

proposed rules to the new EOC requirements.<sup>26</sup>

## 2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>27</sup> of the Act, in general, and further the objectives of Section 6(b)(5),<sup>28</sup> in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with provisions of Section 11A(a)(1)(B) of the Act,<sup>29</sup> which states that the new data processing and communications techniques create the opportunity for more efficient and effective market operations.

### 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 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 on the proposed rule change 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, as amended, 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 PCX. All submissions should refer to File No. SR-PCX-2002-57 and should be submitted by August 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>30</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48266; File No. SR-Phlx-2003-56]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to a Pilot Program to Deploy the Options Floor Broker Management System

July 31, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 31, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal, on an accelerated

basis. The pilot will expire on August 29, 2003.

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

The Exchange proposes to effect a pilot program to deploy a new component of the Exchange's Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X)<sup>3</sup> by adopting new Phlx Rules 1063(e) and 1080, Commentary .06 relating to the Exchange's Options Floor Broker Management System (the "System") on a pilot basis beginning not later than July 31, 2003, extending through full deployment of the System not later than August 29, 2003 ("the pilot").

In order to have enforceable rules in place concerning the System, and to ensure that Floor Brokers using the System during the month-long deployment would not be in violation of current Exchange rules concerning ticket marking requirements, the Exchange proposes that the following rule text, which would apply to Floor Brokers using the System during the pilot, become effective on a pilot basis, to expire on August 29, 2003.<sup>4</sup>

The text of the proposed rule change is set forth below. New text is in *italics*; deletions are in *brackets*.

\* \* \* \* \*

### Obligations And Restrictions Applicable To Specialists And Registered Options Traders

Rule 1014.

(a)-(f) No change.

(g) Equity Option and Index Option Priority and Parity

(i)(A) Exchange Rules 119 and 120 direct members in the establishment of priority of orders on the floor. In addition, equity option and index option orders of controlled accounts are required to yield priority to customer

<sup>3</sup> 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 feature, AUTO-X. 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.

<sup>4</sup> The Exchange has filed for permanent approval of the proposed rules. See SR-Phlx-2003-40 and Amendment No. 1 thereto. The Exchange acknowledges that SR-Phlx-2003-40 and Amendment No. 1 thereto will be subject to publication of a Notice in the **Federal Register** and subject to public comment, which may result in amendments to the proposed rules.

<sup>26</sup> See e.g., proposed PCX Rules 6.48 and 6.62(e).

<sup>27</sup> 15 U.S.C. 78f(b).

<sup>28</sup> 15 U.S.C. 78f(b)(5).

<sup>29</sup> 15 U.S.C. 78k-1(a)(1)(B).

<sup>30</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

orders when competing at the same price, as described below.

For the purpose of paragraph (g) of this Rule, "Initiating Order" means an incoming contra-side order. "Remainder of the Order" means the portion of an Initiating Order that remains following the allocation of contracts to customers that are on parity, in accordance with this Rule 1014(g)(i). The remainder of the Order shall be allocated pursuant to this Rule 1014. An account type is either a controlled account or a customer account. A controlled account includes any account controlled by or under common control with a broker-dealer. Customer accounts are all other accounts.

Orders of controlled accounts must yield priority to customer orders. Orders of controlled accounts are not required to yield priority to other controlled account orders.

Orders of controlled accounts, other than ROTs and Specialists market making in-person, must be (1) verbally communicated as for a controlled account when placed on the floor and when represented to the trading crowd and (2) recorded as for a controlled account by appropriately circling the "yield" field on the floor ticket of any such order (except market maker tickets) *or, in the case of trades involving a Floor Broker, by making the appropriate notation the Options Floor Broker Management System.*

(ii)-(v) No change.

(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)-(iv) No change.

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 or 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 initiating the trade tickets. *In the case of a trade in which a Floor Broker is the Allocating Participant, such Floor Broker shall allocate the trade using the Options Floor Broker Management System.*

#### Execution Guarantees

Rule 1015. (a) (i)-(v) No change.

