SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49435; File No. SR–Phlx–2003–68]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Options Transactions Resulting From Obvious Errors

March 17, 2004.

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 September 29, 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 Exchange. On November 25, 2003, Phlx filed Amendment No. 1 to the proposed rule change.[3] On January 15, 2004, Phlx filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated November 24, 2003 (''Amendment No. 1''). Amendment No. 1 replaced the original proposed rule change in its entirety.

[4] *See* Letter from Richard S. Rudolph, Director and Counsel, Phlx, to Susie Cho, Special Counsel, Division, Commission, dated January 14, 2004 (''Amendment No. 2''). In Amendment No. 2, Phlx amended the proposed rule change by: (1) Clarifying that proposed Phlx Rule 1092(c)(ii)(A) does not apply to a verifiable disruption or malfunction of an execution, dissemination, or communication system of a Specialized Quote Feed user; (2) clarifying that the term ''primary market,'' used in proposed Phlx Rule 1092(c)(ii)(D), means, in respect of an underlying stock or exchange-traded fund share, the principal market in which the underlying stock or exchange-traded fund share is traded; (3) amending proposed Phlx Rule 1092(e)(ii) to provide that, in the case of an obvious error determination, where at least one party to the transaction in which an obvious error occurred is not a specialist or ROT on the Exchange, two Floor Officials will nullify the transaction, unless both parties agree to adjust the price of the transaction within 30 minutes of being notified by Market Surveillance of the obvious error; (4) amending proposed Phlx Rule 1092(f) to require that a request for review of Floor Official rulings under proposed Phlx Rule 1092 must be in writing; and (5) amending the paragraph numbering contained in Commentaries .02 and .03 of proposed Phlx Rule 1092.

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

The Exchange proposes to adopt new Phlx Rule 1092, which would permit the Exchange to nullify or adjust a transaction resulting from an obvious error. The Exchange further proposes to amend Phlx Rule 124 (Disputes) to provide that Phlx Rule 124(a) would not apply to options transactions that are the result of an obvious error (as defined in proposed Phlx Rule 1092). Options transactions that are the result of an obvious error would be subject to the provisions and procedures set forth in proposed Phlx Rule 1092. Below is the text of the proposed rule change. Proposed new language is *italicized.*

* * * * *

Obvious Errors [5]

Rule 1092. The Exchange shall either nullify a transaction or adjust the execution price of a transaction that results in an Obvious Error as provided in this Rule. (a) Definition of Obvious Error. For purposes of this Rule only, an Obvious Error will be deemed to have occurred when:

(i) If the Theoretical Price of the option is less than $3.00:

(A) during regular market conditions (including rotations), the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount of 35 cents or more; or,

(B) during unusual market conditions (i.e., the Exchange has declared an unusual market condition status for the option in question), the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount of 50 cents or more.

(ii) If the Theoretical Price of the option is $3.00 or more:

(A) during regular market conditions (including rotations), the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least two times the maximum bid/ask spread allowed for the series, so long as such amount is 50 cents or more; or

(B) during unusual market conditions i.e., the Exchange has declared an unusual market condition status for the option in question), the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least three times the maximum bid/ask spread allowed for the series, so long as such amount is 50 cents or more.

[5] The text of the proposed rule reflects a few technical corrections from the text contained in Amendment No. 2. Telephone conversation between Richard S. Rudolph, Director and Counsel, Phlx, and Frank N. Genco, Attorney, Division, Commission on February 12, 2004.

(b) Definition of Theoretical Price. For purposes of this Rule only, the Theoretical Price of an option is:

(i) if the series is traded on at least one other options exchange, the last bid or offer, just prior to the transaction, on the exchange that has the most total volume in that option over the most recent 60 calendar days; or

(ii) if there are no quotes for comparison purposes, as determined by two Floor Officials and designated personnel in the Exchange's Market Surveillance Department.

