

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48639; File No. SR-Phlx-2003-65]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Manner in Which a Contrary Exercise Advice Is Submitted and To Extend by One Hour the Cut-Off Time To Submit Contrary Exercise Advices

October 16, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4² thereunder, notice is hereby given that on October 14, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. The Exchange filed the proposed rule change under paragraph (f)(6) of Rule 19b-4 under the Act.³ 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 Phlx Rule 1042 to simplify the manner in which a Contrary Exercise Advice ("CEA")⁴ is submitted to the Exchange and to extend by one hour the cut-off time by which members and member organizations must submit CEAs to the Exchange. The proposal also indicates when the Exchange could modify (expand or reduce) the cut-off time for decisions whether to exercise an option or submit a CEA. Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deleted text is [bracketed].

* * * * *

Rule 1042, Exercise of Equity Option Contract

Rule 1042. (a) Exercise Notices. [Subject to the restrictions established by the Exchange pursuant to Rule 1002 and to such other restrictions which may be imposed by the Exchange pursuant to Rules 1004 and 1005 or by the Options Clearing Corporation ("OCC") pursuant to the OCC Rules, an outstanding option contract may be exercised during the time period specified in the OCC Rules by the tender to the OCC of an exercise notice in accordance with OCC Rules.] *An outstanding option contract may be exercised by the tender to The Options Clearing Corporation ("OCC") of an exercise notice made during the periods, and using the procedures, specified in OCC rules.* An exercise notice may be tendered to OCC only by the clearing member in whose OCC account the option contract is carried. *Option exercises are also subject to restrictions that are established by or may be imposed by the Exchange in Rules 1002, 1004 and 1005, and in this rule.* Members and member organizations [shall] *may* establish fixed procedures as to the latest [hour at which] *time* they will accept exercise notices from their customers.

(b) [Exercise Cut-Off] *Exercise-by-Exception Procedure for Expiring Options.* [Final exercise decisions of option holders to either exercise or not exercise expiring equity options must be indicated to the Exchange by the respective member or member organization no later than 5:30 P.M. (EST) on the business day immediately prior to the expiration date ("exercise cut-off time") in either of the following manners.] *Special procedures apply to the exercise of equity options on the last business day before their expiration ("expiring options"). Unless waived by OCC, expiring options are subject to the Exercise-by-Exception ("Ex-by-Ex") procedure under OCC Rule 805. This rule provides that, unless contrary instructions are given, option contracts that are in-the-money by specified amounts shall be automatically exercised. In addition to OCC rules, the following Exchange requirements apply with respect to expiring options. Option holders desiring to exercise or not exercise expiring options must either:*

- (i) take no action and allow exercise determinations to be made in accordance with OCC's Rule 805 [exercise-by-exception] *Ex-by-Ex* procedure where applicable; or
- (ii) submit a Contrary Exercise Advice ("CEA") or Advice Cancel to the Exchange by the deadline specified in

paragraph (c) below. A CEA [Contrary Exercise Advice] is a *communication either* [form approved by the Exchange for use by a member or member organization to submit a final exercise decision committing an options holder] to not exercise an option [position which] *that would be* automatically [be] exercised pursuant to OCC's [exercise-by-exception] *Ex-by-Ex* procedure, or to exercise an [equity] option [position which] *that would not be* automatically [be] exercised pursuant to OCC's [exercise-by-exception] *Ex-by-Ex* procedure. A CEA [Contrary Exercise Advice] may be submitted by a [any] member or member organization [(1)] *either by using the Exchange's CEA Form, OCC's clearing system (ENCORE), or a CEA form of any other* [at a place designated for that purpose by any] national [options] *securities* exchange of which they are a member and where the option is listed, or [(2)] may be submitted to the Exchange via OCC in a form prescribed by OCC] *via such other method as the Exchange may prescribe. A CEA may be canceled or resubmitted at any time up to the exercise cut-off time specified below.*

