

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

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50947; File No. SR-Phlx-2004-82]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Short Sales

December 29, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on December 3, 2004, 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 December 28, 2004, the Phlx filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was filed by the Phlx as a non-controversial filing under Rule 19b-4(f)(6) of the Act.<sup>4</sup> 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, pursuant to Section 19(b)(1) and Rule 19b-4 thereunder,<sup>5</sup> proposes to amend Exchange Rules: 455, Short Sales; 203, Agreement of Specialists; 225, Odd-Lot Orders in Securities Which the Exchange Is the Primary Market; 785, Automated Submission of Trading Data; and 786, Periodic Reports.

The text of amended Exchange Rules 455, 203, 225, 785 and 786 is set forth below. New text is italicized; deleted text is bracketed.

\* \* \* \* \*

#### Rule 455. Short Sales

*No member or member organization shall effect a sell order or sale of any security unless such sell order or sale is effected in compliance with Securities and Exchange Commission Rule 10a-1 promulgated under the Securities Exchange Act of 1934.*

[(a)(1) Except as provided in subsection (d) hereof, no member or member organization shall for his or its own account or for the account of any other person, effect on the Exchange a short sale of any security for which traders are reported pursuant to a consolidated transaction reporting system operated in accordance with a plan declared effective under Securities Exchange Act Rule 17a-15 (a "consolidated system") (i) below the price at which the last sale thereof, regular way, was reported in such consolidated system, or (ii) at the last sale price unless such price is above the next preceding different price at which a sale of such security, regular way, was reported in such consolidated system.

(2) Except as provided in subsection (d) hereof, no member or member organization shall for his or its own account, or for the account of any other person, effect on the Exchange a short sale of any security not covered by paragraph (1) of this subsection (i) below the price at which the last sale of such security, regular way, was effected on the Exchange, or (ii) at the last sale price unless such price is above the next preceding different price at which a sale of such security, regular way, was effected on the Exchange.

(3) Notwithstanding paragraph (1) of this subsection (a), the Floor Procedure Committee, in its discretion, may determine that it is necessary or appropriate in the public interest or for the protection of investors that short sales in any security for which trades are reported in a consolidated system be subject to the rule set forth in paragraph (2) hereof. Following any such designation of any such security by the Floor Procedure Committee, compliance with the terms of paragraph (2) shall constitute compliance with this subsection (a).

#### Marked "Long" or "Short"

(b) No member or member organization of the Exchange shall, by the use of any facility of the Exchange, execute any sell order unless such order is marked either "long" or "short".

#### Marking Orders

(c) No member or member organization of the Exchange shall mark a sell order "long" unless (1) the security to be delivered after sale is carried in the account for which the sale is to be effected, or (2) such member or member organization is informed that the seller owns the security ordered to be sold, and as soon as is possible without undue inconvenience or expense, will deliver the security owned to the account for which the sale is to be effected.

#### Exceptions

(d) The provisions of subsection (a) hereof shall not apply to:

(1) Any sale by any person, for an account in which he has an interest, if such person owns the security sold and intends to deliver such security as soon as possible without undue inconvenience or expense;

(2) Any member or member organization in respect of a sale, for an account in which it has no interest, pursuant to an order to sell which is marked "long";

(3) Any sale of a security for which trades are reported in a consolidated system (except a sale to a stabilizing bid complying with Securities Exchange Act Rule 10b-7) by a specialist in such security for its own account (i) effected at a price equal to or above the last sale reported for such security in such consolidated system; or (ii) effected at a price equal to the most recent offer communicated for the security if such offer, when communicated, was equal to or above the last sale, regular way, reported for such security pursuant to an effective transaction reporting plan; provided, however, this exemption shall not be available for securities covered by paragraph (3) of subsection (a) hereof.

(4) Any sale by a specialist to offset odd lot orders of customers;

(5) Any sale by a specialist to liquidate a long position which is less than a round lot, provided such sale does not change the position of such specialist by more than the unit of trading;

(6) Any sale of a security for which trades are not reported in a consolidated system (except a sale to a stabilizing bid complying with Securities Exchange Act Rule 10b-7) effected with the approval of the Exchange which is necessary to equalize the price of such security on the Exchange with the current price of such security on another national securities exchange which is the principal exchange market for such security;

<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> See Amendment No. 1 to the proposed rule change (December 28, 2004). Amendment No. 1 replaced the Exchange's original filing in its entirety.

<sup>4</sup> 17 CFR 240.19b4(f)(6). For purposes of determining the effective date and calculating the sixty-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on December 28, 2004, the date the Exchange filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

<sup>5</sup> 17 CFR 240.19b-4.