(c) Absent Mutual Agreement as provided in Rule 1092(c)(iii) below, parties to a trade may have a trade nullified or its price adjusted if:

(i) any such party makes a documented request within the time specified in Rule 1092(e)(i); and

(ii) one of the conditions below is met:

(A) The trade resulted from a verifiable disruption or malfunction of an Exchange execution, dissemination, or communication system that caused a quote/order to trade in excess of its disseminated size (*e.g.* a quote/order that is frozen, because of an Exchange system error, and repeatedly traded) in which case trades in excess of the disseminated size may be nullified; or

(B) The trade resulted from a verifiable disruption or malfunction of an Exchange dissemination or communication system that prevented a member from updating or canceling a quote/order for which the member is responsible where there is Exchange documentation providing that the member sought to update or cancel the quote/order; or

(C) The trade resulted from an erroneous print disseminated by the underlying market which is later cancelled or corrected by the underlying market where such erroneous print resulted in a trade higher or lower than the average trade in the underlying security during the time period encompassing two minutes before and after the erroneous print, by an amount at least five times greater than the average quote width for such underlying security during the time period encompassing two minutes before and after the erroneous print. For purposes of this Rule, the average trade in the underlying security shall be determined by adding the prices of each trade during the four minute time period referenced above (excluding the trade in question) and dividing by the number of trades during such time period (excluding the trade in question); or

(D) The trade resulted from an erroneous quote in the Primary Market

for the underlying security that has a width of at least $1.00 and that width is at least five times greater than the average quote width for such underlying security during the time period encompassing two minutes before and after the dissemination of such quote. For the purposes of this rule, the average quote width shall be determined by adding the quote widths of each separate quote during the four minute time period referenced above (excluding the quote in question) and dividing by the number of quotes during such time period (excluding the quote in question); or

(E) The trade resulted in an execution price in a series quoted no bid and at least one strike price below (for calls) or above (for puts) in the same class were quoted no bid at the time of the erroneous execution.

(F) The trade is automatically executed at a price where the specialist or ROT sells $0.10 or more below parity. Parity describes an option contract's total premium when that premium is equal to its intrinsic value. Parity for calls is measured by reference to the offer price of the underlying security in the Primary Market at the time of the transaction minus the strike price for the call. Parity for puts is measured by the strike price of an underlying security minus its bid price in the Primary Market at the time of the transaction.

(iii) Mutual Agreement. The determination as to whether a trade was automatically executed at an erroneous price may be made by mutual agreement of the affected parties to a particular transaction. A trade may be nullified or adjusted on the terms that all parties to a particular transaction agree. In the absence of mutual agreement by the parties, a particular trade may only be nullified or adjusted when the transaction results from an Obvious Error as provided in this Rule.

(d) Adjustments. Where the execution price of a transaction executed as the result of an Obvious Error is adjusted, the adjusted price will be:

(i) the Theoretical Price of the option in the case where the erroneous price is displayed in the market and subsequently executed against quotes or orders that did not exist on the Exchange at the time the erroneous price was entered; or

(ii) the last bid or offer, just prior to the transaction, on the exchange that was disseminating the National Best Bid or Offer for the series at the time of the transaction that was the result of an Obvious Error in the case where an erroneous price executes against quotes or orders already existing on the Exchange at the time the erroneous price was entered.

(e) Obvious Error Procedure. Market Surveillance shall administer the application of this Rule as follows:

(i) Notification. If a specialist or Registered Options Trader ("ROT") on the Exchange believes that he/she participated in a transaction that was the result of an Obvious Error, he/she must notify Market Surveillance within five minutes of the transaction. If a member or member organization that initiated the order from off the floor of the Exchange believes a transaction on the Exchange was the result of an Obvious Error, such member or member organization must notify Market Surveillance within fifteen minutes of the execution. Absent unusual circumstances, Market Surveillance will not grant relief under this Rule unless notification is made within the prescribed time period.

(ii) Adjust or Bust. A Floor Official will determine whether there is an Obvious Error as defined in this Rule. If it is determined that an Obvious Error has occurred: (A) where each party to the transaction is either a specialist or ROT on the Exchange, the execution price of the transaction will be adjusted by one Floor Official, unless both parties agree to nullify the transaction within ten minutes of being notified by Market Surveillance of the Obvious Error; or (B) where at least one party to the transaction in which an Obvious Error occurred is not a specialist or ROT on the Exchange, two Floor Officials will nullify the transaction, unless both parties agree to adjust the price of the transaction within 30 minutes of being notified by Market Surveillance of the Obvious Error. Upon final Floor Official action, Market Surveillance, in conjunction with the AUTOM Help Desk, where appropriate, shall promptly notify both parties to the trade.