(vi) Floor Brokers must make reasonable efforts to ascertain whether

each order entrusted to them is for the account of a customer or a broker-dealer. If it is ascertained that the order is for the account of a broker-dealer, the responsible Floor Broker must advise the crowd of that fact prior to bidding/ offering on behalf of the order or executing the order. The [responsible floor agent] *Floor Broker or his employees must [legibly mark the floor ticket as "B/D"] make the appropriate notation on the Options Floor Broker Management System when it has been determined that the order is for an account of a broker/dealer.*

(vii) No change.

(b) No change.

#### General Comparison and Clearance Rule

Rule 1051. (a) 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, except that, when an order represented by a Floor Broker is executed against a limit order on the book, the specialist must report or ensure that the portion of the transaction represented by such specialist is reported 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.

(b) No change.

#### Responsibilities of Floor Brokers

Rule 1063. (a)-(d) No change.

(e) *Options Floor Broker Management System. In order to create an electronic audit trail for options orders represented by Floor Brokers on the Exchange's Options Floor, a Floor Broker or such Floor Broker's employees shall, contemporaneously upon receipt of an order and prior to the representation of such an order in the trading crowd, record all options orders represented by such Floor Broker onto the electronic Options Floor Broker Management System (as described in Rule 1080, Commentary .06). The following specific information with respect to orders represented by a Floor Broker shall be recorded by such Floor Broker or such Floor Broker's employees: (i) The order type (i.e., customer, firm, broker-dealer); (ii) the option symbol; (iii) buy, sell, or cancel; (iv) call, put, complex (i.e., spread, straddle), or contingency order as described in Rule 1066; (v) number of contracts; (vi) limit price or market order or, in the case of a complex order,*

*net debit or credit, if applicable; (vii) whether the transaction is to open or close a position. Upon the execution of such an order, the Floor Broker shall enter the time of execution of the trade. Floor Brokers or their employees shall enter clearing information onto the Options Floor Broker Management System no later than five minutes after the execution of a trade. In the event of a malfunction in the Options Floor Broker Management System, Floor Brokers shall record the required information on trade tickets, and shall not represent an order for execution which has not been time stamped with the time of entry on the trading floor. Such trade tickets shall be time stamped upon the execution of such an order.*

#### Crossing, Facilitation and Solicited Orders

Rule 1064. (a) No change.

(b) Facilitation Orders. A Floor Broker holding an options order for a public customer and a contra side order may cross such orders in accordance with paragraph (a) above or may execute such orders as a facilitation cross in the following manner:

(i) [A legible "F" must be recorded on the floor ticket.] *The Floor Broker or his employees must enter the appropriate notation onto the Options Floor Broker Management System for the public customer's order, together with all of the terms of the order, including any contingency involving other options or the underlying or related securities.*

(ii)-(iii)

(c)(i)-(ii) No change.

(iii) [ "Solicited" shall be written clearly and legibly on the order ticket of the solicited order] *The Floor Broker or his employees must note on the Options Floor Broker Management System that the trade involves a solicited order.*

(d) No change.

Commentary:

No change.

#### Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X)

Rule 1080. (a)-(j) No change.

Commentary:

.01-.05 No change.

.06 *Options Floor Broker Management System. The Options Floor Broker Management System is a component of AUTOM designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. The Options Floor Broker Management System also is designed to*

*establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. The Exchange will begin deployment of the Options Floor Broker Management System on July 31, 2003, with floor-wide deployment to be completed not later than August 29, 2003.*

**Proposed Amendments to Option Floor Procedure Advices:**

**A-11 Responsibility to Fill Customer Orders**

(a)(i)-(v) No change.

