

afforded any remaining balance of the six month grace period for compliance with all other requirements. Companies transferring from other markets with substantially similar requirements would be afforded the balance of any grace period afforded by the other market.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,⁵ in general, and with section 15A(b)(6) of the Act,⁶ in particular, in that the proposed rules are 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.

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

Nasdaq does not believe that the proposed rule change will result in 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 were neither solicited nor 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 self-regulatory organization 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. 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 NASD. All submissions should refer to File No. SR-NASD-2002-141 and should be submitted by April 15, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-6987 Filed 3-24-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47500; File No. SR-Phlx-2001-28]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange Relating to Who Allocates Options Trades

March 13, 2003.

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 9, 2001, 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 January 31, May 17, July 8, 2002, and March 12, 2003, the Phlx filed Amendment Nos. 1, 2, 3, and 4 to the proposed rule change, respectively.³

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 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 from Richard S. Rudolph, Director and Counsel, to Nancy J. Sanow, Assistant Director, Division,

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 Option Floor Procedure Advice F-2 ("Advice F-2"), "Allocation, Time Stamping, Matching and Access to Matched Trades." The Phlx further proposes to codify paragraph (a) of Advice F-2, as amended—regarding who allocates options trades—in the Exchange's rules, as new paragraph (vi) of Phlx rule 1014(g).

The Phlx also proposes to amend the fine schedule associated with Advice F-2, and thereby to amend its minor rule violation enforcement and reporting plan ("minor rule plan")⁴ and the Exchange's sanctioning guidelines⁵ accordingly.

Finally, the Exchange is proposing corresponding amendments to Option Floor Procedure Advice F-12 ("Advice F-12"), "Responsibility for Assigning Participation," to replace the term "largest participant" with "Allocating Participant" and to cross-reference that new term to new rule 1014(g)(vi). The Exchange is also proposing to change Advice F-12 by correcting the fine schedule so that it does not apply a minor rule plan fine to paragraph (d), dealing with disputes, which is a process-oriented provision, and not one which could give rise to a violation.

Below is the text of the proposed amendments to Advice F-2 and Advice F-12. Paragraph (a) of Advice F-2, as amended, would also be codified in the Phlx's rules as rule 1014(g)(vi). Deleted language is in brackets. Proposed new language is *italicized*.

* * * * *

Commission, dated May 16, 2002, July 5, 2002, and March 12, 2003 (Amendment Nos. 2, 3, and 4). The changes made by these amendments have been incorporated into this notice.

⁴ The Phlx's minor rule plan, codified in rule 970, consists of advices, such as Advice F-2, with accompanying fine schedules. Rule 19d-1 under the Act authorizes national securities exchanges to adopt minor rule plans for summary discipline and abbreviated reporting. Rule 19d-1 requires prompt filing with the Commission of any final disciplinary actions. However, minor rule plan violations not exceeding \$2,500 are deemed not final, thereby permitting periodic, as opposed to immediate, reporting. See also Securities Exchange Act Release No. 44537 (July 11, 2001), 66 FR 37511 (July 18, 2001) (SR-Phlx-2001-36).

⁵ See Securities Exchange Act Release No. 45569 (March 15, 2002), 67 FR 13397 (March 22, 2002) (SR-Phlx-2001-60).

⁵ 15 U.S.C. 78o-3.

⁶ 15 U.S.C. 78o-3(b)(6).

Option Floor Procedure Advices**F-2 Allocation, Time Stamping, Matching and Access to Matched Trades**

(a) In order to facilitate timely tape reporting of executed trades, it is the duty of the *persons identified below* [largest participant in a trade] to allocate, match and time stamp manually executed trades as well as to submit the matched trade to the appropriate person at the respective specialist post immediately upon execution:

(i) *in a trade involving a floor broker, the floor broker shall do so, provided that a floor broker may delegate this responsibility to the specialist (or an assistant to the specialist under the specialist's direct supervision) if the specialist agrees to accept such responsibility, and, in the event of such delegation, the specialist (or an assistant to the specialist under the specialist's direct supervision) shall do so;*

(ii) *in all other cases where the specialist is a participant (i.e., where there is no floor broker), the specialist (or an assistant to the specialist under the specialist's direct supervision) shall do so;*

(iii) *in any other case (i.e., where there is no floor broker and no specialist is involved), the largest participant shall do so (for example, where several Registered Options Traders are involved); and*

(iv) *if there is only one seller and one buyer (no floor broker and no specialist is involved), the seller shall do so (for example, where only two Registered Options Traders are involved).*

The person responsible for trade allocation (the "Allocating Participant") shall, for each trade allocated by such Allocating Participant, circle his or her badge identification number on the trade tickets, identifying himself/herself as the Allocating Participant in the particular trade. If the Allocating Participant is not a participant in the trade to be allocated, he/she shall identify himself/herself by initialing the trade tickets.