(7) Any sale of a security for a special arbitrage account by a person who then owns another security by virtue of which he is, or presently will be, entitled to acquire an equivalent number of securities of the same class as the securities sold, provided such sale, or the purchase which such sale offsets, is effected for the bona fide purpose of profiting from a current difference between the price of the security sold and the security owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any class of securities of the issuer;

(8) Any sales of a security on the Exchange effected for a special international arbitrage account for the bona fide purpose of profiting from a current difference between the price of such security on a securities market not within or subject to the jurisdiction of the United States and on the Exchange provided the seller at the time of such sale knows or, by virtue of information currently received, has reasonable grounds to believe that an offer enabling him to cover such sale is then available to him in such foreign securities market and intends to accept such offer immediately;

(9) Any sale of a security effected in accordance with a special offering plan declared effective by the Securities and Exchange Commission pursuant to paragraph (d) of Securities Exchange Act Rule 10b-2; or

(10) Any sale by an underwriter, or any member of a syndicate or group participating in the distribution of a security, in connection with an over-allotment of securities, or any lay-off sale by such a person in connection with a distribution of securities through rights pursuant to Securities and Exchange Act Rule 10b-8 or a standby underwriting commitment.

(11) Any sale of a security for which, trades are reported in a consolidated system (except a sale to a stabilizing bid complying with Securities Exchange Act Rule 10b-7) by any broker or dealer, for his own account or for the account of any other person, effected at a price equal to the most recent offer communicated by such broker or dealer to the Exchange in an amount less than or equal to the quotation size associated with such offer, if such offer when communicated was (i) above the price at which the last sale, regular way, for such security was reported pursuant to an effective transaction reporting plan; or (ii) at such last sale price, if such last sale price is above the next preceding different price at which a sale of such security, regular way, was reported

pursuant to an effective transaction reporting plan; provided however, this exemption shall not be available for securities covered by paragraph (3) of subsection (a) hereof.

For the purpose of paragraph (8) of this subsection (d) a depository receipt for a security shall be deemed to be the same security as the security represented by such receipt.

(12) Any sale by any person in Nasdaq/NM securities as defined in Securities Exchange Act Rule 11Aa3-1 except for those Nasdaq/NM securities for which transaction reports are collected, processed, and made available pursuant to the plan originally submitted to the Securities and Exchange Commission pursuant to Securities Exchange Act Rule 17a-15 (subsequently amended and redesignated as Securities Exchange Act Rule 11Aa3-1), which plan was declared effective as of May 17, 1974.

\* \* \* Supplementary Material

.01 This Rule 455 shall not prohibit any transaction or transactions which the Commission, upon written request or upon its motion, exempts, either unconditionally or on specified terms and conditions.]

**Rule 203. Agreement of Specialists**

(a)-(d) No change.

(e)(i) At an opening, all market orders, (whether entrusted to or left with the specialist or represented by a broker or brokers in the Trading Crowd) including at the opening market orders, shall have precedence over limit orders and shall be executed at one price.

(ii) In connection with an opening:

(A) A limited price order to buy which is at a higher price than the price at which the security is to be opened, and a limited price order to sell which is at a lower price than the price at which the security is to be opened, are to be treated as market orders.

(B) A market order to sell short is not to be treated as other market orders, but is to be treated as a limited price order to sell at the price of the first permissible short sale. A limited price order to sell short which is at a lower price than the price at which the security is to be opened, is to be treated as a limited price order to sell at the price of the first permissible short sale. Such orders are to be treated as market orders only if the opening price is higher than the first permissible short sale price. *This subsection (B) does not apply to market orders or limited price orders that are marked "sell short exempt".*

**Rule 225. Odd-Lot Orders in Securities for Which the Exchange Is the Primary Market**

(a) Odd-lot orders in securities for which the Exchange is the primary market shall be executed subject to the provisions of Rules 203 and 205 and in the manner prescribed below:

Order to buy at market

(i) An order to buy at the market shall be executed on the next round-lot transaction of the security, plus the differential if any is charged.

Order to sell at market

(ii) An order to sell at the market marked "long" or "sell short exempt" shall be executed on the next round-lot transaction of the security, minus the differential if any is charged.

An order to sell at the market marked "short" (*but not marked "sell short exempt"*) shall be executed at the price of the next round-lot transaction which is higher than the last different round-lot price, minus the differential if any is charged.

Order to buy at limit

(iii) The effective transaction for a limited order to buy shall be the next round-lot transaction which is either at or below the specified limit by the amount of any differential if charged or by a greater amount. The order shall be filled at the price of the effective transaction, plus the differential if any is charged.