(vi) Floor Brokers must make reasonable efforts to ascertain whether each order entrusted to them is for the account of a customer or a broker-dealer. If it is ascertained that the order is for the account of a broker-dealer, the responsible Floor Broker must advise the crowd of that fact prior to bidding/ offering on behalf of the order or executing the order. The [responsible floor agent] *Floor Broker or his employees must [legibly mark the floor ticket as "B/D"] make the appropriate notation on the Options Floor Broker Management System when it has been determined that the order is for an account of a broker/dealer.*

(vii) No change.

(b) No change.

FINE SCHEDULE No change.

**B-6 Priority of Options Orders for Equity Options and Index Options by Account Type (EQUITY OPTION AND INDEX OPTION ONLY)**

(No change to first two introductory paragraphs.)

**Section A**

No change.

**Section B**

Orders of controlled accounts, other than ROTs and Specialists market making in-person, must be (1) verbally communicated as for a controlled account when placed on the floor and when represented to the trading crowd and (2) recorded as for a controlled account by appropriately circling the "yield" field on the floor ticket of any such order (except market maker tickets) *or, in the case of trades involving a Floor Broker, by making the appropriate notation on the Options Floor Broker Management System.*

In any instance where an order is misrepresented in this fashion due to factors which give rise to the concern that it was the result of anything other than an inadvertent error, the Exchange may determine to bypass the fine schedule below and refer the incident to the Business Conduct Committee for possible disciplinary proceedings in accordance with those procedures set forth under the Exchange's Disciplinary Rule 960.

**Section C-E No change**

FINE SCHEDULE No change.

**B-8 Use of Floor Brokers by an ROT While on the Floor**

(a) When an ROT who is on the floor gives an order to a Floor Broker for execution, the ROT must initial and time stamp the order ticket. *The Floor Broker or his employees must [and] indicate on [it] the Options Floor Broker Management System whether such order is opening or closing.*

(b) If such order opens or increases a position in the account of an ROT, the ROT must be aware of the terms of the trade, initial and time stamp the order and retain a copy of the ticket.

FINE SCHEDULE No change.

**B-11 Crossing, Facilitation and Solicited Orders**

(a) No change.

(b) Facilitation Orders—A Floor Broker holding an options order for a public customer and a contra-side order may cross such orders in accordance with paragraph (a) above or may execute such orders as a facilitation cross in the following manner:

(i) [A legible "F" must be recorded on the floor ticket]. *The Floor Broker or his employees must enter the appropriate notation onto the Options Floor Broker Management System for the public customer's order, together with all of the terms of the order, including any contingency involving other options or the underlying or related securities.*

(ii)-(iii)

(c) (i)-(ii) No change.

(iii) ["Solicited" shall be written clearly and legibly on the order ticket of the solicited order.] *The Floor Broker or his employees must note on the Options Floor Broker Management System that the trade involves a solicited order.*

(d) No change.

FINE SCHEDULE No change.

**C-2 [Clocking Tickets for Time of Entry on the Floor**

A Floor Broker shall not represent an order for execution which has not been time stamped with the time of entry on the trading floor. It is the responsibility

of the introducing Floor Brokerage unit to time stamp an order when it is received.]

**Options Floor Broker Management System**

*Options Floor Broker Management System. In order to create an electronic audit trail for options orders represented by Floor Brokers on the Exchange's Options Floor, a Floor Broker or such Floor Broker's employees shall, contemporaneously upon receipt of an order and prior to the representation of such an order in the trading crowd, record all options orders represented by such Floor Broker onto the electronic Options Floor Broker Management System (as described in Rule 1080, Commentary .06). The following specific information with respect to orders represented by a Floor Broker shall be recorded by such Floor Broker or such Floor Broker's employees: (i) The order type (i.e., customer, firm, broker-dealer); (ii) the option symbol; (iii) buy, sell, or cancel; (iv) call, put, complex (i.e., spread, straddle), or contingency order as described in Rule 1066; (v) number of contracts; (vi) limit price or market order or, in the case of a complex order, net debit or credit, if applicable; (vii) whether the transaction is to open or close a position. Upon the execution of such an order, the Floor Broker shall enter the time of execution of the trade. Floor Brokers or their employees shall enter clearing information onto the Options Floor Broker Management System no later than five minutes after the execution of a trade. In the event of a malfunction in the Options Floor Broker Management System, Floor Brokers shall record the required information on trade tickets, and shall not represent an order for execution which has not been time stamped with the time of entry on the trading floor. Such trade tickets shall be time stamped upon the execution of such an order.*

FINE SCHEDULE No change.

