

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>5</sup> Specifically, the Commission believes the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act,<sup>6</sup> which requires, among other things, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to perfect the mechanism of a free and open market, and in general to protect investors and the public interest.

The Commission believes that the rule change should provide specialists with greater flexibility in their ability to use hedging transactions to offset market-making risk. By permitting specialists to use single stock futures to hedge their specialty stock positions, the Commission believes that the rule change should enable specialists to add to overall stock market liquidity by taking specialty stock positions they might not otherwise assume or by reducing risks on positions they are required to assume.

The Commission is accelerating approval of Amendment No. 1 to the proposed rule change. Amendment No. 1 made technical corrections and certain other minor changes to the proposed rule change. The Commission believes that the changes included in Amendment No. 1 should not affect the substance of the rule change. Accordingly, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> the Commission finds good cause to approve Amendment No. 1 prior to the thirtieth day after notice of the Amendment is published in the **Federal Register**.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 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

<sup>5</sup> In approving the proposed rule change, the Commission has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

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 also will be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-2002-63 and should be submitted by September 5, 2003.

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-NYSE-2002-63) is approved, and Amendment No. 1 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48310; File No. SR-Phlx-2002-85]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, by the Philadelphia Stock Exchange, Inc. Relating to the Definition of a Wheel Assignment Area

August 8, 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 December 20, 2002, 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. The Phlx submitted Amendment No. 1 to the proposed rule change on July 28, 2003.<sup>3</sup> The Commission is publishing

<sup>8</sup> Id.

<sup>9</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> Letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 25, 2003 ("Amendment No. 1"). In Amendment No. 1, the Phlx amended the

this notice to solicit comments on the proposed rule change, as amended, 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 ("OFPA") F-24, AUTO-X Contra-Party Participation (The Wheel), to redefine a "Wheel Assignment Area," based on the current configuration of the Exchange Options Floor. The text of the proposed rule change is set forth below. Proposed new language is in italics. Proposed deletions are in brackets.

\* \* \* \* \*

F-24 AUTO-X Contra-Party Participation (The Wheel)

(a)-(b) No change.

(c) Participation Requirements and Sign-on/off—Specialists on the Options Floor are required to participate on the Wheel in assigned issues in accordance with paragraph (e) of this Advice.

(i) An ROT[s] may elect to participate on the Wheel for any or all [issues] *options* which *such ROT* [they] maintains an ROT assignment, as long as *such* [those listed] *options* are located *within the Wheel Assignment Area (as defined below) for the crowd in which such ROT participates*, [within two contiguous quarter turrets of each other] and the ROT is actively making markets in the specific [issues] *options traded within such Wheel Assignment Area*.

(ii) No two associated or dually affiliated ROTs may be on the Wheel for the same option at the same time. Regardless of [an ROT's] *the total number of options assigned to an ROT* [issues], an ROT may only sign-on the Wheel in one Wheel [a]Assignment [a]Area at any given time.

(iii) For [the] purposes of this Advice, a Wheel [a]Assignment [a]Area is [each area on the trading floor constituted by two contiguous quarter turrets] *a location on the trading floor where an ROT: (1) Is actively making markets by quoting continuous, 2-sided markets in compliance with Advice B-1 and Rule 1014; (2) can hear and ascertain the markets that are being made by the specialist and crowd; (3) is deemed to be quoting the disseminated markets being made by the specialist in accordance*

proposed rule change by clarifying the proposed definition of a "Wheel Assignment Area" set forth in paragraph (c)(iii) of OFPA F-24, AUTO-X Contra-Party Participation (The Wheel). The substance of Amendment No. 1 is incorporated into the description of the proposed rule change in Section II.A. below, and the proposed rule text set forth herein reflects the changes made in Amendment No. 1.

with Rule 1080.01(c); and (4) can be heard by the specialist and crowd. [However, t]The Options Committee may extend the number of options to be included in a Wheel [a]Assignment [a]Area on a case-by-case basis, taking into account the activity and trading crowd size in the [those options] Wheel Assignment Area(s) to be extended [as well as the intervening posts, if it is determined that the specialist and all Wheel participants on all Wheels agree that an ROT can be actively making markets in that particular situation and can thus be considered presenting such Wheel issues, until either specialist or any such Wheel participant no longer agree that the circumstances warrant an extension].

