

could be dismissed, exposing the claimant to additional costs, loss of fees, time and effort, and the risk of a lapsed statute of limitations.¹³ The commenter further expressed concern that such waivers might be vulnerable to a legal challenge, thereby impairing the finality of any award. The commenter asserted that the PCX faced little or no harm if it continued its arbitration program.

In response, the PCX noted that SR-PCX-2003-13 applies only to cases where arbitrators have been appointed.¹⁴ The PCX stated that none of the commenter's pending cases had arbitrators appointed, and that thus, approval of this proposal would not affect them. The PCX asserted that approval of this proposed rule change would permit other arbitrations to move forward in an expeditious manner. Finally, as noted above,¹⁵ PCX has stated that it will defer action on arbitrations where the parties do not sign waivers, but will address their administration in the companion rule filing, SR-PCX-2002-77, subject to approval by the SEC.

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

After careful review, 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, and, in particular, the requirements of Section 6 of the Act.¹⁶ Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, as well as to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.¹⁷ The Commission believes that the proposed rules are designed to provide investors with a mechanism to help resolve their disputes with broker-dealers in an expeditious manner, and are designed to help ensure the certainty and finality of arbitration awards.

¹³ The commenter noted that although an arbitration generally tolls the statute of limitations, this does not apply when an arbitration is dismissed.

¹⁴ See letters dated April 17 and 23, 2003 from Kathryn Beck, Senior Vice President, PCX, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission.

¹⁵ See n. 9, *supra*.

¹⁶ In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78f(b)(5).

The Commission further finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that this proposal would apply only to a defined set of arbitrations currently pending at the PCX—those where arbitrators have been appointed. Accelerated approval is appropriate in that it will allow these cases to move forward in an expeditious manner. The Commission further notes that PCX will defer action on any case where a party refuses to execute the required waivers, and that the administration of such cases will be addressed in another PCX rule filing, as stated above.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-PCX-2003-13) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47738; File No. SR-Phlx-2001-28]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Who Allocates Options Trades

April 25, 2003.

On March 9, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change relating to who allocates options trades.

On January 31, 2002, May 17, 2002, July 8, 2002, and March 12, 2003, Phlx submitted Amendment Nos. 1, 2, 3, and 4 to the proposed rule change, respectively.³ The proposed rule

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

²⁷ 17 CFR 240.19b-4.

³ See letter from Edith Hallahan, First Vice President and Deputy General Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 30, 2002 ("Amendment No. 1"); and letters

change, as amended, was published for comment in the **Federal Register** on March 25, 2003.⁴ The Commission received no comments on the proposal.

The proposal would amend the Exchange's Option Floor Procedure Advice F-2 ("Advice F-2"), governing who is responsible for allocating, matching, and time stamping an options trade in specific situations, and for reporting the trade upon its execution. The proposal would also codify paragraph (a) of Advice F-2, as amended, in the Exchange's rules as new paragraph (vi) of Phlx Rule 1014(g).

The proposal specifies that, in trades involving a floor broker, the floor broker would be assigned the responsibility for allocating, matching, time stamping, and reporting, but provides that the floor broker would be permitted to delegate this responsibility to the specialist or an assistant under the specialist's supervision. The proposed rule change would also specify that, in all other cases where the specialist is a participant, the specialist or an assistant under the specialist's supervision would be required to allocate the trade. The responsibility for allocating trades in which neither the floor broker nor the specialist is a participant would remain the same under the proposed rule change. The proposal would also increase the fines for violation of the Exchange's rules on allocation and reporting of trades.

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 exchange⁵ and, in particular, the requirements of Section 6 of the Act⁶ and the rules and regulations thereunder. The Commission believes

from Richard S. Rudolph, Director and Counsel, to Nancy J. Sanow, Assistant Director, Division, Commission, dated May 16, 2002, July 5, 2002, and March 12, 2003 ("Amendment Nos. 2, 3, and 4").

The proposed rule change was submitted by Phlx pursuant to subparagraph IV.B.j. of the Commission's Order of September 11, 2000, which requires the Exchange (among other respondent options exchanges) to adopt new, or amend existing, rules to make express any practice or procedure "whereby Market-Makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class, or the allocation of orders in that option class." Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000).

⁴ See Securities Exchange Act Release No. 47500 (March 13, 2003), 68 FR 14456.

⁵ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f.

that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁷ because it assigns the responsibility for trade allocation and reporting in an appropriate and reasonable manner. The Phlx seeks in addition to permit a floor broker to delegate his or her responsibility to the specialist in view of the different set of burdens that floor brokers face due to changed economic and technological realities on the Exchange floor. The Commission believes it is reasonable to allow the specialist, who is always in the trading crowd, to assume the responsibility if he or she is willing to do so. The Commission further notes that the proposed rule change would add a provision requiring the allocating party in each trade to record his or her role in a manner that would facilitate investigation of any allocation after the fact should questions arise. The Commission believes that the proposed increases to the fine schedule associated with the trade allocation function and reporting responsibility are reasonable to help ensure compliance with these rules.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (File No. SR-Phlx-2001-28) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47739; File No. SR-Phlx-2001-39]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Allocation of Trades

April 25, 2003.