(b) A member or member organization initiating an options transaction whether acting as principal or agent, must report or ensure that the transaction is reported within 90 seconds of the execution to the tape. Transactions not reported within 90 seconds after execution shall be designated as late. A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with just and equitable principles of trade.

[If there is only one seller and one buyer, the seller is responsible.]

(c) Execution times must be recorded on the reverse side of one or more of the tickets to a matched trade.

[(b)d] Once a trade has been matched and submitted for reporting at the post, the respective Specialist Unit must preserve the matched tickets for a period of not less than three years.

[(c)e] Member access to tickets comprising a matched trade is available to any participant of that trade, as well as the respective Specialist and any Floor Official acting in his capacity as a Floor Official. Requests to review trade matches must be made with the Specialist Unit.

FINE SCHEDULE

[Implemented on a three year running calendar basis]⁶

F-2 [(a-c)] (a, c-e):			
1st Occurrence	[\$100]	\$500	
2nd Occurrence	[\$250]	\$1,000	
3rd Occurrence	[\$500]	\$2,000	
4th and Thereafter ..			Sanction is discretionary with Business Conduct Committee.
F-2 (b):			
1st Occurrence		\$500	
2nd Occurrence		\$1,000	
3rd Occurrence		\$2,500	
4th and Thereafter ..			Sanction is discretionary with Business Conduct Committee.

F-12 Responsibility for Assigning Participation

(a) In each instance where a member/participant effects a transaction on the options or foreign currency options floor, he must make reasonable efforts to ensure that a meeting of the minds occurred with the contra-side as to confirming the contra-side's participation in the trade. In trades where more than one contra-side is involved, each contra-side must immediately make known to the [largest participant] *Allocating Participant* (See Advice F-2 and Rule 1014(g)) his understanding as to his respective level of participation in the trade.

(b) No such contra-side who has participated in the trade shall leave the crowd until the level of his participation in the trade has been confirmed by the [largest participant] *Allocating Participant* (See Advice F-2 and Rule 1014(g)).

(c) No person in the crowd shall submit a ticket for matching on a trade

when that person is not due participation in the trade.

(d) Disputes as to participation on a trade shall be resolved by a majority vote of those persons present in the crowd during the relevant time or, if not so settled, then by a Floor Official.

FINE SCHEDULE

[Implemented on a one year running calendar basis]

F-12 (a-d)c):	
1st Occurrence	\$500
2nd Occurrence	\$1,000
3rd Occurrence	\$2,000
4th and Thereafter ..	Sanction is discretionary with Business Conduct Committee.

Obligations and Restrictions Applicable to Specialists and Registered Options Traders

Rule 1014. (a)-(e) No change.

(g) (i)-(iv) No change.

(v) RESERVED.

(vi) *In order to facilitate timely tape reporting of executed trades, it is the duty of the persons identified below to allocate, match and time stamp manually executed trades as well as to submit the matched trade to the appropriate person at the respective specialist post immediately upon execution:*

(i) *in a trade involving a floor broker, the floor broker shall do so, provided that a floor broker may delegate this responsibility to the specialist (or an assistant to the specialist under the specialist's direct supervision) if the specialist agrees to accept such responsibility, and, in the event of such delegation, the specialist (or an assistant to the specialist under the specialist's direct supervision) shall do so;*

(ii) *in all other cases where the specialist is a participant (i.e., where there is no floor broker), the specialist (or an assistant to the specialist under the specialist's direct supervision) shall do so;*

(iii) *in any other case (i.e., where there is no floor broker and no specialist is involved), the largest participant shall do so (for example, where several Registered Options Traders are involved); and*

(iv) *if there is only one seller and one buyer (no floor broker and no specialist is involved), the seller shall do so (for example, where only two Registered Options Traders are involved).*

The person responsible for trade allocation (the "Allocating Participant") shall, for each trade allocated by such Allocating Participant, circle his or her

⁶ See Securities Exchange Act Release No. 44537 (July 11, 2001), 66 FR 37511 (July 18, 2001) (SR-Phlx-2001-36).

badge identification number on the trade tickets, identifying himself/herself as the Allocating participant in the particular trade. If the Allocating Participant is not a participant in the trade to be allocated, he/she shall identify himself/herself by initialing the trade tickets.