(f) Request for Review. If a party affected by a determination made under this Rule so requests within the time permitted, a Review Panel of Floor Officials will review decisions made under this Rule in accordance with Exchange Rule 124(d). A request for review under this paragraph must be made within thirty minutes after a party receives verbal notification of a final determination by the Floor Official(s) under this Rule, except that if such notification is made after 3:30 p.m. Eastern Time, either party has until 9:30 a.m. Eastern Time on the next trading day to request a review. Such a request for review must be in writing or otherwise documented. The Review Panel shall review the facts and render a decision on the day of the transaction, or the next trade day in the case where a request is properly made after 3:30 p.m. on the day of the transaction or where the request is properly made the next trade day.

Commentary.

.01. For purposes of paragraph (a) of this Rule, the maximum bid/ask spread shall be the maximum bid/ask spread allowed pursuant to Exchange Rule 1014(c)(i)(A), unless a wider spread has been allowed by the Exchange for the option because of unusual market conditions.

.02. The Theoretical Price will be determined under paragraph (b)(i) of this Rule as follows: (i) the bid price from the exchange providing the most total volume in the option over the most recent 60 calendar days will be used with respect to an erroneous bid price entered on the Exchange, and (ii) the offer price from the exchange providing the most total volume in the option over the most recent 60 calendar days will be used with respect to an erroneous offer price entered on the Exchange.

.03. The price to which a transaction is adjusted under paragraph (d)(ii) of this Rule will be determined as follows: (i) The bid price from the exchange disseminating the National Best Bid for the series at the time of the transaction that was the result of an obvious error will be used with respect to an erroneous offer price entered on the Exchange, and (ii) the offer price from the exchange disseminating the National Best Offer for the series at the time of the transaction that was the result of an obvious error will be used with respect to an erroneous bid price entered on the Exchange. If there are no quotes for comparison purposes, the adjustment price will be determined by two Floor Officials and Market Surveillance.

Disputes

Rule 124. (a) Disputes occurring on and relating to the trading floor, if not settled by agreement between the members interested, shall be settled, if practicable, by vote of the members knowing of the transaction in question; if not so settled, they shall be settled by a Floor Official summoned to the trading crowd.

In issuing decisions for the resolution of trading disputes, Floor Officials may institute the course of action deemed to be most fair to all parties under the circumstances at the time. A Floor Official may direct the execution of an order on the floor, or adjust the transaction terms or participants to an executed order on the floor. However, two Option Floor Officials may nullify a transaction if they determine the transaction to have been in violation of Rules 1014 (Obligations and Restrictions Applicable to Specialist and ROTs), 1015 (Quotation Guarantees), 1017 (Priority and Parity at Openings in Options), 1033 (Bids and Offers) or 1080 (AUTOM). Two Equity Floor Officials may nullify a transaction if they determine the transaction to have been in violation of Rules 110 (Bids and Offers—Precedence), 111 (Bids and Offers—Binding), 118 (Bids and Offers Outside Best Bid and Offer), 119 (Precedence of Highest Bid), 120 (Precedence of Offers at Same Price), 126 (Crossing), 203 (Agreement of Specialists), 218 (Customer Order Receives Priority), 229 (PACE System), 232 (Handling Orders When the Primary Market is Not Open for Free Trading), or 455 (Short Sales). *This Rule 124(a) shall not apply to options transactions that are the result of an Obvious Error (as defined in Rule 1092). Options transactions that are the result of an Obvious Error shall be subject to the provisions and procedures set forth in Rule 1092.*

