

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50851; File No. SR-Phlx-2004-51]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Phlx Regulation 5, Visitors and Applicants

December 14, 2004.

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 October 7, 2004, 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 and II below, which Items have been prepared by Phlx. On December 6, 2004, Phlx filed 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.

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

The exchange proposes to amend Phlx Regulation 5, Visitors and Applicants. The text of the proposed rule change is set forth below. Additions are italicized. Deletions are bracketed.

\* \* \* \* \*

Regulation 5—[Visitors and Applicants] *Guests*

Non-member [visitors] *guests* will be permitted on the trading floor at the discretion of the respective floor committee (Options, FCO or Floor Procedures). All [visitors] *guests* must be signed in by a member or Exchange official and accompanied at all times by a member, associated person of a member or an Exchange official.

[As a visitor, the applicant must be escorted by a representative of a member firm at all times while on the trading floor, and failure to do so shall result in a violation of this regulation by such member Firm.

Once an applicant has filed an application with the Office of the Secretary pursuant to By-Law Article XII, Section 12-4, the Examinations

Department and the Office of the Secretary shall conduct clearance procedures to verify personal data and financial viability. The applicant may be admitted as a visitor for ten business days, after which the applicant must submit an Applicant Access Card/Floor Badge application which is subject to approval by the Exchange pursuant to satisfactory completion of personal and financial data verification. Twenty-one days after the Access Card is issued, it will automatically expire; an applicant may apply to the Chairman of the Admissions Committee or his designee for a twenty-one day extension.]

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|--------------------|---|
| 1st Occurrence     | Official Warning  |
| 2nd Occurrence     | \$50.00   |
| 3rd Occurrence     | \$100.00  |
| 4th Occurrence     | \$200.00  |
| 5th and Thereafter | Sanction is discretionary with 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. Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organizations' 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 Phlx Regulation 5, Visitors and Applicants, encated as a rule of order and decorum under Phlx Rule 60. Phlx Regulation 5 originally applied generally to non-member guests' access to the trading floor.<sup>4</sup> It was amended by the Exchange in 1992 to create an "applicant" status for prospective Exchange members from whom an application for membership had been filed and for whom the personal background check had been completed, but whose membership application process would not be completed until a subsequent posting

period had been completed.<sup>5</sup> That rule filing (File No. SR-Phlx-91-06) stated that, while clearance procedures are being conducted, which normally take about ten business days to complete, the prospective member would remain in a "visitor" status, requiring the signature of a member for entry on the floor and constant accompaniment by a member while on the floor. Once the clearance procedures were completed, the applicant would submit an "Applicant Access Card/Floor Badge Application," and upon issuance of the Applicant Access Card<sup>6</sup> and Floor Badge, the applicant would have unescorted access to the floor and not have to be signed in by a member. According to the Exchange, Phlx Membership Services no longer uses an Applicant Access Card/Floor Badge Application and no longer issues Applicant Access Cards. Instead, applicants for membership who desire access to the trading floor are required to register as on-floor trading personnel pursuant to Phlx Rule 620(b), Trading Floor Registration. Once registered under Phlx Rule 620(b), applicants are issued the same access card issued to members, members' staff and Exchange staff to permit access to the Exchange floor.

Therefore, Phlx proposes to return Regulation 5 to its pre-1992 wording. As such, Phlx Regulation 5 would continue to apply to guests who do not qualify for registration as on-floor trading personnel under Phlx Rule 620(b).

###### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it would eliminate outdated language which no longer reflects current procedures at the Exchange regarding access to the trading floor by applicants for membership.

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

The Exchange does not believe that the proposed rule change would impose any inappropriate burden on competition.

<sup>5</sup> See Securities Exchange Act Release No. 30416 (February 26, 1992), 57 FR 7836 (March 4, 1992) (approving File No. SR-Phlx-91-06).

<sup>6</sup> The Applicant Access Card, an electronic proximity card, was an access card designed to permit access to the Exchange floor for a period of 21 days. After that period expired, the applicant's use of the Applicant Access Card would generate an alert to Exchange personnel who would then obtain the return of the Applicant Access Card from the applicant.

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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

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

<sup>3</sup> Amendment No. 1 replaced the original filing in its entirety. Amendment No. 1 clarified that violations of Regulation 5 would be enforced against members and not the guests themselves, and added a description for the Applicant Access Card.

<sup>4</sup> Violations of Regulation 5 are enforced against members, member organizations, and/or associated persons who permit their guest to have access to the Exchange floor without properly signing them in, accompanying them, and otherwise ensuring their compliance with the rule.

*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 Phlx consents, the Commission will:

A. By order approve such proposed rule change, or

B. Instate proceedings to determine whether the proposed rule change should be disapproved.<sup>9</sup>

**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. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2004-51 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Phlx-2004-51. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of this filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posed without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2004-51 and should be submitted on or before January 17, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

J. Lynn Taylor,

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-50856; File No. SR-Phlx-2004-91]

**Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change To Establish a Directed Order Process for Orders Delivered to the Exchange Via AUTOM**

December 14, 2004.

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 9, 2004, 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 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 1080, Philadelphia Stock Exchange Automated Options Market (AUTOM)<sup>3</sup>

<sup>10</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> AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing

and Automatic Execution System (AUTO-X), and Phlx Rule 1014, Obligations And Restrictions Applicable to Specialists And Registered Options Traders, by adopting: (1) New Phlx Rule 1080(l), Directed Orders, under which Exchange specialists, Streaming Quote Traders ("SQTs")<sup>4</sup> and Remove Streaming Quote Traders ("RSQTs")<sup>5</sup> trading on the Exchange's electronic options trading platform, Phlx XL,<sup>6</sup> would receive Directed Orders (as defined below); and (2) Phlx Rule 1014(g)(viii), which would set forth the trade allocation algorithm for electronically executed and allocated trades involving Directed Orders. Below is the text of the proposed rule change. Proposed new language is in *italics*.

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

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

(l) *Directed Orders. For a one-year pilot period, beginning on the date of approval of this Rule by the Securities and Exchange Commission, respecting Streaming Quote Options traded on Phlx XL, specialists, RSQTs and SQTs may receive Directed orders (as defined in this Rule) in accordance with the provisions of this Rule 1080(l).*

(i)(A) *The term "Directed Order" means any customer order to buy or sell which has been directed to a particular specialist, RSQT, or SQT by an Order Flow Provider, as defined below. To qualify as a Directed Order, an order must be delivered to the Exchange via AUTOM.*

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 features, AUTO-X, Book Sweep and Book March. 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. See Phlx Rule 1080.

<sup>4</sup> An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. See Phlx Rule 1014(b)(ii)(A).

<sup>5</sup> An RSQT is a participant in the Exchange's electronic trading system. "Phlx XL", who has received permission from the Exchange to trade in options for his own account, and to generate and submit option quotations electronically from off the floor of the Exchange through AUTOM in eligible options to which such RSQT has been assigned.

<sup>6</sup> See Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (SR-Phlx-2003-59).

<sup>9</sup> 15 U.S.C. 78s(b)(2).