accurately, then any orders received by the Exchange would be processed manually through the use of paper tickets. In such circumstances, all other Exchange rules governing options trading would remain in effect. Accordingly, the Exchange proposes to retain its existing rules that are applicable to the manual processing of order tickets.

Current PCX Rule 6.68(a) requires OTP Holder and OTP Firms to maintain and preserve certain information items relating to the terms of each option order. The Exchange proposes to make minor technical changes to the text by renaming and renumbering certain information items enumerated in the Rule for clarity. The Exchange also proposes language to specify that the Exchange would be required to maintain and preserve all electronic orders on behalf of OTP Holders and OTP Firms. The proposed rule change does not replace existing requirements for recording orders contained in this Rule. The Exchange further proposes to amend PCX Rule 6.68(b) to make it clear that OTP Holders and OTP Firms would be required to comply with their recordkeeping obligations for orders excepted from the EOC/Electronic Tablet requirements.

Finally, the Exchange proposes to add a Commentary .01 to PCX Rule 6.67, which provides that Cabinet Trades and FLEX options are exempt from the EOC and Electronic Tablet Entry Requirements as set forth in PCX Rule 6.67(c). However, such trades would be required to be processed using manual time stamped order tickets. The PCX would maintain a separate record of quotes, orders and transactions related to such trades in the same format as the COATS data and would make such information available upon Commission request.

The system entry requirement proposed in this rule change would become completely operative on January 10, 2005.

IV. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] which requires among other things, that the Exchange's

rules be designed to promote just and equitable principles of trade, to remove impediments 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.

The Commission believes that the rules as proposed should allow the Exchange to comply with its obligations under the Order in that they should result in the creation of an audit trail that incorporates manual orders sent to PCX. Specifically, the proposed rule change requires that PCX members enter certain details immediately upon receipt, prior to representation of the order, into either EOC or the Electronic Tablet, which the Commission believes should result in an accurate, time-sequenced record of orders.

The Commission also believes that the Exchange's plan for recording order details in the event of a systems outage or malfunction is reasonable. In the event of a systems outage or malfunction, floor brokers would revert to the use of trade tickets and would record on those tickets the times that various events occur in the life of the order. Further, the Exchange would ensure that the information recorded on trade tickets is entered into the Exchange's electronic systems in a timely manner so that it can be incorporated into the electronic audit trail.

The Commission notes that the Exchange has acknowledged the need for effective and proactive surveillance for activities such as trading ahead and front-running in connection with the creation of its audit trail. The Exchange represents that it will implement proactive and effective surveillance procedures for violations of Exchange rules and Federal securities laws, including, but not limited to, rules prohibiting trading ahead and front running, related to the entry of customer orders into the EOC system. The Commission views effective surveillance as critical to the integrity of COATS and expects that the Exchange will inform the Commission of any problems it encounters in conducting effective surveillance.

The Commission finds good cause for accelerating approval of the proposed rule change prior to the thirtieth day after the date of the publication of notice thereof in the **Federal Register**. The Commission notes that the proposed rule change was noticed for a 15-day comment period and that no comments were received. The Commission believes that it is appropriate to accelerate approval of the proposed rule change so that the

proposal may be implemented on a timely basis to ensure prompt compliance with the undertakings contained in the Commission's Order.

V. Conclusion

For all of the aforementioned reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–PCX–2004–122) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,
Assistant Secretary.
[FR Doc. E5–126 Filed 1–12–05; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50997; File No. SR–Phlx–2003–40]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 2, 3, 4 and 5 Relating to the Options Floor Broker Management System

January 7, 2005.

I. Introduction

On June 2, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] to adopt new rules relating to the implementation of its Floor Broker Management System (''FBMS'' or ''System''). On July 28, 2003, the Exchange filed Amendment No. 1 to the proposed rule change. On August 7, 2003, the proposed rule change, as amended, was published for comment in the **Federal Register** to solicit comment from interested persons.[3] No comments were received.

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[9] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48265 (July 31, 2003), 68 FR 47137.

On August 1, 2003, the Exchange submitted Amendment No. 2 to the proposed rule change.[4] On August 15, 2003, the Exchange submitted Amendment No. 3 to the proposed rule change.[5] On October 9, 2003, the Exchange submitted Amendment No. 4 to the proposed rule change.[6] On December 14, 2004, the Exchange submitted Amendment No. 5 to the proposed rule change.[7] This order approves the proposed rule change, as amended, and notices and grants

accelerated approval to Amendments No. 2, 3, 4, and 5.