(b)–(d) 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, 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 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 purpose of the proposed rule change is to adopt Exchange Rule 1092, which would allow the Exchange to either nullify or adjust a transaction in circumstances where a member or its customer has made an error and the terms of the trade execution are obviously not correct. The Exchange believes that it is inconsistent with just and equitable principles of trade to allow one market participant to receive a windfall at the expense of another market participant that made an obvious error; on the other hand, the Exchange does not believe that market participants should be permitted to reconsider poor trading decisions. Accordingly, the Exchange represents that the proposed rule includes objective criteria for determining when a transaction is clearly the result of an obvious error; under what circumstances a trade will be adjusted or nullified; and to what price a trade would be adjusted if appropriate.

a. Notification

Under proposed Phlx Rule 1092(e), when a member or member organization believes it has participated in a transaction that was the result of an obvious error, it must notify the Exchange's Market Surveillance Department (''Market Surveillance'') within a specified time of the execution in order to allow the transaction to be nullified or adjusted. Exchange specialists and Registered Options Traders (''ROTs''), who are located on the floor of the Exchange and continuously monitor their transactions, would be required to notify Market Surveillance within five minutes of the transaction. Off-floor members and member organizations, many of which handle customer orders on multiple exchanges simultaneously, and which may need to contact customers for instruction, would be required to notify Market Surveillance within 15 minutes of the transaction.

The purpose of the notification requirement is to provide reasonably prompt notice to Market Surveillance and to participants in a transaction subject to proposed Phlx Rule 1092 that such transaction may have been the result of an obvious error and that the process set forth in the proposed rule change has begun, and ultimately a decision concerning the transaction will be made.

b. Theoretical Price

Once Market Surveillance has been timely notified of a participant's belief that he or she has participated in a transaction that was the result of an obvious error, Market Surveillance would be required to determine the ''Theoretical Price'' of the option series in question, against which the price at which the trade was executed would be compared to determine if there was indeed an obvious error. For purposes of proposed Phlx Rule 1092 only, if the series is traded on at least one other options exchange, the Theoretical Price is the last bid or offer just prior to the trade found on the exchange that has the most total volume in that option over the most recent 60 calendar days. If there are no quotes for comparison purposes, the Theoretical Price would be determined by two Floor Officials and designated personnel in the Exchange's Market Surveillance Department.

Proposed Phlx Rule 1092, Commentary .02 provides that the Theoretical Price would be: (1) The bid price from the exchange providing the most total volume in the option over the most recent 60 calendar days with respect to an erroneous bid price entered on the Exchange; and (ii) the offer price from the exchange providing the most total volume in the option over the most recent 60 calendar days with respect to an erroneous offer price entered on the Exchange.

The purpose of the Theoretical Price is to establish an objective price against which transactions that may have been the result of an obvious error may be measured to determine whether nullification or adjustment of the transaction is warranted under the proposed rule.

c. Definition of Obvious Error

Proposed Phlx Rule 1092(a) would define ''obvious error'' based on the Theoretical Price of the option and market conditions. Specifically, if the Theoretical Price of the option is less than $3.00, during regular market conditions (including rotations), and the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount of 35 cents or more, such an execution price would be considered an obvious error and, if notification of the obvious error is made in accordance with the requirements set forth above, the transaction would be subject to nullification or adjustment.

During unusual market conditions (*i.e.,* the Exchange has declared an unusual market condition status for the option in question), if the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount of 50 cents or more, such an execution price would be considered an obvious error and, if notification of the obvious error is made in accordance with the requirements set forth above, the transaction would be subject to nullification or adjustment.

If the Theoretical Price of the option is $3.00 or more, during regular market conditions (including rotations), if the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least two times the maximum bid/ask spread allowed for the series, so long as such amount is 50 cents or more, such an execution price would be considered an obvious error and, if notification of the obvious error is made in accordance with the requirements set forth above, the transaction would be subject to nullification or adjustment.