(c) *Exercise Cut-Off Time.* *Option holders have until 5:30 p.m. (EST) on the business day immediately prior to the expiration date to make a final decision to exercise or not exercise an expiring option. For customer accounts, members and member organizations may not accept exercise instructions after 5:30 p.m. (EST) but have until 6:30 p.m. (EST) to submit a CEA. For non-customer accounts, members and member organizations may not accept exercise instructions after 5:30 p.m. (EST) but have until 6:30 p.m. (EST) to submit a CEA if such member or member organization employs an electronic submission procedure with an electronic time stamp (with fixed procedures to ensure security of the time stamp) to indicate the time of the submission of exercise instructions by option holders. Consistent with Commentary .04, members and member organizations are required to submit a CEA by 5:30 p.m. (EST) for non-customer accounts if such members and/or member organizations do not employ an electronic submission procedure with electronic time stamp for the submission of exercise instructions by option holders. [In those instances when the exercise by exception procedure has been waived by OCC (such that OCC will not for that security on that expiration effect automatic exercise or non-exercise of expiring equity option positions), a Contrary Exercise Advice is still*

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ The term CEA as used in the filing may also include Advice Cancels. Advice Cancels are documents used to cancel CEAs.

required to be submitted prior to the exercise cut-off time by members and member organizations wishing to exercise an option that would not have been automatically exercised had the exercise-by-exception procedure been in effect, or not exercise an option that would have been automatically exercised had the exercise-by-exception procedure been in effect. The applicable underlying security price in such instances will be as described in OCC Rule 805(1), which is normally the last sale price in the primary market for underlying security. OCC rules may require submission of an affirmative exercise notice even in circumstances where Contrary Exercise Advice is not required.]

[Members and member organizations which maintain proprietary or public customer positions in expiring options shall take necessary steps to ensure that final exercise decisions are properly indicated to the Exchange on behalf of such positions. Member organizations who have accepted the responsibility to indicate final exercise decisions on behalf of another member or non-member firm shall take necessary steps to ensure that such decisions are properly indicated. Member organizations may establish a processing cut-off time prior to the Exchange's exercise cut-off time at which it will no longer accept final exercise decisions in expiring options from customers.]

(d) Waiver of Ex-by-Ex Procedure. If OCC has waived the Ex-by-Ex procedure for an options class, members and member organizations must either:

- (i) submit to the Exchange, a CEA, in a manner specified by the Exchange, within the time limits specified in paragraph (c) above if the holder intends to exercise the option, or*
- (ii) take no action and allow the option to expire without being exercised.*

The applicable underlying security price in such instances will be as described in OCC Rule 805(j). In cases where the Ex-by-Ex procedure has been waived, OCC rules require that members and member organizations wishing to exercise such options must submit an affirmative Exercise Notice to OCC, whether or not a CEA has been filed with the Exchange.

(e) Indicating Final Exercise Decisions. An Exchange member organization that has accepted the responsibility to indicate final exercise decisions on behalf of another member or non-member organization shall take the necessary steps to ensure that such decisions are properly indicated to the Exchange. Such member organization may establish a processing cut-off time

prior to the Exchange's exercise cut-off time at which it no longer will accept final exercise decisions in expiring options from options holders for whom it indicates final exercise decisions. Each member or member organization that indicates final exercise decisions through another broker-dealer is responsible for ensuring that final exercise decisions for all of its proprietary (including market maker) and public customer account positions are timely indicated to such broker-dealer.

(f) Exceptions to Submitting a CEA; Recordkeeping. Members and member organizations may [effect or amend] receive and submit final exercise decisions after the exercise cut-off time (but prior to expiration) without having submitted a CEA under the following circumstances:

- (i) in order to remedy mistakes made in good faith[.];*
- (ii) to take appropriate action as the result of a failure to reconcile unmatched Exchange option transactions[.]; or*
- (iii) where exceptional circumstances have restricted an [customer's or member's] option holder's ability to inform [the respective] a member organization of [such] a decision[s] [regarding exercise, or a member organization's ability to receive such decision[s] by the cut-off time[)]. The burden of establishing [an] any of the above exceptions for a proprietary or customer account of a member or member organization rests solely on the member or member organization seeking to rely on such exceptions.*

In the event a member or member organization does not timely submit a CEA [Contrary Exercise Advice] in accordance with the requirements of this rule or does not timely submit a CEA [Contrary Exercise Advice] for a final exercise decision pursuant to an exception in the paragraph above, the responsible member or member organization shall set forth in a written memorandum the surrounding circumstances and shall file a copy of the memorandum with the Exchange's Market Surveillance Department no later than 12:00 noon (EST) on the business day following the expiration. Such memorandum must additionally include the time when such final exercise decision was made or, in the case of a customer, was received, and shall be subject to the recordkeeping requirements of SEC Rules 17a-3(a)(6) and 17a-4(b).