**C-3 Handling Orders of Phlx ROTs and Other Registered Options Market Makers**

(a) No change

(b) Upon receipt of an options order on the Phlx for any account of a person registered as an options market maker on another national securities exchange, the Floor Broker *or his employees must [legibly mark the letter "N" on the order ticket] so indicate on the Options Floor Broker Management System and must ensure that the order is represented in the trading crowd as a "BD" order for the purposes of the Exchange's [public customer order guarantee rule (i.e., the Ten-Up Rule)] yielding requirements. A*

Floor Broker must make reasonable efforts to inquire which orders placed with him for execution on the Phlx qualify as ["N"] such orders.

(c) Before executing an opening transaction on behalf of a Phlx ROT, the Floor Broker *or his employees* must ascertain that the ROT is aware of the terms of the trade and assure that the floor ticket has been initialed and time-stamped by the ROT *and that the order is appropriately entered on the Options Floor Broker Management System*. The Floor Broker must [mark a "P" on the floor ticket off] *note on the Options Floor Broker Management System* any opening off-floor order to be cleared into a Phlx market maker account, as indicated by a Phlx ROT seeking market maker margin treatment for such order pursuant to Rule 1014, Commentary .01 and Advice B-4, and comply with the requirements of Advice B-12 respecting multiply traded options.

(d) No change.

FINE SCHEDULE No change.

#### F-1 Use of Identification Letters and Numbers

All Specialists, ROTs, and Floor Brokers must use the complete alpha/numeric identification assigned by the Exchange. All Floor Brokers *or their employees* must [put] *indicate* their complete alpha/numeric identifiers on [every ticket which they broker] *the Options Floor Broker Management System for each order they receive and represent in the trading crowd*.

FINE SCHEDULE No change.

#### F-2 Allocation, Time Stamping, Matching and Access to Matched Trades

(a) No change.

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 or 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. *In the case of a trade in which a Floor Broker is the Allocating Participant, such Floor Broker shall allocate the trade using the Options Floor Broker Management System.*

(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, *except that, when an order represented by a Floor Broker is executed against a limit order on the book, the specialist must report or ensure that the portion of the transaction represented by such specialist is reported 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.

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

(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.

(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 No change.

#### F-4 Orders Executed as Spreads, Straddles, Combinations or Synthetics and Other Order Ticket Marking Requirements

(a) Sp, St, Comb, Syn—Members executing spread, straddle or combination orders in reliance upon the "spread priority rule," Rule 1033(d), or synthetic option (buy-write, synthetic put and synthetic call) orders, must mark the tickets as "sp" for spreads, "st" for straddles, "comb" for combinations and "syn" for synthetics. *In the case of trades involving a Floor Broker, such Floor Broker or his employees must make the appropriate notation on the Options Floor Broker Management System.*

(b) Additional Marking Requirements—The following is a list of requirements to mark order tickets *or, in the case of trades involving a Floor Broker, for such Floor Broker or his employees to make the appropriate notations on the Options Floor Broker Management System*, including a description and reference to the Rule or Advice requiring such mark or *notation*:

|                               |                                     |                     |
|-------------------------------|-------------------------------------|---------------------|
| Circling "yield" .....        | yielding/11(a)(1) .....             | Advice B-6          |
| Acronym .....                 | identification letter/#s .....      | Advice F-1          |
| ROT initial/ time stamp ..... | on-floor brokered orders .....      | Advice B-8, C-3     |
| SS .....                      | sold sale .....                     | Advice F-3          |
| F .....                       | facilitation .....                  | Advice B-11         |
| BD .....                      | non-member BD .....                 | Advice A-11         |
| B/X .....                     | bid-exempt .....                    | Rule 1072           |
| N .....                       | non-Phlx ROTs .....                 | Advice C-3          |
| P .....                       | off-floor/market maker margin ..... | Rule 1014, Comm. 01 |
| P/A .....                     | principal acting as agent .....     | Rule 1015           |

FINE SCHEDULE No change.