During unusual market conditions (*i.e.,* the exchange has declared an unusual market condition status for the option in question), if the Theoretical Price of the option is $3.00 or more, and the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least three times the maximum bid/ask spread allowed for the series, so long as such amount is 50 cents or more, such an execution price would be considered an obvious error and, if notification of the obvious error is made in accordance with the requirements set forth above, the transaction would be subject to nullification or adjustment.

d. Trade Adjustment and Nullification

Proposed Phlx Rule 1092(c) would allow a Floor Official(s) to adjust or nullify a transaction in the following circumstances:

• Verifiable System Disruption or Malfunction

The trade resulted from a verifiable disruption or malfunction of an Exchange's execution, dissemination, or communication system that caused a quote/order to trade in excess of its disseminated size (*e.g.,* a quote/order that is frozen, because of an Exchange system error, and repeatedly traded) in which case trades in excess of the disseminated size may be nullified; or the trade resulted from a verifiable disruption or malfunction of an Exchange dissemination or communication system that prevented a member from updating or canceling a quote/order for which the member is responsible where there is Exchange documentation providing that the member sought to update or cancel the quote/order.

• Erroneous Print in Underlying Market Which is Later Cancelled or Corrected

The trade resulted from an erroneous print disseminated by the underlying market which is later cancelled or corrected by the underlying market where such erroneous print resulted in a trade higher or lower than the average trade in the underlying security during the time period encompassing two minutes before and after the erroneous print, by an amount at least five times greater than the average quote width for such underlying security during the time period encompassing two minutes before and after the erroneous print. For purposes of proposed Phlx Rule 1092, the average trade in the underlying security would be determined by adding the prices of each trade during the four minute time period referenced above (excluding the trade in question) and dividing by the number of trades during such time period (excluding the trade in question).

• Erroneous Quote in Underlying Market

The trade resulted from an erroneous quote in the primary market[6] for the underlying security that has a width of at least $1.00 and that width is at least five times greater than the average quote width for such underlying security during the time period encompassing two minutes before and after the dissemination of such quote. For purposes of proposed Phlx Rule 1092, the average quote width would be determined by adding the quote widths of each separate quote during the four minute time period referenced above (excluding the quote in question) and dividing by the number of quotes during such time period (excluding the quote in question).

• Series Quoted No Bid

The trade resulted in an execution price in a series quoted no bid, and at least one strike price below (for calls) or above (for puts) in the same class were quoted no bid at the time of the erroneous execution.

• $0.10 or More Below Parity

The trade is automatically executed at a price where the specialist or ROT sells $0.10 or more below parity. Parity describes an option contract's total premium when that premium is equal to its intrinsic value. Parity for calls is measured by reference to the offer price of the underlying security in the primary market at the time of the transaction minus the strike price for the call. Parity for puts is measured by the strike price of an underlying security minus its bid price in the primary market at the time of the transaction.

In addition to the circumstances described above, the determination as to whether a trade was automatically executed at an erroneous price may be made by mutual agreement of the affected parties to a particular transaction. The trade may be nullified or adjusted on terms to which all parties to a particular transaction agree. In the absence of mutual agreement by the parties, a particular trade may only be nullified or adjusted when the transaction results from an obvious error as provided in proposed Phlx Rule 1092.

e. Procedure

If it is determined that a transaction is the result of an obvious error, Market Surveillance would take one of the following actions: (i) Where each party to the transaction is either a specialist or ROT on the Exchange, the execution price of the transaction would be adjusted by one Floor Official, unless both parties agree to nullify the transaction within ten minutes of being notified by Market Surveillance of the obvious error; or (ii) where at least one party to the transaction in which an obvious error occurred is not a specialist or ROT on the Exchange, two Floor Officials would nullify the transaction unless both parties agree to adjust the price of the transaction within 30 minutes of being notified by Market Surveillance of the obvious error. Upon final Floor Official action, Market Surveillance, in conjunction with the AUTOM Help Desk, where appropriate, would promptly notify both parties to the transaction. The purpose of this procedure is to provide Exchange staff and Floor Officials with a consistent, established course of action to be taken when a transaction has resulted from an obvious error, and to ensure prompt notification of an adjustment or nullification of such a transaction.