Order to sell at limit "long"

(iv) The effective transaction for a limited order to sell marked "long" or "sell short exempt" shall be the next round-lot transaction which is either at or above the specified limit by the amount of any differential if charged by a greater amount. The order shall be filled at the price of the effective transaction, minus the differential if any is charged.

Order to sell at limit "short"

The effective transaction for a limited order to sell marked "short" (*but not "sell short exempt"*) shall be the next round-lot transaction which is either at or above the specified limit by the amount of any differential if charged, or by a greater amount, and which is also higher than the last different round-lot transaction (a "plus" or "zero-plus" tick). The order shall be filled at the price of the effective transaction, minus the differential if any is charged.

Buy stop order

(v) A buy stop order shall become a market order when a round-lot transaction takes place at or above the stop price. The order shall then be filled at the price of the next transaction, plus the differential if any is charged.

Sell stop order marked "long"

(vi) A sell stop order marked "long" or "sell short exempt" shall become a market order when a round-lot transaction takes place at or below the stop price. The order shall then be filled at the price of the next transaction, minus the differential if any is charged.

Sell stop order marked "short"

A sell stop order marked "short" (but not "sell short exempt") shall become a market order when a round-lot transaction takes place at or below the stop price. The order shall then be filled at the price of the next transaction, which is higher than the last different round-lot price, minus the differential if any is charged.

Buy stop limited order

(vii) A buy stop limited order shall become a limited order when a round-lot transaction takes place at or above the stop price. The order shall then be filled in the manner prescribed for handling a limited order to buy.

Sell stop limited order marked "long"

(viii) A sell stop limited order marked "long" or "sell short exempt" shall become a limited order when a round-lot transaction takes place at or below the stop price. The order shall then be filled in the manner prescribed for handling a limited order to sell, marked "long."

Sell stop limited order marked "short"

A sell stop limited order marked "short" (but not "sell short exempt") shall become a limited order when a round-lot transaction takes place at or below the stop price. The order shall then be filled in the manner prescribed for handling a limited order to sell, marked "short."

Buy on offer

(ix) An order to buy on the offer shall be filled at the round-lot offer price prevailing at the time the specialist receives the order, plus the differential if any is charged.

Sell on bid

(x) An order to sell on the bid marked "long" or "sell short exempt" shall be filled at the round-lot bid price prevailing at the time the specialist receives the order, minus the differential if any is charged. An order to sell on the bid marked "short" (but not "sell short exempt") shall not be accepted.

Buy "on close"

(xi) An order to buy "on close" shall be filled at the price of the closing round-lot offer, plus the differential if any is charged.

Sell "on close"

(xii) An order to sell "on close" marked "long" or "sell short exempt" shall be filled at the price of the closing round-lot bid, minus the differential if

any is charged. An order to sell "on close" marked "short" (but not "sell short exempt") shall not be accepted.

Limited order to buy marked "or at market on close"

(xiii) A limited order to buy marked "or at the market on close" which remains unfilled at the close of business on the Exchange, shall be filled at a price equal to the closing round-lot offer, plus the differential if any is charged.

Limited order to sell marked "long" and "or at market on close"

(xiv) A limited order to sell marked "long" or "sell short exempt" and marked "or at market on close" which remains unfilled at the close of business on the Exchange, shall be filled at a price equal to the closing round-lot bid, minus the differential if any is charged.

A limited order to sell marked "short" (but not "sell short exempt") and marked "or at market on close" shall not be accepted.

Limited order to buy on the offer

(xv) A limited order to buy on the offer shall be filled at a price equal to the round-lot offer price prevailing at the time the specialist receives the order, plus the differential if any is charged, but only if the offer price plus the differential if any is charged, is at or below the limit of the order. If the order cannot be filled forthwith, it shall be canceled and the originating member or member organization shall be informed regarding the quotation and the cancellation.

Limited order to sell on the bid marked "long"

(xvi) A limited order to sell on the bid marked "long" or "sell short exempt" shall be filled at a price equal to the round-lot bid price prevailing at the time the specialist receives the order, minus the differential if any is charged, but only if the bid price minus the differential if any is charged, is at or above the limit of the order. If the order cannot be filled forthwith, it shall be cancelled and the originating member or member organization shall be informed regarding the quotation and the cancellation.

Limited order to buy marked "immediate or cancel"

(xvii) A limited order to buy marked "Immediate or Cancel" shall be handled in the manner specified in (xv) above for the handling of a limited order to buy on the offer. A limited order to sell marked "Immediate or Cancel" shall be handled in the manner specified in (xvi) above for the handling of a limited order to sell on the bid.