II. Background

The proposed rule change is intended to fulfill certain of the undertakings contained in an order issued by the Commission relating to the settlement of an enforcement action against the American Stock Exchange LLC, Chicago Board Options Exchange, Inc., Pacific Exchange, Inc. and Phlx (collectively ''Options Exchanges'') for failure to comply with their own rules and to enforce compliance with their own rules by their members and persons associated with their members [8] as is required by Section 19(g) of the Act.[9] The Order found that the Options Exchanges impaired the operations of the options market by: (1) Following a course of conduct under which they refrained from multiply listing a large number of options; and (2) inadequately discharging their obligations as self-regulatory organizations by failing adequately to enforce compliance with (a) certain of their rules, including order handling rules, that promote competition as well as investor protection, and (b) certain of the rules prohibiting anticompetitive conduct, such as harassment, intimidation, refusals to deal and retaliation directed at market participants who sought to act competitively. In addition, the Commission found that the Options Exchanges failed to enforce compliance with their trade reporting rules, which promote transparency of the market and facilitate surveillance and enforcement of other exchange rules and the federal securities laws.

As part of the Order, the Options Exchanges agreed to, and were ordered to comply with, a variety of undertakings. Among other things, they agreed to, and were ordered to, design and implement an accurate, time-sequenced, consolidated options audit trail system (''COATS'') that will enable the Options Exchanges to reconstruct markets promptly, effectively surveil them and enforce order handling, firm quote, trading reporting and other rules. The Options Exchanges were required to complete this undertaking in five phases. The Options Exchanges have completed the first four phases. The final phase of the undertaking to implement COATS requires that each

exchange incorporate into its audit trail all non-electronic orders. This proposed rule change addresses that aspect of the undertaking.

III. Description

The Exchange proposes to effect rule changes on a permanent basis to support the implementation of its new system, known as FBMS. FBMS would create an accurate, time-sequenced electronic options order audit trail for manual orders received by the Exchange's floor brokers

A. Operation of FBMS

FBMS is a component of AUTOM [10] designed to enable floor brokers and/or their employees to enter, route and report transactions stemming from option orders received on the Exchange. Floor brokers or their employees would access the System through an electronic Exchange-provided handheld device on which they would have the ability to enter the required information as set forth in proposed Phlx Rule 1063(e), either from their respective posts on the options trading floor or in the trading crowd.

Specifically, proposed Phlx Rule 1063(e) sets forth the requirement that a floor broker or such floor broker's employees must, contemporaneously upon receipt of an order and prior to the representation of such an order in the crowd, record the required information regarding all option orders represented by such floor broker onto the System. Additionally, the proposed rule change provides that upon the execution of such an order, the floor broker would be required to enter the time of execution of the trade.[11]

Proposed Phlx Rule 1063(e) would require floor brokers or their employees to record the following specific information onto the System upon receipt of an order: (i) The order type (*i.e.*, customer, firm, broker-dealer); (ii) the option symbol; (iii) buy, sell, or cancel; (iv) call, put, complex (*i.e.*, spread, straddle), or contingency order

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[4] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated July 31, 2003. In Amendment No. 2, the Exchange represents that it intends to implement supplementary surveillance and examination programs designed to address, among other things, trading ahead and front-running.

[5] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Jennifer Colihan, Special Counsel, Division, Commission, dated August 14, 2003. In Amendment No. 3, the Exchange proposes to clarify that in the event that floor brokers or their employees are required to record order information on trade tickets pursuant to proposed Phlx Rule 1063(e) due to a systems malfunction, they must enter the information recorded on trade tickets into AUTOM for inclusion in the electronic audit trail. In Amendment No. 3, the Exchange further proposes to exempt non-multiply listed index options, foreign currency, and other options traded exclusively on the Exchange other than equity options from the requirements of proposed Phlx Rule 1063.

[6] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Jennifer Colihan, Special Counsel, Division, Commission, dated October 9, 2003. In Amendment No. 4, the Exchange proposes to delete ''options traded on the Exchange other than equity options'' from the list of products it proposed to exempt from the requirements of proposed Phlx Rule 1063(e)(ii). The Exchange also commits to store information regarding products exempt from the requirements of proposed Phlx Rule 1063 in the same format used for non-exempt products. Further, the Exchange proposes to amend proposed Phlx Rule 1063 to provide that, until February 1, 2004, the requirement that floor brokers record order information into the FBMS prior to representing such orders in the trading crowd shall not apply to complex orders or other orders if a Floor Official makes a determination that there was an influx of orders at the time the floor broker received the order such that entry of the information required by the rule is not reasonably feasible. The Exchange also included provisions for documenting such a decision by a Floor Official.