\* \* \* \* \*

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements

may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### 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 deploy the System incrementally, beginning not later than July 31, 2003, and ending at the time of floor-wide deployment, which would occur not later than August 29, 2003 (the "Rollout").

### *The Options Floor Broker Management System*

Proposed Phlx Rule 1080, Commentary .06 would provide a general description of the System as a component of AUTOM designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from option orders received on the Exchange. Floor Brokers or their employees would access the System through an electronic Exchange-provided handheld device on which they would have the ability to enter the required information as set forth in proposed Phlx Rule 1063(e), either from their respective posts on the options trading floor or in the trading crowd. The System will replace the Exchange's current Floor Broker Order Entry System ("FBOE"),<sup>5</sup> as part of a roll-out of the new System floor-wide. The proposed rule would also include a rollout schedule for the System, setting forth that the Exchange will begin deployment of the Options Floor Broker Management System on July 31, 2003, with floor-wide deployment to be completed not later than August 29, 2003.

Proposed Phlx Rule 1063(e) would include a description of the purpose of the System, which, as stated above, is to create an electronic audit trail for option orders represented by Floor Brokers on the Exchange Options Floor. The proposed rule also sets forth the requirement that a Floor Broker or such Floor Broker's employees must, contemporaneously upon receipt of an order and prior to the representation of such an order in the crowd, record the required information regarding all option orders represented by such Floor Broker onto the System.<sup>6</sup> The Exchange believes that the requirement that Floor

Brokers or their employees enter order information onto the System contemporaneously upon receipt preserves the integrity of the electronic audit trail.<sup>7</sup>

Additionally, the proposed rule would provide that upon the execution of such an order, the Floor Broker shall enter the time of execution of the trade.<sup>8</sup>

Proposed Phlx Rule 1063(e) would require Floor Brokers or their employees to record the following specific information onto the System upon receipt of an order: (i) The order type (*i.e.*, customer, firm, broker-dealer); (ii) the option symbol; (iii) buy, sell, or cancel; (iv) call, put, complex (*i.e.*, spread, straddle), or contingency order as described in Phlx Rule 1066; (v) number of contracts; (vi) limit price or market order or, in the case of a complex order, net debit or credit, if applicable; and (vii) whether the transaction is to open or close a position. These enumerated elements of an order are currently written on trade tickets; the proposed new rule would simply require them to be entered onto the System.

Upon entry of the order into the System, the System would automatically record the time of entry, and would assign an identification code that is particular to that order for purposes of the electronic audit trail.

### *Clearing Information*

Proposed Phlx Rule 1063(e) would also require Floor Brokers or their employees to enter clearing information onto the System no later than five minutes after the execution of a trade. Such clearing information would include the account number(s) of each contra-side participant to the Floor Broker's trade in the crowd and the

number of contracts bought or sold, which would be immediately reported via AUTOM to the clearing firm of each crowd participant involved in the trade. Once the clearing information is reported, crowd participants involved in the trade would receive a position update, enabling them to know their respective positions on a real-time basis and to make appropriate, informed and timely hedging and transactional decisions. The purpose of this provision is to assist both Floor Brokers and crowd participants involved in a trade to better manage their risk by knowing their account status on a real-time basis. Thus, the Exchange believes that the five-minute reporting requirement for clearing information to be entered onto the System should enable crowd participants to better manage their risk.