(g) Modifying the Time for Close of Trading in Options. In the event the Exchange provides advance notice on or before 5:30 p.m. (EST) on the business

day immediately prior to the last business day before the expiration date indicating that a modified time for the close of trading in equity options on such last business day before expiration will occur, then the deadline to make a final decision to exercise or not exercise an expiring option shall be 1 hour 28 minutes following the time announced for the close of trading on that day instead of the 5:30 p.m. (EST) deadline found in Rule 1042 (c). However, members and member organizations may deliver a CEA or Advice Cancel to the Exchange within 2 hours 28 minutes following the time announced for the close of trading in equity options on that day instead of the 6:30 p.m. (EST) deadline found in Rule 1042(c) for: (i) customer accounts; and, (ii) non-customer accounts where such member firm employs an electronic submission procedure with an electronic time stamp (with fixed procedures to ensure security of the time stamp) to indicate the time of receipt of exercise instructions.

For non-customer accounts, members and member organizations that do not employ an electronic submission procedure with a time stamp for the submission of exercise instructions are required to deliver a CEA or Advice Cancel within 1 hour and 28 minutes following the time announced for the close of trading on that day instead of the 5:30 p.m. (EST) deadline found in Rule 1042(c).

(h) Extending or Reducing the Cut-Off Time for Exercise Decisions.

(i) The Exchange may establish extended cut-off times for a decision to exercise or not exercise an expiring option and for the submission of CEAs on a case-by-case basis due to an unusual circumstance.

(ii) The Exchange, with at least one (1) business day prior advance notice, by 12:00 noon (EST) on such day, may establish a reduced cut-off time for the decision to exercise or not exercise an expiring option and for the submission of CEAs on a case-by-case basis due to unusual circumstances; provided, however, that under no circumstances should the exercise cut-off time and the time for submission of a CEA be before the close of trading.

Commentary

.01 For purposes of this Rule 1042, the terms "customer account" and "non-customer account" have the same meaning as in OCC By-Laws Articles I(C)(28) and I(N)(2), respectively.

.02 Reporting final exercise decisions contemplated by this rule does not serve to substitute as the effective "exercise notice" to OCC for

the exercise or non-exercise of expiring options.

.03 In the event of "unusual circumstances," Rule 1042(h)(i) provides that the Exchange may extend the cut-off times for exercise instructions and the submission of a CEA beyond the normal time frames specified in Rule 1042(c). For purposes of subparagraph (h)(i), an "unusual circumstance" includes, but is not limited to, increased market volatility; significant order imbalances; significant volume surges and/or systems capacity constraints; significant spreads between the bid and offer in underlying securities; internal system malfunctions affecting the ability to disseminate or update market quotes and/or deliver orders; or other similar occurrences. Rule 1042 (h)(ii) provides that the Exchange may also reduce such cut-off times for "unusual circumstances." For purposes of subparagraph (h)(ii), an "unusual circumstance" includes, but is not limited to, a significant news announcement concerning the underlying security of an option contract that is scheduled to be released just after the close on the business day immediately prior to expiration.

.04 Although the deadline for options holders to make a final decision to exercise or not exercise is 5:30 p.m. (EST), the deadline for the submission of the CEA in the case of non-customer accounts will depend on the manner of the decision to exercise or not exercise as set forth below.

(i) For electronic submissions of CEAs by non-customer option holders with an electronic timestamp indicating receipt of exercise instructions on or before 5:30 p.m. (EST), members and member organizations must submit CEAs to the Exchange by 6:30 p.m. (EST).

(ii) For non-electronic submissions of CEAs by non-customer option holders, members and member organizations must submit CEAs to the Exchange via the Contrary Exercise Advice Box by 5:30 p.m. (EST).

.05 Each member organization shall establish fixed procedures to insure secure time stamps in connection with their electronic systems employed for the recording of submissions to exercise or not exercise expiring options.