(iv) In order to be placed on the Wheel for an entire trade day, the respective ROT must sign-on, in person on the trading floor for that listed option. Although ROTs may sign-on in individual listed options, a sign-off by an ROT is effective for all options for which the ROT is on the Wheel. Sign-offs shall become effective immediately upon being processed for deletion in the computer system.

((iii)v) If an ROT who is signed-on the Wheel is away from the Wheel [a]Assignment [a]Area for more than a brief interval, a Floor Official shall:

(A) Remove the ROT from [any]all Wheel participation for the remainder of the trading day; and

(B) issue a fine pursuant to the fine schedule below.

If [such] an ROT is assigned a Wheel trade while away from the Wheel [a]Assignment [a]Area for more than a brief interval, that ROT is responsible for all [trades]contracts assigned to his/her ROT account until the sign-off is processed.

Fine Schedule (Implemented on a two-year running calendar basis)

F-24 (c) ((iii)v):

1st Occurrence .....	\$250.00
2nd Occurrence ....	\$500.00
3rd Occurrence .....	\$1,000.00
4th Occurrence	Sanction is discretionary with Business Conduct Committee
and thereafter.	

(d)-(f) No change.

Fine Schedule

F-24 Fine not applicable, except paragraph (c)((iii)v). Matters subject to review by the Business Conduct Committee.

\* \* \* \* \*

## 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 Exchange 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 update the definition of a "Wheel Assignment Area" to be consistent with the current physical configuration of the Options Floor. Due to changes in the physical layout of the Options Floor (as explained below), not only is the "two contiguous quarter turret" standard no longer useful, but the variations in layout and post location on the Options Floor are such that the Exchange believes a standard based on the activities of Registered Options Traders ("ROTs"), rather than a physical description of a "Wheel Assignment Area," is now more appropriate.

Currently, OFPA F-24 provides that ROTs may elect to participate on the Wheel<sup>4</sup> for any or all issues in which they maintain an ROT assignment, as long as those listed options are located within two contiguous "quarter turrets" of each other and the ROT is actively making markets in the specific issues.

The Exchange's Options Floor has undergone many physical changes since the adoption of the current definition of "Wheel assignment area."<sup>5</sup> Specifically, the Options Floor no longer has any

<sup>4</sup> The "Wheel" is a feature of AUTOM that provides an automated mechanism for assigning specialists and ROTs signed on the Wheel for a given listed option, on a rotating basis, as contra-side participants to trades executed via AUTO-X. See Exchange Rule 1080(g). 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>5</sup> The Exchange previously defined a "Wheel assignment area" as two contiguous quarter turrets. See Securities Exchange Act Release No. 35033 (November 30, 1994), 59 FR 63152 (December 7, 1994) (SR-Phlx-94-32). A quarter turret was one section of a four-sided, diamond-shaped trading post, which no longer exists on the Exchange's Options Floor.

"quarter turrets." The Options Floor trading posts are now linear, and in some instances extend continuously over the entire length of a given specialist post, encompassing a relatively large number of options in a relatively large physical area.

In order to conform the Exchange's rules with the current physical configuration of the Options Floor, the proposed rule change amends the text of OFPA F-24 to include references to the proposed defined term "Wheel Assignment Area" throughout. The proposal defines a "Wheel Assignment Area" as a location on the trading floor where an ROT: (1) Is actively making markets by quoting continuous, 2-sided markets in compliance with Advice B-1 and Rule 1014; (2) can hear and ascertain the markets that are being made by the specialist and crowd; (3) is deemed to be quoting the disseminated markets being made by the specialist in accordance with Rule 1080.01(c); and (4) can be heard by the specialist and crowd.<sup>6</sup>

As stated above, the proposed definition of "Wheel Assignment Area" is focused on the activities of individual ROTs, and not on the actual physical area in which ROTs are present. The requirements to actively make markets (making continuous two-sided markets in all issues assigned to such ROT), to hear and be heard, and to be deemed by the Exchange to be quoting the disseminated markets being made by the specialist in accordance with Rule 1080.01(c)<sup>7</sup> are central to an ROT's participation in a particular crowd.