### *System Malfunctions*

Proposed Phlx Rule 1063 would provide that, in the event of a malfunction in the Options Floor Broker Management System, Floor Brokers shall record the required information on trade tickets, and shall not represent an order for execution which has not been time stamped with the time of entry on the trading floor. Such trade tickets shall be time stamped upon the execution of such an order. This reflects the current practice of recording information concerning orders represented and executed by Options Floor Brokers onto trade tickets, and using time stamps to record the time of receipt of an order, and the time of execution.

### *Trade Reporting*

Currently, Exchange members or member organizations that initiate an options transaction are required to report the execution of such trades within 90 seconds of the execution.<sup>9</sup> Trades are currently reported by Exchange personnel known as Data Entry Terminal ("DET") Operators. DET Operators are situated at various locations on the Exchange floor, at the specialist's post. Once a trade is executed, the person who initiated the trade is required to submit the trade ticket(s) to the DET Operator, who reports the transaction by typing and entering the trade information into the DET, which in turn reports the trade to

<sup>5</sup> See Securities Exchange Act Release No. 41524 (June 14, 1999), 64 FR 33127 (June 21, 1999) (SR-Phlx-99-11). The FBOE, a component of AUTOM, currently provides a means for (but does not require) Floor Brokers to route eligible orders to the specialist's post, consistent with the order delivery criteria of the AUTOM System set forth in Phlx Rule 1080(b). The new System (which Floor Brokers would be required to use under the instant proposal) would include the same functionality as the FBOE, in addition to providing an electronic audit trail for non-electronic orders received by Floor Brokers by way of the entry of the required information in proposed Phlx Rule 1063(e).

<sup>6</sup> The Exchange recognizes the need for effective and proactive surveillance for activities such as trading ahead and front-running. It currently conducts automated surveillance for such activities and will incorporate a review of order entry into the System as part of such surveillance. The Exchange also intends to implement supplementary surveillance and examination programs related to the requirement to enter order information into the System promptly after this requirement is instituted, which are designed to address, among other things, trading ahead and front-running.

<sup>7</sup> Currently, OFPA C-2 requires Floor Brokers to time stamp an order ticket when it is received, and provides that a Floor Broker shall not represent an order for execution in the crowd that is not time stamped with the time of entry on the trading floor. While this current OFPA is intended to capture the time of receipt of the order on the trade ticket, it does not currently create an electronic audit trail for non-electronic options orders represented and executed by Floor Brokers on the Exchange as required by the Order. The Exchange is proposing herein to amend OFPA C-2 to convert the time stamping requirement to the requirement to enter order information onto the System concurrently upon receipt by the Floor Broker, which immediately captures the information, including the time of entry, into the electronic audit trail. Once an order is entered into the System, AUTOM is able to track the life of such an order through its execution or partial execution, cancellation or partial cancellation, and report to the consolidated tape, as well as any changes made concerning the size of the order or its limit price, if applicable.

<sup>8</sup> Once the Floor Broker executes an order using the System, the time of execution would be automatically recorded into the electronic audit trail.

<sup>9</sup> Phlx Rule 1051 and OFPA F-2 currently provide that 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.

the Options Price Reporting Authority ("OPRA").

The System includes a feature that would report transactions executed in the trading crowd by the Floor Broker automatically upon execution. Once a trade involving a Floor Broker is executed in the trading crowd, such a Floor Broker would simply indicate on the System that the order was executed, which would automatically generate an electronic report. The Exchange believes that this feature should enhance the ability of Floor Brokers to comply with the 90-second trade reporting requirement. Further, such reporting activity would be captured in the electronic audit trail, thus facilitating electronic surveillance for compliance with the reporting requirement.

The Exchange is proposing amendments to Phlx Rule 1051 and OFPA F-2 in order to address the situation in which a Floor Broker who initiates a transaction executes all or a portion of the transaction against a contra-side limit order on the specialist's limit order book.<sup>10</sup> Currently, in such a situation, the specialist manually executes the booked limit order on the AUTOM System against the order represented by the Floor Broker. Upon such manual execution, the transaction is reported automatically by AUTOM.

