-72]

### **Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Reduce Strike Prices for Index Options**

January 14, 2004.

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 4, 2003, 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 1101A ("Terms of Option Contracts") to provide that strike price intervals for index options<sup>3</sup> shall be \$2.50 for the three consecutive near-term months, \$5 for the fourth month, and \$10 for the fifth month. The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and at the Commission.

#### **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 Phlx proposes to reduce strike price intervals of index options, thereby

<sup>4</sup> 15 U.S.C. 78f(b).

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>7</sup> 17 CFR 240.19b-4(f)(1).

<sup>8</sup> For purposes of determining the effective date of the filing and calculating the 60-day abrogation date, the Commission considers the period to commence on January 6, 2004, the date the NYSE filed Amendment No. 1.

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Index options traded on the Exchange are also known as sector index options.