Where an adjustment is made to a transaction price, proposed Phlx Rule 1092, Commentary .03 would provide that the bid price from the exchange disseminating the national best bid for the series at the time of the transaction that was the result of an obvious error would be used with respect to an erroneous offer price entered on the Exchange, and the offer price from the exchange disseminating the national best offer for the series at the time of the transaction that was the result of an obvious error would be used with respect to an erroneous bid price entered on the Exchange. If there are no quotes for comparison purposes, the adjustment price would be determined by two Floor Officials and Market Surveillance.

f. Review

If a party affected by a determination made under proposed Phlx Rule 1092 so requests within the time permitted, a Review Panel of at least three Floor Officials would review Floor Official rulings made under this Rule in accordance with Phlx Rule 124(d).[7] A

[6] Phlx represents that the term "primary market," as used in proposed Phlx Rule 1092(c)(ii)(D) and (F), means, in respect of an underlying stock or exchange-traded fund share, the principal market in which the underlying stock or exchange-traded fund share is traded. *See* Amendment No. 2, *supra* note 4; *see also* Phlx Rule 1000(a)(31).

[7] Phlx Rule 124 (Disputes) governs situations where trading disputes cannot be settled by agreement between the members interested. Phlx

request for review under this paragraph must be made within thirty minutes after a party receives verbal notification of a final determination by the Floor Official(s) under Phlx Rule 1092, except that if such notification is made after 3:30 p.m. Eastern Time, either party has until 9:30 a.m. Eastern Time on the next trading day to request a review. The Review Panel shall review the facts and render a decision on the day of the transaction, or the next trade day in the case where a request is properly made after 3:30 p.m. on the day of the transaction or where the request is properly made the next trade day.

As stated above, proposed Phlx Rule 1092 would allow Exchange Floor Officials to nullify certain transactions based on the stated objective criteria set forth in the proposed Rule. Current Phlx Rule 124(a) allows Exchange Floor Officials to nullify transactions in certain cases in which any of the specifically enumerated Exchange Rules listed in Phlx Rule 124(a) have been violated.[8] In order to provide clarity as to the application of each rule, the Exchange is proposing to amend Phlx Rule 124(a) to state that Phlx Rule 124(a) would not apply to options transactions that are the result of an obvious error (as defined in Phlx Rule 1092). Options transactions that are the result of an obvious error would be subject to the provisions and procedures set forth in Phlx Rule 1092.

g. Conclusion

The proposed rule change is intended to address the situation in which the price of an executed trade indicates that an obvious error exists, suggesting that it is unrealistic to expect that the parties to the transaction have come to a meeting of the minds regarding the terms of the transaction. The proposed rule change contemplates that the determination of whether such an obvious error has occurred should be based on objective criteria, and subject to specific objective procedures, including making an appeal process available to the parties to such transactions.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and Section 6(b)(5),[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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 Exchange believes that the proposed rule change will provide objective means for both on and off-floor participants on the Exchange to adjust or nullify transactions that result from an obvious error, and objective procedures and a process to be followed when a transaction results from an obvious error.

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 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

No written comments were either 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 Exchange 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 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–Phlx–2003–68. 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, 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 the filing will also be available for inspection and copying at the principal offices of the Exchange. All comments should be submitted by April 19, 2004.

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

Margaret H. McFarland,

Deputy Secretary.

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Rule 124(d) sets forth procedures to be followed for the appeal of Floor Official rulings.

[8] Under Phlx Rule 124(a), two Option Floor Officials may nullify a transaction if they determine the transaction to have been in violation of Phlx Rules 1014 (Obligations and Restrictions Applicable to Specialist and ROTs), 1015 (Quotation Guarantees), 1017 (Priority and Parity at Openings in Options), 1033 (Bids and Offers), or 1080 (AUTOM). Two Equity Floor Officials may nullify a transaction if they determine the transaction to have been in violation of Phlx Rules 110 (Bids and Offers—Precedence), 111 (Bids and Offers—Binding), 118 (Bids and Offers Outside Best Bid and Offer), 119 (Precedence of Highest Bid), 120 (Precedence of Offers at Same Price), 126 (Crossing), 203 (Agreement of Specialists), 218 (Customer Order Receives Priority), 229 (PACE System), 232 (Handling Orders When the Primary Market is Not Open for Free Trading), or 455 (Short Sales).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49456; File No. SR–Phlx–2004–19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. Relating to the Execution of Market and Marketable Limit Orders in Certain Trust Shares and Trust Issued Receipts During a Locked Market

March 22, 2004.

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 March 10, 2004, the Philadelphia Stock Exchange,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.