The proposed amendment would provide that, when an order represented by a Floor Broker is executed against a limit order on the book, the specialist must report or ensure that the portion of the transaction represented by such specialist is reported to the tape. The purpose of this provision is to address the situation in which an order represented by a Floor Broker executes a booked limit order is executed by the specialist, in which case AUTOM automatically reports the execution of the booked limit order. Thus, the Floor Broker in this situation would not be required to report that portion of the transaction on the System, despite the fact that the Floor Broker involved may have in fact "initiated" the transaction. If the booked limit order represents the entire contra-side to the order represented by the Floor Broker, the specialist would be required to report the entire transaction. If the booked limit order represents a portion of the transaction, the specialist would be required to report that portion of the

transaction, while the Floor Broker initiating the transaction would be responsible for reporting the remaining portion of the transaction he or she initiated.

#### *Ticket Marking Requirements and the System*

Currently, various Exchange rules require Floor Brokers to mark trade tickets with certain notations, depending on the type of trade and the crowd participants involved. The Exchange is proposing to amend the rules concerning the ticket marking requirements so that Floor Brokers would be required to enter similar notations onto the System.

Specifically, the Exchange proposes the following amendments to the current Phlx rules and OFPAs concerning ticket marking requirements in order to make such rules and OFPAs applicable to the System:

- Phlx Rule 1015, Execution Guarantees, and corresponding OFPA A-11, Responsibility to Fill Customer Orders, would be amended to require a Floor Broker or his employees to make the appropriate notation on the System when it has been determined that the order is for an account of a broker/dealer.
- Phlx Rule 1064 and corresponding OFPA B-11, Crossing, Facilitation and Solicited Orders, would be amended to require that Floor Brokers who wish to execute orders as a facilitation cross (or their employees) to enter the appropriate indication onto the System for the public customer's order, together with all of the terms of the order, including any contingency involving other options or the underlying or related securities. The sections of the Rule and OFPA concerning solicited orders would require a Floor Broker or his employees to indicate on the System that the trade involves a solicited order.
- Phlx Rule 1014(g)(i)(A) and corresponding OFPA B-6, Priority of Options Orders for Equity Options and Index Options by Account Type, would be amended to require Floor Brokers representing controlled accounts<sup>11</sup> to indicate on the System that such accounts must yield to customer orders in parity situations.
- Phlx OFPA B-8, Use of Floor Brokers by an ROT While on the Floor, would be amended to require a Floor Broker or his employees to indicate on the System whether an order for an ROT that is represented by the Floor Broker

is opening or closing, in order to remain consistent with the requirements of proposed Phlx Rule 1063(e) and proposed OFPA C-2.

- Phlx OFPA C-2, Clocking Tickets for Time of Entry on the Floor, which currently requires an introducing Floor Brokerage unit to time stamp an order when it is received, would be re-titled and amended to include the requirements concerning the System included in proposed Phlx Rule 1063(e).

- Phlx OFPA C-3, Handling Orders of Phlx ROTs and Other Registered Options Market Makers, would be amended to require, in the situation in which a Floor Broker represents an order for a market maker on another national securities exchange, such Floor Broker or his employees must so indicate on the Options Floor Broker Management System and must ensure that the order is represented in the trading crowd as a "BD" order for the purposes of the Exchange's yielding requirements.

- Phlx OFPA F-1, Use of Identification Letters and Numbers, would be amended to require all Floor Brokers or their employees to indicate their complete alpha/numeric identifiers on the System for each order they receive and represent in the crowd.

- Phlx OFPA F-4, Orders Executed as Spreads, Straddles, Combinations or Synthetics and Other Order Ticket Marking Requirements, would be amended to require that, in the case of trades involving a Floor Broker, such Floor Broker or his employees must make the appropriate notation concerning such order types on the Options Floor Broker Management System.