Buy or sell on closing bid or offer

(xviii) At the request of a customer an order may be filled after the close at a

price based on the closing round-lot bid or offer provided that the order was received prior to the close and could have been filled, in the case of a buy order, if a sale had occurred at the offer price and, in the case of a sell order, if a sale had occurred at the bid price; the request is made within a reasonable time after the close; and nothing has occurred after the close which could affect the market value of the stock.

A buy order shall be filled at the price of the closing round-lot offer, plus the differential if any is charged.

A sell order marked "long" or "sell short exempt" shall be filled at the price of the closing round-lot bid, minus the differential if any is charged. A sell order marked "short" (but not "sell short exempt") may not be accepted for filling after the close.

"Cash" or "seller's option"

(xix) Odd-lot orders for "cash" or "seller's option" may be filled only by agreement between customer and odd-lot dealer.

"Delayed sale" or "sold sale"

(xx) When a "delayed sale" or "sold sale" occurs (printed on the ticker tape followed by the symbol "SLD"), the specialist shall make every effort to ascertain the approximate time the transaction took place. If there is some doubt as to whether or not this transaction in any way effects the execution of an odd-lot order, the firm that entered the order should be notified, informed of the circumstances, and given the opportunity to accept or reject a report based on the transaction.

#### **Rule 785. Automated Submission of Trading Data**

A member or member organization shall submit such of the following trade data elements specified below in such automated format as may be prescribed by the Exchange from time to time, in regard to such transaction or transactions as may be subject of a particular request for information made by the Exchange:

(a) If the transaction was a proprietary transaction effected or caused to be effected by the member or member organization for any account in which such member or member organization, or any member, allied member, approved person, partner, officer, director, or employee thereof, is directly or indirectly interested, such member or member organization shall submit or cause to be submitted the following information:

(1)-(4) No Change.

(5) Number of shares, or quantity of bonds or options contracts for each specific transaction and whether each transaction was a purchase, sale, short

sale, *exempt short sale*, and if an options contract whether open long or short or close long or short;

(6)–(8) No Change.

(b)–(d) No Change.

#### Rule 786. Periodic Reports

Member organizations shall submit, as required by the Exchange, periodic reports with respect to short positions in securities.

##### \* \* \* Supplementary Material

.01 Short Positions—Member organizations for which the Exchange is the designated examining authority (“DEA”) are required to report short positions, including odd-lots, in each stock or warrant traded on the Exchange, and in each other stock or warrant not traded on the Exchange for which short positions are not otherwise reported to another United States securities exchange or association, using such automated format and methods as prescribed by the Exchange. Such reports must include customer and proprietary positions and must be made at such times and covering such time period as may be designated by the Exchange. Member organizations whose short positions have properly been reported to, and are carried by, a non-member clearing organization will be in compliance with this rule if adequate arrangements have been made providing for the clearing organization to properly report such positions to the Exchange or to another United States securities exchange or association.

“Short” positions to be reported are those resulting from “short” sales as defined in Securities and Exchange Commission [Regulation 3b–3] *Rule 200 of Regulation SHO*, but excluding [positions resulting from sales specified in clauses (1), (6), (7), (8), (9) and (10) of paragraph (e) of Regulation 10a–1] sales marked “sell short exempt” pursuant to *Rule 200(g) of Regulation SHO*. Also, to be excluded are “short” positions carried for other members and member organizations reporting for themselves.

Only one report should be made for each stock or warrant which there is a short position, if more than one “account” has a short position in the same stock or warrant, the combined aggregate should be reported.

Member organizations for which the Exchange is not the DEA must report short positions to its DEA if such DEA has a requirement for such reports. If the DEA does not have such a reporting requirement, then such member organization must comply with the provisions of this rule.

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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. 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 update the Exchange’s rules as they pertain to short sales in view of recent Commission actions in the area of short sale regulation. On July 28, 2004 the Commission published two releases making changes to the Commission’s rules governing short sales. In the first release, the Commission adopted new Regulation SHO under the Act, replacing SEC Rules 3b–3<sup>6</sup> and 10a–2,<sup>7</sup> SEC Rule 10a–1<sup>8</sup> was also amended. In the second release, the Commission, by order, suspended the tick test provision of Rule 10a–1, and any short sale price test of any exchange or national securities association, with respect to certain securities, for a period of approximately one year (the “Short Sale Pilot Program”) beginning on January 3, 2005, which beginning date the Commission extended to May 2, 2005 by order of November 29, 2004.<sup>9</sup> In view of these developments in the area of short sale regulation, the Exchange is proposing a number of amendments to Phlx rules related to short sales.