[.02].06 It is contemplated by this rule that effecting an exercise decision in an expiring option on the basis of material information obtained after the exercise cut-off time is activity inconsistent with just and equitable principles of trade.

[.03].07 The exercise cut-off requirements contained in this rule do not apply to any foreign currency or

index option products listed on the Exchange.

.08 Each Member Organization shall prepare a memorandum of every exercise instruction received showing the time when such instruction was so received. Such memoranda will be subject to the requirements of SEC Rule 17a-4(b).

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

In its filing with the Commission, 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 and is 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 amend Phlx Rule 1042 to simplify how CEAs are submitted to the Exchange in light of the Options Clearing Corporation's ("OCC") Exercise-by-Exception ("Ex-by-Ex") procedure and to provide additional time for members and member organizations to submit CEAs for certain accounts to the Exchange. The purpose is also to provide the Exchange with flexibility to modify the time to close options trading prior to expiration and the time by which decisions whether to exercise must be made. The proposal provides guidance to those member organizations that indicate final exercise decisions on behalf of others. Additionally, the proposal conforms the language of the various parts of the rule in light of the changes.

The OCC, issuer of all Phlx and other exchange-traded options contracts, has an established procedure pursuant to OCC Rule 805 for options holders wishing to exercise in-the-money options before they expire. Known as Ex-by-Ex, the procedure provides for the automatic exercise at expiration of any equity option contract that has an exercise price below (in the case of a call) or above (in the case of a put) the closing price of the underlying security by: "of a point (\$.75) or more if the option contract is carried in a customer

account,"⁵ or ¼ of a point (\$.25) or more if the option is carried in any other account. Options holders who wish to have their options contracts exercised in accordance with the Ex-by-Ex procedure need to take no further action. Those contracts that are in-the-money by the appropriate amount will be automatically exercised. Options holders who do not wish to have their options automatically exercised, or wish their options to be exercised under different parameters than the Ex-by-Ex procedure, must file a CEA with the Exchange pursuant to Phlx Rule 1042, and thereby instruct OCC of their "contrary intention".⁶ Members and member organizations can satisfy the filing requirement by manually submitting a CEA to the Exchange or by electronically submitting the CEA through OCC's clearing system (ENCORE). Phlx Rule 1042 is designed to, among other things, deter individuals from taking improper advantage of late-breaking news by requiring evidence of an option holder's intention regarding whether to exercise expiring equity options via the submission of a CEA.

On occasion, OCC has had to waive or suspend its Ex-by-Ex procedure, such as when trading in the underlying stock has been halted, or where no accurate price was available to be used in the determination of the closing price. When this occurs and there is no automatic exercise per OCC Rule 805, all options holders must send exercise instructions to OCC if they wish to exercise an option regardless of whether the option is in or out-of-the-money. Currently, when OCC suspends its Ex-by-Ex procedure for an option class, Phlx Rule 1042 requires the submission of a CEA. Thus, when OCC has waived the Ex-by-Ex procedure, option holders must determine what price would have been used, even though the only available price might be a "stale" last sale price, and then determine whether a CEA needs to be submitted to the Exchange to indicate the option holder's intention to exercise or not exercise. Option holders and options exchanges have long viewed this process as cumbersome and confusing.

⁵ A "customer account" is defined in OCC By-Laws as an account of a Clearing Member which is confined to Exchange transactions cleared and positions carried by the Clearing Member on behalf of its securities customers, other than those transactions of market-makers which are cleared through a market maker's account. See OCC By-Laws Article (I)(C)(28).

⁶ A CEA may be cancelled by filing an Advice Cancel with the Exchange at any time up to the submission cut-off deadline specified in proposed Phlx Rule 1042(c).