[7] In Amendment No. 5, the Exchange proposes to delete the provisions in proposed Phlx Rule 1063 that provided that until February 1, 2004, the requirement that floor brokers record order information into the FBMS prior to representing such orders in the trading crowd shall not apply to complex orders or other orders if a Floor Official makes a determination that there was an influx of orders at the time the floor broker received the order such that entry of the information required by the rule is not reasonably feasible. Amendment No. 5 also clarifies how the Exchange would handle order data regarding Foreign Currency Options, Customized Foreign Currency Options and FLEX Options, and how the FBMS would identify the broker-dealer submitting an order. Finally, Amendment No. 5 provides that the requirements of proposed Phlx Rule 1063(e) would take effect on January 10, 2005.

[8] *See* Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000) and Administrative Proceeding File 3–10282 (the ''Order'').

[9] 15 U.S.C. 78s(g).

[10] 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.

[11] Once the floor broker executes an order using the System, the time of execution would be automatically recorded into the electronic audit trail.

as described in Phlx Rule 1066; (v) number of contracts; (vi) limit price or market order or, in the case of a complex order, net debit or credit, if applicable; (vii) whether the transaction is to open or close a position; and (viii) The Options Clearing Corporation ("OCC") clearing number of the broker-dealer that submitted the order. These enumerated elements of an order are currently written on trade tickets; the proposed new rule would simply require them to be entered onto the System. Upon entry of the order into the System, the System would automatically record the time of entry, and will assign an identification code that is particular to that order for purposes of the electronic audit trail.

With regard to FLEX, Foreign Currency, and Customized Foreign Currency Options, under proposed Phlx Rule 1063(f), floor brokers or their employees would be required to enter the above-described data elements into the Exchange's electronic audit trail in the same electronic format as the required information for equity and index options. Floor brokers or their employees must enter the required information for FLEX, Foreign Currency and Customized Foreign Currency Options into the electronic audit trail on the same business day that a specific event surrounding the lifecycle of an order in FLEX, Foreign Currency, or Customized Foreign Currency Options (including, without limitation, orders, price or size changes, execution or cancellation) occurs.

B. Ticket Marking Requirements and the System

Currently, various Exchange rules require floor brokers to mark trade tickets with certain notations, depending on the type of trade and the crowd participants involved. The Exchange is proposing to amend its rules concerning the ticket marking requirements so that floor brokers would be required to enter similar notations onto the System. For example, the Exchange is proposing to amend Phlx Rule 1015 and corresponding OFPA A–11 to require that a floor broker or his employees make the appropriate notice in the FBMS when an order is for the account of a broker/dealer. Also, by way of example, the Exchange is proposing to amend Phlx OFPA C–3 to require in the situation in which a floor broker represents an order for a market maker on another national securities exchange, such floor broker or his employees must so indicate on the FBMS and must ensure that the order is represented in the trading crowd as a

"BD" order for the purposes of the Exchange's yielding requirements.

C. System Malfunctions

Proposed Phlx Rule 1063 would require that, in the event of a malfunction in the FBMS, floor brokers would be required to record the required information on trade tickets, and would not be permitted to represent an order for execution which has not been time stamped with the time of entry on the trading floor. Such trade tickets would be required to be time stamped upon the execution of such an order. This reflects the current practice of recording information concerning orders represented and executed by options floor brokers onto trade tickets, and using time stamps to record the time of receipt of an order, and the time of execution. Once it is determined that such malfunction no longer exists, floor brokers or their employees would be required to enter the required information that is recorded on such trade tickets into AUTOM, using the FBMS, for inclusion in the electronic audit trail.

D. Clearing Information

Proposed Phlx Rule 1063(e) would require floor brokers or their employees to enter clearing information onto the FBMS no later than five minutes after the execution of a trade. Such clearing information would be required to include the account number(s) of each contra-side participant to the floor broker's trade in the crowd and the number of contracts bought or sold, which would be immediately reported via AUTOM to the clearing firm of each crowd participant involved in the trade. Once the clearing information is reported, crowd participants involved in the trade would receive a position update, enabling them to know their respective positions on a real-time basis and to make appropriate, informed and timely hedging and transactional decisions.