The proposal contemplates that issues may be raised on the Options Floor as to whether a particular ROT is eligible to participate in a Wheel Assignment Area based on the above four criteria. In order to account for this, and to address possible disputes, the proposal would continue to provide that the Options Committee<sup>8</sup> may extend the number of options to be included in a Wheel Assignment Area on a case-by-case basis. Under the proposal, the Options Committee could now take into account the activity and trading crowd size in the Wheel Assignment Area(s) to be extended. In such a situation, the Options Committee would have the authority to determine if the Wheel Assignment Area should be extended to

<sup>6</sup> See Amendment No. 1, *supra* n. 3.

<sup>7</sup> Phlx Rule 1080.01(c) provides, in relevant part: "[t]he disseminated market \* \* \* is deemed to represent the quotations of all ROTs in that option unless an ROT has expressly indicated otherwise in a clear and audible manner. \* \* \*"

<sup>8</sup> The Options Committee has general supervision of the dealings of members on the options floor. See Exchange By-Law Article X, Section 10-19.

include such an ROT. Because the Exchange believes it would be cumbersome and impractical for the Options Committee to meet and vote to approve the extension of a Wheel Assignment Area each time the issue arises on the Options Floor, the Options Committee has delegated its authority to approve such changes to two Exchange Floor Officials, who would indicate their approval by signing the appropriate form and submitting the form to Market Surveillance.<sup>9</sup>

The proposal also includes a provision that would enable a Floor Official to remove an ROT from all Wheel participation for the remainder of the trading day, and issue a fine pursuant to the fine schedule in OFPA F-24, if an ROT who is signed-on the Wheel is away from the Wheel Assignment Area for more than a brief interval. The Exchange believes that this provision substantially reduces the likelihood that an ROT would sign onto the Wheel and then leave the crowd, or even the trading floor, thereby receiving the benefit of participating as contra-side to automatically executed trades, and receiving favorable on-floor margin treatment despite the fact that such an ROT may not even be present in the crowd or on the floor.

Other technical amendments, included to make the OFPA consistent throughout, are also proposed.

## 2. Statutory Basis

For these reasons, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>11</sup> in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest by defining "Wheel Assignment Area" to be consistent with the current physical configuration of the Exchange's Options Floor.

<sup>9</sup> Exchange By-Law Article X, Section 10-3(a) provides that each Standing Committee of the Exchange (the Options Committee is a Standing Committee) shall make such regulations for its government as it shall deem proper. By-Law Article X, Section 10-3(b) provides that each Standing Committee may appoint subcommittees as it may deem necessary for the efficient discharge of its duties. Each Options Committee member is a Floor Official, as is each member of the Options Subcommittee on Rules and Rulings. For purposes of efficiency, the Options Committee has delegated authority to these Floor Officials to discharge its on-floor duties of general supervision of the dealings of members on the options floor.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</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. 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 the 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Phlx-2002-85 and should be submitted by September 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-20819 Filed 8-14-03; 8:45 am]

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## SMALL BUSINESS ADMINISTRATION

### **Meridian Venture Partners II, L.P., License No. 03/73-0220; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest**

Notice is hereby given that Meridian Venture Partners II, L.P., 201 King of Prussia Road, Suite 240, Radnor PA, 19087, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.7301(2001)). Meridian Venture Partners II, L.P. proposes to provide equity financing to Woof & Co., 55 Carter Drive, Edison, NJ 08817 ("Woof"). The financing is contemplated for the build out of additional retail stores.

The financing is brought within the purview of Sec. 107.730(a)(1) of the Regulations because Meridian Venture Partners and MVP Distribution Partners, Associates of Meridian Venture Partners II, L.P., currently own greater than 10 percent of Woof and therefore Woof is considered an Associate of Meridian Venture Partners II, L.P., as defined in Sec. 107.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U. S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

**Jeffrey D. Pierson,**

*Associate Administrator for Investment.*

[FR Doc. 03-20837 Filed 8-14-03; 8:45 am]

BILLING CODE 8025-01-P

## SMALL BUSINESS ADMINISTRATION

### **[Declaration of Disaster #3526]**

### **State of Indiana; Amendment #2**

In accordance with the notice received from the Department of

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