The Phlx proposes to amend Phlx Rule 1042 to eliminate the requirement that a CEA be submitted if the option holder does not want to exercise the option when OCC has waived its Ex-by-Ex procedure for that options class. As a result, the proposed rule change indicates that when Ex-by-Ex procedures have been waived by OCC, submission of instructions to exercise (CEAs) are only required when the options holder wants to exercise the option contract. If an options holder takes no action, the option will expire without being exercised.⁷

Currently, Phlx Rule 1042 provides that option holders have until 5:30 p.m. (EST) on the business day immediately prior to the expiration date⁸ to decide whether to exercise an expiring option. The Exchange proposes in Phlx Rule 1042(c) to extend the cut-off time for members and member organizations to deliver CEAs to the Exchange to 6:30 p.m. (EST) for customer accounts. The cut-off time would also be extended to 6:30 p.m. (EST) for non-customer accounts⁹ provided that such submission was done electronically, with an electronic time stamp to record receipt of the exercise instruction by 5:30 p.m. (EST).¹⁰ The Exchange believes that this rule change is required because members or member organizations may sometimes find it difficult to deliver CEAs in compliance with the 5:30 p.m. (EST) cut-off time when the determination of final settlement prices are sometimes delayed as members and member organizations are confirming exercise instructions with their customers. Because of such logistical problems, members and member organizations must often process and immediately submit customer CEAs to the Exchange upon receiving instructions from customers in order to meet the existing 5:30 p.m. (EST) cut-off time. Accordingly, to allow

sufficient time to process CEAs for customer accounts, the Exchange proposes to extend the cut-off time to 6:30 p.m. (EST) for members and member organizations to deliver CEAs for customer accounts to the Exchange and to deliver CEAs for non-customer accounts to the Exchange, as long as the submissions are done electronically (which includes, but is not limited to, e-mail), and the member or member organization received the CEAs by 5:30 p.m. (EST) as evidenced by a time-stamp. The Exchange believes that it is appropriate to extend the cut-off time for member and member organization submission of these CEAs, and any cancellation thereof, to the Exchange as all decisions to exercise (or not exercise) must still be made by 5:30 p.m. (EST) in accordance with Phlx Rule 1042.

To address unusual circumstances, the Exchange proposes in Rule 1042 (h) that it have the ability to establish different cut-off times for the option holder to make a decision to exercise or not exercise expiring options and for members and member organizations to submit CEAs. Proposed Phlx Rule 1042(h)(i) would permit the Exchange to extend the cut-off time for option holders to decide whether to exercise expiring options, as well as for members and member organizations to submit CEAs because of unusual circumstances. Unusual circumstances would include, for example, increased market volatility and significant order imbalances. Proposed Phlx Rule 1042(h)(ii) would likewise allow the Exchange to reduce the cut-off time for option holders to decide whether to exercise options as well as for members and member organizations to submit CEAs because of unusual circumstances that include a significant news announcement regarding the underlying security of an option contract that is scheduled to be released just after the close on the business day immediately prior to expiration.¹¹ For example, a decision on whether a particular merger will be approved or whether a new product will receive regulatory approval that occurs after the close of trading would justify a reduced cut-off time so that persons holding short positions are not prejudiced by being unable to close out their positions. The Exchange believes that this will maintain a level playing field between persons holding long and short positions in expiring options.

In addition, proposed Phlx Rule 1042(g) provides customers and members and member organizations

with added flexibility in connection with the delivery of CEAs or Advice Cancels if the Exchange announces a modified time for the close of trading in equity options prior to expiration. The Exchange proposes that, if the Exchange establishes a modified time for the close of trading in equity options on the day when expiration will occur and properly notifies its members about the modification, option holders would have 1 hour 28 minutes after the announced close of trading to make a final decision to exercise or not exercise an expiring option. The proposal would also give members and member organizations 2 hours 28 minutes after the close of trading to deliver CEAs for customer accounts and for non-customer accounts, as long as the submission were done electronically with an electronic time-stamp. However, members and member organizations that do not employ an electronic submission procedure for non-customer accounts would have to submit their CEAs within 1 hour 28 minutes following the close of trading.

Proposed Phlx Rule 1042 (e) provides that if a member organization has accepted the responsibility to indicate final exercise decisions on behalf of another member or non-member organization, it must take the necessary steps to ensure that such decisions are properly indicated to the Exchange. Such member organization may establish a processing cut-off time prior to the Exchange's exercise cut-off time after which it will not accept exercise decisions or other processing procedures.

