

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49215; File No. SR-Phlx-2003-71]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Participation Guarantees for Floor Brokers Representing Crossing and Facilitation Orders in Index Options

February 9, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 20, 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 Phlx. On January 9, 2004, Phlx submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing 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 Phlx Rule 1064, Crossing, Facilitation and Solicited Orders, which currently governs, among other things, the crossing of equity option orders by floor brokers. Specifically, the proposal would amend Commentary .02(i) and (iii) to Phlx Rule 1064 to provide a participation guarantee of 20% to floor brokers representing crossing and facilitation orders in index options.

The text of the proposed rule change follows. Additions are italicized; deletions are in brackets.

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Crossing, Facilitation and Solicited Orders

Rule 1064. (a)-(d) No change.

Commentary:

.01. No change.

.02. Firm Participation Guarantees. (i)

Notwithstanding the provisions of paragraphs (a) and (b) of this Rule, when a Floor Broker holds an equity *or index* option order of the eligible order size or

greater ("original order"), the Floor Broker is entitled to cross a certain percentage of the original order with other orders that he is holding or in the case of a public customer order, with a facilitation order of the originating firm (*i.e.*, the firm from which the original customer order originated).

(ii) No change.

(iii) The percentage of the order which a Floor Broker is entitled to cross, after all public customer orders that were (1) On the limit order book and then (2) represented in the trading crowd at the time the market was established have been satisfied, is determined as follows:

(A) *With respect to orders for equity options:* (i) 20% of the remaining contracts in the order if the order is traded at the best bid or offer given by the crowd in response to the Floor Broker's initial request for a market; or ([B]) (ii) 40% of the remaining contracts in the order if the order is traded between the best bid or offer given by the crowd in response to the Floor Broker's initial request for a market.

(B) *With respect to orders for index options, 20% of the remaining contracts in the order.*

(iv)-(x) No change.

.03. No change.

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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 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 provide a participation guarantee of 20% to floor brokers representing crossing and facilitation orders in index options.

Background. Currently, Phlx Rule 1064 sets forth, among other things, the procedures by which a floor broker holding a public customer order ("original order") may cross it with either another customer order or orders

from the same originating firm,⁴ or a contra side order provided by the original firm from its own proprietary account ("facilitation order").⁵

Under Exchange Rules 1064(a) and (b), a floor broker seeking to cross or facilitate buy and sell orders for the same options series must first bring the transaction to the trading floor and request markets from the trading crowd for all components of the order. After providing the crowd with the opportunity to make such markets, the floor broker must announce that he holds an order subject to crossing or facilitation, and then must propose a price at which to cross the original order that improves upon the price provided by the crowd. However, before the floor broker can effect the cross, the Registered Options Traders in the crowd are given the opportunity to take all or part of the transaction at the proposed price.

Under these rules, if the crowd does not want to participate in the trade, the floor broker may proceed with the cross. If the crowd wants to participate in part of the order, however, the crowd has priority and the floor broker may cross only that amount remaining after the crowd has taken its portion. If the crowd wants to participate in the entire order, the floor broker will not be able to cross or facilitate any part of the order.

In May 2003, the Commission approved amendments to Phlx Rule 1064 that guarantee floor brokers representing crossing and facilitation orders in equity options with a size of at least 500 contracts the right to participate in a certain percentage of such orders.⁶

Currently, the participation guarantee applies to crossing and facilitation orders in equity options only. The percentage of the equity option order that a floor broker is entitled to cross after all public customer orders have been satisfied is determined as follows: (A) 20% of the remaining contracts in the order if the order is traded at the best bid or offer given by the crowd in response to the floor broker's initial request for a market; or (B) 40% of the remaining contracts in the order if the order is traded between the best bid or offer given by the crowd in response to the floor broker's initial request for a market.

Crossing and Facilitation Orders in Index Options. The instant proposal would extend the participation

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Richard S. Rudolph, Director and Counsel, Phlx, to Ira Brandriss, Special Counsel, Division of Market Regulation ("Division"), Commission, dated January 8, 2004 ("Amendment No. 1"). The changes made by Amendment No. 1 have been incorporated into this notice.

⁴ See Phlx Rule 1064(a).

⁵ See Phlx Rule 1064(b).

⁶ See Securities Exchange Act Release No. 47819 (May 8, 2003), 68 FR 25924 (May 14, 2003) (File No. SR-Phlx-2002-17).

guarantee to floor brokers representing crossing and facilitation orders in index options. Floor brokers would be guaranteed a participation right of 20% for crossing and facilitation orders they represent in index options. All other current rules concerning participation guarantees in crossing and facilitation orders would apply to index options under the proposal.⁷ The Exchange believes that the proposed expansion of the participation guarantee to crossing and facilitation orders in index options would make the Exchange more competitive by providing an incentive to index options order flow providers to bring order flow to the Exchange.⁸ The Exchange also believes that the proposed rule change should make order flow providers, as customers of Exchange floor brokers, aware of the percentage of crossing and facilitation orders in index options to which they are entitled and also provide the Exchange's trading crowd participants with the same guidelines.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,⁹ in general, and furthers the objectives of section 6(b)(5) of the Act,¹⁰ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect the investors and the public interest by providing floor brokers and Exchange crowd participants with rules setting forth guidelines regarding the percentage of crossing and facilitation orders in index options to which the floor brokers are entitled, and by making the Exchange more competitive by providing an incentive to index options order flow providers to bring order flow to the Exchange.

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 solicited or received with respect to the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments should be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-Phlx-2003-71. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should be submitted by March 10, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SMALL BUSINESS ADMINISTRATION

Notice Inviting Application for Funding Under the 7(j) Management and Technical Assistance Program

AGENCY: U.S. Small Business Administration.

ACTION: Notice of invitation for proposals for 7(j) management and technical assistance awards in FY 2004.

SUMMARY: The U.S. Small Business Administration (SBA) plans to issue program announcement No. MTA-04-01, to solicit proposals from organizations to provide business development assistance for nationwide 7(j) eligible client executives. The authorizing legislation for this training is Section 7(j) of the Small Business Act, U.S.C. 636(j). SBA will select successful proposals using a competitive process.

Award recipients will have responsibility for project oversight, design, marketing, management, execution, monitoring and reporting for the training program. Proposals are being solicited from non-profit organizations, small businesses and educational institutions. The applicant must have the qualified trainers, support staff, training and technical materials, equipment and facilities, or access to facilities, as well as an internal financial management system, to provide business development assistance to 7(j) eligible client executives.

The business development proposal must provide practical information and guidance on how to define business development and carry out that business development. The proposal must include plans to assist the firms in the development of Individualized Business Development Plans (IBDPs). The proposal must also include the development of DVD/materials package (full audio and video) for the 7(j) clients. The business development training workshops, IBDPs and DVDs will be provided to firms with less than two years in the 8(a) program and other 7(j) eligible clients who have been in business for not more than four (4) years. The class room lecture and workshops will provide brief training

⁷ *Id.* See also Phlx Rule 1064, Commentary .02.

⁸ The Exchange indicated this belief in the section of its filing that discusses the statutory basis for the proposed rule change.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 17 CFR 200.30-3(a)(12).