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 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 change the responsibility for options trade allocation to permit floor brokers to delegate this responsibility to the specialist.⁷ The Exchange believes that this amendment should render the process of trade allocation more efficient, which in turn facilitates trade reporting. Trade allocation means, in this context, determining who is considered to be bidding or offering at a particular price, who participates in a trade, and for what size.⁸

Currently, Advice F-2 provides that in order to facilitate timely tape

reporting of executed trades, it is the duty of the largest participant in a trade to allocate, match, and time stamp manually executed trades,⁹ as well as to submit the matched trade to the appropriate person at the respective specialist post immediately upon execution. Further, under the current rule, if there is only one seller and one buyer, the seller is responsible.

Advice F-2 was amended in 1998 to add a trade allocation provision and to specifically place that responsibility upon the largest participant involved in the trade, who is normally the floor broker representing the original order in the trading crowd.¹⁰ At the time of this amendment, the Exchange noted that the practice in most options crowds was for the specialist to announce trade splits. The Exchange also noted that the practice differed throughout the floor, especially when the specialist was not involved in a trade, or where a great deal of trading and quoting activity rendered specialist allocation impractical. In these situations, floor brokers assisted in allocating trades, along with their other duties respecting trade tickets. Thus, the 1998 amendment was intended to both establish who is responsible for trade allocation as well as to select the largest participant (normally, the floor broker) as a logical extension of the then-existing responsibilities for matching and time stamping.

The proposed amendment to Advice F-2 would facilitate a voluntary shift in the responsibility for allocating trades from the floor broker to, generally (subject to delegation), the specialist. The proposal would require the floor broker to allocate trades (where a floor broker is a participant to a trade), recognizing the floor broker's unique position in asking for the market and hearing the responses. At the same time, it would allow the floor broker to delegate such responsibility to the specialist (if the specialist agrees to do so), recognizing the floor broker's desire to proceed to the next trade.

That delegation, which could also be made to someone assisting the specialist

under the specialist's direct supervision,¹¹ also acknowledges the specialist's general obligation to be present and aware of who is on what market. The Exchange anticipates that, generally, the delegation would be done across-the-board in a particular crowd, but understands that there are situations where the delegation may occur trade-by-trade, and even after a trade, in order to be responsive to the needs and relative activity level of particular specialists and floor brokers.

Since the 1998 amendment, for reasons relating to both business practices and technology, some floor brokers have found the responsibilities under the current version of Advice F-2 burdensome and impractical in many instances. Due to the changed role and reduced number of floor brokers, it may no longer make sense for floor brokers to have the sole responsibility to allocate trades on the Exchange floor. The number of orders received through the AUTOM System (not requiring a floor broker) has risen steadily, causing a declining role for floor brokers. The maximum size of orders eligible for AUTOM delivery has risen from 500 to 1,000 contracts, in response to competitive pressures.¹² At the same time, the number of options listed on the Exchange and overall volume have skyrocketed. Overall technological enhancements and changes in the operation and economics of the trading floor seem to indicate it would be more realistic for specialists, who are always present in the trading crowd, to assume this responsibility.

In trades not involving a floor broker or the specialist, the largest participant would continue to be responsible for trade allocation. For instance, where two Registered Options Traders sell to one Registered Options Trader, that one buyer would be the largest participant, and thus the allocating participant. Similarly, where there is one buyer and one seller (neither of whom is the specialist or floor broker), the seller would continue to be responsible for trade allocation. An example of this situation would be two Registered Options Traders trading with each other.

⁷ On September 11, 2000, the Commission issued an Order Instituting Public Administrative Proceedings Pursuant to section 19(h) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, which requires the Exchange (among other respondent options exchanges) to implement certain undertakings. See Securities Exchange Act Release No. 43268 (September 11, 2000) ("Order"). One such undertaking, set forth in section IV.B.j. of the Order, requires each respondent exchange to adopt new, or amend existing, rules to include any practice or procedure, not currently authorized by rule, whereby market makers determine by agreement the spreads or option prices at which they will trade any option, or the allocation of orders in that option. Describing accurately who allocates trades is intended by the Phlx to capture in a rule activity that can be viewed as allocating trades.

⁸ In a related proposal (File No. SR-Phlx-2001-39), the Phlx proposes to codify other practices relating to the allocation of trades that have developed on the Exchange's options floor, and relating to the Exchange's parity and priority rules. See Securities Exchange Act Release No. 47499 (March 13, 2003).