On March 12, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and rule 19b-4 thereunder,² a proposed rule change

relating to the allocation of trades on the Exchange's options floor.³ On May 11, 2001, February 19, 2002, May 22, 2002, November 19, 2002, December 16, 2002, and February 25, 2003, Phlx submitted Amendment Nos. 1, 2, 3, 4, 5, and 6 to the proposed rule change, respectively.⁴ The proposed rule change, as amended, was published for comment in the **Federal Register** on March 25, 2003.⁵ The Commission received no comments on the proposal.

Specifically, the proposed rule change would revise Phlx Rule 1014(g) and Option Floor Procedure Advice B-6 to: (1) Eliminate current exceptions to the Exchange's rule that an order of a "controlled account" (any account controlled by or under common control with a broker-dealer) must yield priority to a customer order; (2) establish that specialists and Registered Options Traders ("ROTs") are entitled to participate only in the portion of an incoming order that remains ("Remainder of the Order") following the allocation of contracts to customers that are on parity; (3) establish that each Enhanced Specialist Participation granted by the Exchange's rules is applied to the Remainder of the Order, and is a form of entitlement, rather than a mandatory participation;⁶ (4) set forth

³ The proposed rule change was submitted by Phlx pursuant to subparagraph IV.B.j. of the Commission's Order of September 11, 2000, which requires the Exchange (among other respondent options exchanges) to adopt new, or amend existing, rules to make express any practice or procedure "whereby Market-Makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class, or the allocation of orders in that option class." Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000).

The proposed rule change applies to trades that are not executed through the Exchange's automatic execution system. In addition, the Commission notes that the Exchange has adopted special allocation rules that pertain to its "ROT Access" system. See Securities Exchange Act Release No. 46763 (November 1, 2002), 67 FR 68898 (November 13, 2002).

⁴ See letters from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 10, 2001 (Amendment No. 1), February 15, 2002 (Amendment No. 2), May 21, 2002 (Amendment No. 3), November 18, 2002 (Amendment No. 4), December 12, 2002 (Amendment No. 5), and February 24, 2003 (Amendment No. 6).

⁵ See Securities Exchange Act Release No. 47499 (March 13, 2003), 68 FR 14459 ("Notice"). The Notice contains a detailed description of the proposed rule change, the major aspects of which are summarized below.

⁶ The Enhanced Specialist Participation programs in the Exchange's rules for certain options classes allocate to the specialist a greater than equal share of the portion of the order that is divided among the specialist and any controlled accounts that are

how the Remainder of the Order is to be allocated among all participants on parity, establishing a method that, after applying any Enhanced Specialist Participation, allocates contracts based on the "stated size" of each participant,⁷ and accommodates smaller stated sizes first when the stated sizes of participants are not equal;⁸ (5) set forth the procedures by which a specialist or ROT may waive some or all of the contracts to which he or she is entitled, and how such waived contracts would be allocated; (6) stipulate that a pattern or practice of waiving may be considered conduct inconsistent with just and equitable principles of trade; and (7) state that it would be considered conduct inconsistent with just and equitable principles of trade for a member to enter into any agreement with another member concerning allocation of trades, or to harass, intimidate, or coerce, any member to enter into any waiver or to make or refrain from making any complaint or appeal.

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 exchange⁹ and, in particular, the requirements of Section 6 of the Act¹⁰ and the rules and regulations thereunder. The Commission believes that the proposed rule change is

on parity. The percentage awarded to the specialist varies according to the number of controlled accounts on parity. Most of the relevant provisions in Phlx Rule 1014(g) currently state that the specialist is entitled to the applicable percentage, but other provisions do not. See Notice.

⁷ The proposed rule change would also define how a participant's "stated size" is determined. See Notice.

⁸ As discussed in greater detail in the Notice, the proposed rule change would provide that if all participants' stated sizes were equal, they would receive equal allocations. If all participants' stated sizes were not equal, they would be allocated contracts according to a process whereby, in an initial round of allocation, each participant would receive a number of contracts equal to the stated size of the participant(s) with the smallest stated size (provided that if the sum of such allocations would exceed the number of contracts available, the contracts would be divided equally among all participants). Each participant whose stated size was not filled in the initial round of the process would be allocated in the next round a number of contracts equal to the stated size of the participant(s) with the smallest stated size in that round. The process would continue as necessary until all the contracts are allocated. In any round where the number of contracts remaining does not suffice to allocate the smallest stated size to all participants, or when the stated sizes of all remaining participants are equal, the contracts would be divided equally.

⁹ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.