

mechanism of a free and open market, and to protect investors and the public interest. The Commission believes that the proposed rule change should clarify the LLM's obligations in handling P/A Orders, which should facilitate the efficient handling of P/A Orders through the Linkage.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice thereof in the **Federal Register**. As noted above, the proposed rule change incorporates changes into the PCX Rules that correspond to changes made to the Linkage Plan through Joint Amendment No. 10, which was published for comment on May 19, 2004.⁸ The Commission received no comments on the substance of that Amendment. The Commission believes that no new issues of regulatory concern are being raised by PCX's proposed rule change. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Sections 6 and 19(b) of the Act.⁹

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-PCX-2004-33) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49891; File No. SR-Phlx-2004-26]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Sending Multiple Principal Acting as Agent Orders That Are Larger Than the Firm Customer Quote Size

June 17, 2004.

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 April 23, 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 and II, 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 and to grant accelerated approval to the proposed rule change.

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

The Exchange proposes to amend Phlx Rule 1084(c), Operation of the Linkage, to clarify the manner in which the Exchange may send a Principal Acting as Agent Order ("P/A Order")³ that is larger than the Firm Customer Quote Size ("FCQS")⁴ under the Plan for the Purpose of Creating and Operating an Options Intermarket Linkage (the "Linkage Plan"). The text of the proposed rule change is available at the Office of the Secretary, 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.

³ A Principal Acting as Agent ("P/A") Order 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. See Phlx Rule 1083(k).

⁴ "Firm Customer Quote Size" means the lesser of (a) the number of option contracts that the Participant Exchange sending a P/A Order guarantees it will automatically execute at its disseminated price in a series of an Eligible Option Class for Public Customer orders entered directly for execution in that market; or (b) the number of option contracts that the Participant Exchange receiving a P/A Order guarantees it will automatically execute at its disseminated price in a series of an Eligible Option Class for Public Customer orders entered directly for execution in that market. See Phlx Rule 1083(g).

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 clarify the manner in which an Exchange member may send P/A Orders that are larger than the FCQS. Currently, under Linkage Plan Section 7(a)(ii)(B) and Exchange Rule 1084, a specialist may send a P/A Order through Linkage in one of two ways when the P/A Order is larger than the FCQS. First, a specialist may send a P/A Order larger than the FCQS for manual processing at the receiving exchange. Second, the specialist may send an initial P/A Order for up to the FCQS. If the receiving exchange executes the P/A Order and continues to disseminate the same price at the National Best Bid or Offer ("NBBO") for 15 seconds after reporting the execution of the initial P/A Order, the specialist may send an additional P/A Order to the same Participant Exchange for the lesser of the entire remaining size of the customer order or 100 contracts.

The proposed rule change addresses the handling of orders when the specialist chooses the second alternative, *i.e.*, to send multiple P/A Orders. The current Linkage Plan and Exchange rules do not account for the possibility that an exchange's disseminated quotation may be for less than either the remaining size of the customer order or 100 contracts. In order to properly address that possibility, the proposed amendment to Phlx Rule 1084(c)(2)(ii) would specify that a specialist sending a second P/A order may limit the size of such an order to the lesser of: (1) The size of the receiving exchange's disseminated quotation; (2) 100 contracts; or (3) the entire remaining size of the customer order.

The proposal also addresses how multiple P/A orders are handled when more than one exchange is disseminating the same bid or offer at the NBBO. Currently, the Linkage Plan and exchange rules are not definitive as to whether, in the case of multiple P/A orders, the specialist must send the entire order to one exchange or may send orders to multiple exchanges that are disseminating the same bid or offer at the NBBO. The proposed rule change would permit a specialist to send P/A orders to multiple exchanges, provided that all such orders are for the lesser of the entire remaining size or 100 contracts in the aggregate. A specialist may, nonetheless, limit the size of any single additional P/A order to the size

⁸ See note 3, *supra*.

⁹ 15 U.S.C. 78f and 78s(b).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

of the receiving exchange's disseminated quotation.

The proposed rule change also includes administrative provisions relating to the time period within which a receiving exchange must inform the specialist of the amount of the order executed and the amount, if any, that was canceled, and the time period for which a sending exchange must wait while the receiving exchange continues to disseminate the same price at the NBBO before sending a second P/A order. Currently, the applicable time period for each such circumstance is 15 seconds. The proposed rule change contemplates that the Options Linkage Authority could determine different applicable time periods for both circumstances, and that any change to such time periods must be approved by the Commission before becoming effective.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act⁶ in particular, in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade, by permitting Exchange specialists to send multiple P/A Orders to multiple exchanges for a number of contracts equal to the receiving exchange's disseminated size.

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 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-2004-26 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-2004-26. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices 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-2004-26 and should be submitted on or before July 19, 2004.

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

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁷ In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act⁸ which requires, among other things, that the rules of an 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 to protect investors and the public interest. The Commission believes that the proposed rule change should clarify the specialist's obligations in handling P/A Orders, which should facilitate the efficient handling of P/A Orders through the Linkage.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice thereof in the **Federal Register**. As noted above, the proposed rule change incorporates changes into the Phlx Rules that correspond to changes made to the Linkage Plan through Joint Amendment No. 10, which was published for comment on May 19, 2004.⁹ The Commission received no comments on the substance of that Amendment. The Commission believes that no new issues of regulatory concern are being raised by Phlx's proposed rule change. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Sections 6 and 19(b) of the Act.¹⁰

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-Phlx-2004-26) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

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UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed priorities; request for public comment.

SUMMARY: As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the Federal sentencing guidelines, and in accordance with Rule 5.2 of its

⁹ See Securities Exchange Act Release No. 49689 (May 12, 2004), 69 FR 28953.

¹⁰ 15 U.S.C. 78f and 78s(b).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

⁷ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).