

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57844; File No. SR-Phlx-2008-39)

May 21, 2008

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Permanent Approval of the Exchange's Directed Order Program

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 May 20, 2008, 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 substantially prepared by the Phlx. 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

The Phlx proposes to adopt, on a permanent basis, a pilot program concerning Exchange Rule 1080, Philadelphia Stock Exchange Automated Options Market (AUTOM)³ and Automatic Execution System (AUTO-X), and Exchange Rule 1014, Obligations And Restrictions Applicable To Specialists And Registered Options Traders. Specifically, the current pilot

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ AUTOM is the Exchange's electronic order delivery, routing, execution, and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution features. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. AUTOM is today more commonly referred to as Phlx XL. See Exchange Rule 1080.

program covers: (1) Exchange Rule 1080(l), Directed Orders, under which Exchange specialists, Streaming Quote Traders (“SQTs”),⁴ and Remote Streaming Quote Traders (“RSQTs”)⁵ trading on the Exchange’s electronic options trading platform, Phlx XL,⁶ receive Directed Orders (as defined below); and (2) Exchange Rule 1014(g)(viii), which sets forth the trade allocation algorithm for electronically executed and allocated trades involving Directed Orders. This proposal is in connection with a pilot program that is currently scheduled to expire on May 27, 2008.⁷ The text of the proposed rule change is available at the Phlx, the Commission’s Public Reference Room, and http://www.phlx.com/exchange/phlx_rule_fil.html.

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 III below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

⁴ An SQT is an Exchange Registered Options Trader who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. See Exchange Rule 1014(b)(ii)(A).

⁵ An RSQT is a participant in the Exchange’s electronic trading system, Phlx XL, who has received permission from the Exchange to trade in options for his own account and to generate and submit option quotations electronically from off the floor of the Exchange through AUTOM in eligible options to which such RSQT has been assigned. See Exchange Rule 1014(b)(ii)(B).

⁶ See Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR-Phlx-2003-59).

⁷ See Securities Exchange Act Release No. 55803 (May 23, 2007), 72 FR 30413 (May 31, 2007) (SR-Phlx-2007-37).

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, on a permanent basis, a pilot that: (i) permits specialists, SQTs, and RSQTs assigned in options that trade on Phlx XL to receive directed orders (“Directed Orders”)⁸ from a member or member organization (“Order Flow Provider” or “OFP”)⁹ that submits, as agent, a customer order to the Exchange electronically, and (ii) establishes a trade allocation algorithm for Directed Orders that are electronically executed and allocated to reward such Directed Specialists, SQTs, and RSQTs¹⁰ with a participation guarantee for attracting such order flow to the Exchange. The proposed rule is subject to a pilot program scheduled to expire on May 27, 2008.¹¹

Pursuant to Exchange Rule 1080(l), OFPs must transmit Directed Orders to a particular specialist, SQT, or RSQT through AUTOM. If the Exchange’s disseminated best bid or offer is at the National Best Bid or Offer (“NBBO”) when the Directed Order is received, the Directed Order is automatically executed on Phlx XL and allocated to the orders and quotes represented in the Exchange’s quotation. A Directed Specialist, SQT, or RSQT will receive a participation allocation pursuant to Exchange Rule 1014(g)(viii) if the Directed Specialist, SQT, or RSQT was quoting at the NBBO at the time that the Directed Order was received.¹² Otherwise, the automatic execution will be allocated to those quotations and orders at the NBBO pursuant to

⁸ See Exchange Rule 1080(l)(i)(A).

⁹ See Exchange Rule 1080(l)(i)(B).

¹⁰ 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). The word “Directed” modifies all three; that is, it is referring to a Directed Specialist, Directed SQT, and Directed RSQT.

¹¹ See note 7 *supra*.

¹² See Exchange Rule 1080(l)(ii).

Exchange Rule 1014(g)(vii).¹³ The specialist will manually execute Directed Orders that are received when the Exchange is not quoting at the NBBO.¹⁴

The Exchange believes that the current pilot program rewards specialists, SQTs, and RSQTs for actively engaging in marketing activities and establishing relationships with OFPs that generate Directed Orders sent to the Exchange by such OFPs. The Exchange believes that the permanent adoption of this rule will continue to result in additional order flow to the Exchange, thus adding depth and liquidity to the Exchange's markets, and enabling the Exchange to continue to compete effectively with other options exchanges for order flow.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁵ in general and furthers the objectives of Section 6(b)(5) of the Act¹⁶ in particular in that it is 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 continuing to permit specialists, SQTs, and RSQTs trading options on Phlx XL to receive Directed Orders and by encouraging the capture of order flow on the Exchange by rewarding Directed Order recipients with a participation guarantee in trades involving Directed Orders.

¹³ See Exchange Rule 1080(l)(iii).

¹⁴ See Exchange Rule 1080(l)(iv).

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

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 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. 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-2008-39 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-2008-39. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such 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-2008-39 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 Act¹⁷ and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of 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 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 Commission notes that the Exchange's Directed

¹⁷ 15 U.S.C. 78f.

¹⁸ 15.U.S.C. 78f(b)(5).

Order program was approved on a pilot basis.¹⁹ The Exchange has asked the Commission to approve the Exchange's program on a permanent basis. For the reasons noted by the Commission when it initially approved the Exchange's Directed Order program on a pilot basis, the Commission continues to believe that the program does not jeopardize market integrity or the incentive for market participants to post competitive quotes. Accordingly, the Commission finds that the proposal is consistent with the Act.²⁰

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 believes that granting accelerated approval of the proposed rule change would allow the Exchange's Directed Order program to continue without disruption. Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,²¹ for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the Federal Register.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the

¹⁹ The Commission initially approved the Exchange's Directed Order program on a one-year pilot basis to expire on May 27, 2006. See Securities Exchange Act Release No. 51759 (May 27, 2005), 70 FR 32860 (June 6, 2005) (SR-Phlx-2004-91). The Commission subsequently extended to the pilot period for an additional one-year period to expire on May 27, 2007. See Securities Exchange Act Release No. 53870 (May 25, 2006), 71 FR 31251 (June 1, 2006) (SR-Phlx-2006-27). The Commission again extended the pilot for another one-year period to expire on May 27, 2008. See note 7 supra.

²⁰ 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).

²¹ 15 U.S.C. 78s(b)(2).

proposed rule change (SR-Phlx-2008-39) is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Florence E. Harmon
Deputy Secretary

²² 17 CFR 200.30-3(a)(12).