*Rule 455, Short Sales.* Existing Rule 455 is proposed to be deleted in its entirety. New, more general language which simply prohibits effecting a sell order or sale unless it is effected in compliance with Rule 10a–1, the Commission’s short sale rule, would be substituted in its place. The proposed language is identical to Article IX, Rule 17(a) of the Chicago Stock Exchange

<sup>6</sup> 17 CFR 240.3b–3.

<sup>7</sup> 17 CFR 240.10a–2.

<sup>8</sup> 17 CFR 240.10a–1.

<sup>9</sup> Although the Commission’s order resets the Short Sale Pilot Program to commence on May 2, 2005 and end on April 28, 2006, all other terms of the pilot program remain unchanged. See Securities Exchange Act Release No. 50747 (November 29, 2004).

rules.<sup>10</sup> The proposal is intended to simplify and streamline the Exchange’s short sale rule to be no more burdensome than that imposed by the Commission, and to provide additional flexibility to the Exchange in the event the Commission determines to further liberalize Rule 10a–1. Additionally, some of existing Rule 455’s provisions conflict with new Regulation SHO. For example, Rules 455(b) and (c) track old SEC Rules 10a–1(c) and (d), which Regulation SHO deletes, and conflict with comparable provisions in new SEC Rule 200(g).

#### *Rule 203, Agreement of Specialists.*

Rule 203 currently provides that a market order to sell short at the opening is not to be treated as other market orders, but is to be treated as a limited price order to sell at the price of the first permissible short sale. The proposed amendment would make clear that this provision of Rule 203 does not apply to orders marked “sell short exempt” because such orders are not subject to Rule 10a–1’s “tick test” restrictions.

*Rule 225, Odd-Lot Orders in Securities Which the Exchange Is the Primary Market.* Rule 225 currently prescribes the manner in which various types of odd-lot orders in securities for which the Exchange is the primary market are to be executed. The proposed amendments take into account that certain orders are now to be marked “sell short exempt” and are intended to clarify that orders that are marked “short sale exempt” are to be executed like long sale orders as opposed to short sale orders.

*Rule 785, Automated Submission of Trading Data.* Rule 785 requires members and member organizations to submit certain trade data elements in such automated format as may be prescribed by the Exchange from time to time, including whether each transaction was a purchase, sale, or short sale. The proposed amendment adds “exempt short sale” to these three categories of data elements.

*Rule 786, Periodic Reports.* Rule 786 requires member organizations to submit, as required by the Exchange, periodic reports with respect to short positions in securities. The proposed amendment would substitute a reference to new Rule 200 of Regulation SHO for old Commission Rule 3b–3, which the Commission has deleted.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

<sup>10</sup> See Securities Exchange Act Release No. 40990 (January 28, 1999), 64 FR 5696 (February 4, 1999) (approving SR–CHX–98–24).

of the Act<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>12</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the proposed rule change simplifies Rule 455 and conforms Exchange rules to new Commission rules relating to short sales.

#### *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**

The Exchange has designated the proposed rule change as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>14</sup> Consequently, because the foregoing 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 30 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 Act and Rule 19b-4(f)(6) thereunder. The Exchange requests that the Commission waive the 30-day pre-operative requirements contained in Rule 19b-4(f)(6)(iii),<sup>15</sup> so that the proposed rule change may become operative on January 3, 2005, the compliance date for Regulation SHO.

The Commission believes that waiving the 30-day pre-operative delay

is consistent with the protection of investors and the public interest. The Commission believes that accelerating the operative date does not raise any new regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition. 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 a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the 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. 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-2004-82 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-2004-82. 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 the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted 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-2004-82 and should be submitted on or before January 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 05-309 Filed 1-6-05; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-50946; File No. SR-Phlx-2004-87]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Amending Phlx Rule 1072 in View of Commission Regulation SHO**

December 29, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on December 3, 2004, 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 December 27, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was filed by the Exchange as a non-controversial filing under Rule 19b-4(f)(6) of the Act.<sup>4</sup> The Commission

<sup>16</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> See Amendment No. 1 to the proposed rule change (December 27, 2004). Amendment No. 1 replaced the Exchange's original filing in its entirety.

<sup>4</sup> 17 CFR 240.19b4(f)(6). For purposes of determining the effective date and calculating the sixty-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on December 28, 2004, the date the Exchange filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> Under subparagraph (f)(6)(iii) of Rule 19b-4, the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. 17 CFR 240.19b-4(f)(6)(iii).