The Exchange also proposes new Commentaries to Phlx Rule 1042. First, new Commentary .01 clarifies that for purposes of Phlx Rule 1042, the definitions of "customer" and "non-customer" in OCC's By-Laws are applicable. Second, new Commentary .03 clarifies that cut-off times for the submission of a CEA may be extended or reduced because of "unusual circumstances" and provides examples of such circumstances. Third, new Commentary .04 clarifies that the deadline for submission of CEAs for non-customer accounts will be 6:30 p.m. (EST) where they are submitted electronically with a timestamp indicating receipt of exercise instructions on or before 5:30 p.m. (EST), and will be 5:30 p.m. (EST) if submission is manual. Fourth, new Commentary .05 requires member and member organizations that employ an electronic submission method to adopt specific written procedures for the electronic submission of CEAs. Finally, new Commentary .08 provides that

⁷ Phlx Rule 1042, as amended, indicates that, unless waived by OCC, expiring options are subject to the Ex-by-Ex procedure found in OCC Rule 805, as noted above.

⁸ The "expiration date" of an options contract generally is the Saturday immediately following the third Friday of the expiration month of such option. See Phlx Rule 1000(b)21. See also OCC By-Laws Article (I)(E)(16).

⁹ A "non-customer account" in respect of any person carrying an account with a broker or dealer generally means a person that is not a customer of a broker of dealer as defined in Rules 8c-1 and 15c-2-1 under the Act. See OCC By-Laws Article I(N)(2).

¹⁰ The use of an electronic time stamp requires establishment by members and member organizations of a fixed procedure to ensure that the electronic time stamp for the exercise instruction decision is secure. The time to submit CEAs for non-customer accounts, where a time stamp is not used as part of an electronic submission procedure, remains at 5:30 p.m. (EST).

¹¹ The Exchange would provide notice prior to reducing the cut-off time period. See proposed Phlx Rule 1042(h)(ii).

members and member organizations will prepare a memorandum of every exercise instruction received showing the time of receipt, and that such memoranda will be subject to the requirements of SEC Rule 17a-4(b).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹² in general, and furthers the objectives of Section 6(b)(5) of the Act¹³ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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 to and perfect the mechanism of a free and open market and a national market system by, among other things, simplifying the manner in which CEAs or Advice Cancels are submitted to the Exchange, extending the cut-off time by which members must submit to the Exchange CEAs for certain accounts, and indicating when the Exchange could modify the cut-off time to decide whether to exercise an option.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Exchange pursuant to Section 19(b)(3)(A) of the Act¹⁴ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁵ Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of

investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6)¹⁷ thereunder.¹⁸

A proposed rule change filed under Rule 19b-4(f)(6)¹⁹ normally does not become operative prior to thirty days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Phlx has requested that the Commission waive the thirty-day operative date in order to allow the Exchange's options exercise procedures to be in line with those of OCC and other options exchanges.

The Commission believes that waiving the thirty-day operative date is consistent with the protection of investors and the public interest.²⁰ Accelerating the operative date will allow the Phlx to immediately implement rules similar to ones already in place at the American Stock Exchange LLC and the International Securities Exchange, Inc.,²¹ and will simplify and clarify the process by which members and member organizations accept exercise decisions from options holders and submit such decisions to the Exchange. For these reasons, the Commission designates the proposed rule change as effective and operative immediately. At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter period as designated by the Commission.

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²¹ See Securities Exchange Act Release Nos. 47885 (May 16, 2003), 68 FR 28309 (May 23, 2003) (SR-Amex-2001-92) and 48505 (September 17, 2003), 68 FR 55680 (September 26, 2003) (SR-ISE-2003-20).

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-2003-65 and should be submitted by November 13, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

Margaret H. McFarland,
Deputy Secretary.

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SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3554]

Commonwealth of Kentucky

Franklin County and the contiguous counties of Anderson, Henry, Owen, Scott, Shelby and Woodford constitute a disaster area due to damages caused by severe thunderstorms that occurred on August 22, 2003. Applications for loans for physical damage may be filed until the close of business on December 15, 2003 and for economic injury until the close of business on July 15, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere:	5.125
Homeowners Without Credit Available Elsewhere:	2.562
Businesses with Credit Available Elsewhere:	6.199
Businesses and Non-Profit Organizations Without Credit Available Elsewhere:	3.100

²² 17 CFR 200.30-3(a)(29).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).