⁹ Manually executed trades refers to trades other than AUTO-X trades (which are automatically executed by the AUTO-X feature of the AUTOM System, pursuant to Phlx rule 1080), which includes orders delivered by AUTOM, by the Floor Broker Order Entry System, as well as manually to the specialist. (AUTOM, an acronym for Automated Options Market, is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor.)

¹⁰ See Securities Exchange Act Release No. 39889 (April 10, 1998), 63 FR 23331 (August 28, 1998) (SR-Phlx-97-51).

¹¹ See Option Floor Procedure Advice F-23, which provides in pertinent part that a specialist clerk, under the supervision of a specialist, may request the crowd's market in order to update disseminated markets or ascertain parity/priority splits in relation to the execution of an order. See Securities Exchange Act Release No. 33125 (November 1, 1993), 58 FR 59286 (November 8, 1993), (SR-Phlx-93-17). See also Phlx rule 748, which requires all employees to be supervised.

¹² See Securities Exchange Act Release No. 43115 (August 10, 2000), 65 FR 50262 (August 17, 2000) (File No. SR-Phlx-00-35).

The proposed rule change also would require the person responsible for trade allocation in each trade (the "Allocating Participant") to circle his or her badge identification number on the trade tickets, thereby identifying him or herself as the Allocating Participant in the particular trade.¹³ If the Allocating Participant is not a participant in the trade (such as where a Floor Broker delegated responsibility for allocation to the specialist), the Allocating Participant would be required to identify him or herself by initialing the trade tickets.¹⁴

The purpose of adopting new subparagraph (vi) of rule 1014(g) is to codify Advice F-2 expressly into Exchange rules. Certain advices are merely restatements of Phlx rules, codified into Floor Procedure Advices, not just because they may have an associated fine schedule as part of the minor rule plan, but also for the convenience of members on the trading floor.¹⁵

The Exchange believes that the proposed fine schedule is appropriate, in light of the low level of the existing fines (with a first violation resulting in a fine of merely \$100), and the importance of the trade allocation function. The Exchange has recently increased most of its minor rule plan fine schedules.¹⁶ The Exchange is also proposing to adopt a separate fine schedule for paragraph (b) of Advice F-2, which deals with trade reporting, because the Exchange intends to administer its surveillance and enforcement of that provision separately.¹⁷

2. Statutory Basis

For these reasons, the Exchange believes that its proposal is consistent with section 6(b) of the Act¹⁸ in general and section 6(b)(5)¹⁹ in particular in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices and protect investors and the public interest by establishing a structure for determining who allocates

options trades that permits the floor broker, who would generally perform the allocation, to delegate this responsibility to the specialist. Thus, the provision should promote prompt and accurate trade allocations, which in turn facilitates prompt trade reporting.

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. 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. 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 Phlx. All submissions should refer to File No.

SR-Phlx-2001-28 and should be submitted by April 15, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47499; File No. SR-Phlx-2001-39]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, 3, 4, 5, and 6 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Allocation of Trades

March 13, 2003.

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 12, 2001, 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 Phlx. 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.³ The Commission is publishing this

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letters from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), 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). The proposal, File No. SR-Phlx-2001-39, originally was filed to be immediately effective pursuant to section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A). In Amendment No. 1, Phlx amended the status of the proposed rule change to be filed pursuant to section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2), and requested accelerated effectiveness. In Amendment No. 2, Phlx consolidated a companion proposal, File No. SR-Phlx-2001-29, with the instant proposal to become a single proposed rule change and made several modifications. Phlx made additional changes to the rule text in Amendment No. 3 and, in Amendment No. 4, Phlx amended and restated the proposed rule change in its entirety. In Amendment No. 5, Phlx made revisions to clarify that all customer orders would be executed prior to the participation of the specialist and to delete references to Phlx rule 1064. In Amendment No. 6, Phlx made minor corrections to the rule text and narrative section of the proposal.

¹³ See Amendment No. 2.

¹⁴ See Amendment No. 3.

¹⁵ The advices were historically printed in pocket-sized versions for trading floor use. See, e.g., Advice B-6 and Phlx rule 1014(g)(ii) and Advice A-11 and Phlx rule 1015.

¹⁶ See Securities Exchange Act Release No. 44537 (July 11, 2001), 66 FR 37511 (July 18, 2001) (SR-Phlx-2001-36).

¹⁷ The Commission notes that the proposed fine for a third violation of paragraph (b) of Advice F-2 would be \$2,500, in contrast to the proposed fine of \$2,000 for a third violation of other provisions of Advice F-2.

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(5).