The Rollout will be conducted on a firm-by-firm basis, beginning with the installation of a device at the respective Floor Broker firm's booth on the options floor ("Booth Device"), on which such Floor Broker (or his/her employee) may enter the required information concerning the orders they represent.<sup>12</sup> In addition, the Exchange would issue a handheld device to each individual Floor Broker in such a firm who represents an order in the crowd ("Handheld Device"), on which he/she would have the ability to enter the required information. As stated above, the Rollout would be complete on a

<sup>10</sup> The electronic "limit order book" is the Exchange's automated specialist limit order book, which automatically routes all unexecuted AUTOM orders to the book and displays orders real-time in order of price-time priority. Orders not delivered through AUTOM may also be entered onto the limit order book. See Phlx Rule 1080, Commentary .02.

<sup>11</sup> Phlx Rule 1014(g)(i)(A) defines a "controlled account" as any account controlled by or under common control with a broker-dealer. Customer accounts are all other accounts.

<sup>12</sup> Such information would include: (i) The order type (i.e., customer, firm, broker-dealer); the option symbol; (iii) buy, sell, or cancel; (iv) call, put, complex (i.e., spread, straddle), or contingency order as described in Phlx Rule 1066; (v) number of contracts; (vi) limit price or market order or, in the case of a complex order, net debit or credit, if applicable; (vii) whether the transaction is to open or close a position.

floor-wide basis on or before August 29, 2003.

#### Market Surveillance

During the approximately month-long Rollout, Floor Brokers for whom the Booth Device and the respective Handheld Devices have been installed will use the System to record information concerning orders they represent on the Exchange floor, while those Floor Brokers awaiting installation will continue to use the current System, which includes, without limitation, the requirement that order information is to be written on trade tickets and time-stamped upon receipt of the order<sup>13</sup> and the requirement to time-stamp tickets upon execution.<sup>14</sup>

The Exchange represents that, during the Rollout, it will continue to surveil for, and enforce compliance with, existing rules regarding orders represented by Floor Brokers. For those Floor Brokers for whom the System has been deployed, an order entered through the System must include the information required in the rules set forth in the instant proposal. For those Floor Brokers for whom the System has not been deployed, the Exchange will continue to surveil for, and enforce compliance with, rules concerning current practices regarding orders represented by Floor Brokers using written tickets and time-stamps to record information necessary to reflect the handling of such orders.

The Exchange believes that the System will enable Floor Brokers to handle orders they represent more efficiently, and will further enable the Exchange to comply with the audit trail requirement for non-electronic orders required under the Order.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act<sup>15</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>16</sup> in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market System, and to protect investors and the public interest, by requiring Floor Brokers to enter certain information onto the System regarding orders they represent, thus providing an electronic audit trail for orders they represent on the Exchange.

<sup>13</sup> See Exchange Option Floor Procedure Advice ("OFPA") C-2.

<sup>14</sup> See OFPA F-2.

<sup>15</sup> 15 U.S.C. 78f(b).

<sup>16</sup> 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 inappropriate burden on competition.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

#### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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 Phlx. All submissions should refer to File No. SR-Phlx-2003-56 and should be submitted by August 28, 2003.

#### IV. Commission's Findings and Order Granting Accelerated Approval

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.<sup>17</sup> In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national securities System, and protect investors and the public interest.<sup>18</sup>

<sup>17</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of the publication of notice thereof in the **Federal Register**. The Commission believes that granting accelerated approval to the proposed rule change on a pilot basis will allow the Exchange to have enforceable rules governing use of the Exchange's new System in effect during the Rollout, and will help ensure that members are properly trained and familiar with the rules prior to full deployment of the System.

#### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-Phlx-2003-56) is approved on an accelerated basis and is effective on a pilot basis until August 29, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48265; File No. SR-Phlx-2003-40]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Options Floor Broker Management System

July 31, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 2, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. On July 28, 2003, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

<sup>19</sup> 15 U.S.C. 78f(b)(2).

<sup>20</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 replaces and supercedes the original filing in its entirety.