E. Trade Reporting

Currently, Exchange members or member organizations that initiate an options transaction are required to report the execution of such trades within 90 seconds of the execution.[12] The FBMS includes a feature that would report transactions executed in the

trading crowd by the floor broker automatically upon execution. Once a trade involving a floor broker is executed in the trading crowd, such a floor broker would simply indicate on the system that the order was executed, which would automatically generate an electronic report.

The Exchange is also proposing amendments to Phlx Rule 1051 and OFPA F–2 in order to address the situation in which a floor broker who initiates a transaction executes all or a portion of the transaction against a contra-side limit order on the specialist's limit order book.[13] Currently, in such a situation, the specialist manually executes the booked limit order on the AUTOM System against the order represented by the floor broker. Upon such manual execution, the transaction is reported automatically by AUTOM.

The proposed amendment would require that when an order represented by a floor broker is executed against a limit order on the book, the specialist must report or ensure that the portion of the transaction represented by such specialist is reported to the tape. The purpose of this provision is to address the situation in which an order represented by a floor broker executes a booked limit order is executed by the specialist, in which case AUTOM automatically reports the execution of the booked limit order. Thus, the floor broker in this situation would not be required to report that portion of the transaction on the System, despite the fact that the floor broker involved may have in fact "initiated" the transaction. If the booked limit order represents the entire contra-side to the order represented by the floor broker, the specialist would be required to report the entire transaction. If the booked limit order represents a portion of the transaction, the specialist would be required to report that portion of the transaction, while the floor broker initiating the transaction would be responsible for reporting the remaining portion of the transaction he or she initiated.

IV. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with Act and the rules and regulations thereunder applicable to a national securities

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[12] Phlx Rule 1051 and OFPA F–2 currently provide that a member or member organization initiating an options transaction, whether acting as principal or agent, must report or ensure that the transaction is reported within 90 seconds of the execution to the tape. Transactions not reported within 90 seconds after execution shall be designated as late.

[13] The electronic "limit order book" is the Exchange's automated specialist limit order book, which automatically routes all unexecuted AUTOM orders to the book and displays orders real-time in order of price-time priority. Orders not delivered through AUTOM may also be entered onto the limit order book. *See* Phlx Rule 1080, Commentary .02.

exchange.[14] In particular the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[15] which requires among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments 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.

The Commission believes that the rules as proposed should allow the Exchange to comply with its obligations under the Order in that they will result in the creation of an audit trail that incorporates manual orders sent to Phlx. Specifically, the proposed rules would require that Phlx floor brokers enter certain order details contemporaneously upon receipt and prior to representation into the FBMS. Once an order is entered into the FBMS, the System would automatically timestamp the order as received by the Exchange and assign it a unique order identification number, which allows the system to track the order through its life on the floor up to the point of execution. Upon execution, the floor broker would enter the time the execution took place. Floor brokers or their employees would then be required to enter clearing information onto the FBMS no later than five minutes after the execution of a trade.

The Commission also believes that the Exchange's plan for recording order details in the event of a systems outage or malfunction is reasonable. In the event of a systems outage or malfunction, floor brokers would revert to use of trade tickets and would record on those tickets the times that various events occur in the life of the order. Further, the Exchange would ensure that the information recorded on trade tickets is entered into AUTOM so that it can be incorporated into the electronic audit trail.

Finally, the Commission notes that the Exchange acknowledges the need for effective and proactive surveillance for activities such as trading ahead and front-running. The Exchange represents that it currently conducts automated surveillance for such activities and will incorporate a review of order entry into the System as part of such surveillance. Further, the Exchange states that it also intends to implement supplementary surveillance and examination programs related to the requirement to enter order information into the FBMS, which will be designed to address, among other things, trading ahead and front-running. The Commission views effective surveillance relating to the use of the FBMS as critical to the integrity of COATS and expects that the Exchange will inform the Commission of any problems it encounters in conducting effective surveillance.

The Commission finds good cause for approving Amendments No. 2, 3, 4, and 5 to the proposed rule change, prior to the thirtieth day after the date of the publication of notice thereof in the **Federal Register**. The Commission notes that the amendments would more closely conform the Phlx's rules to those of the other options exchanges, the rules for which were subject to notice and comment. The Commission believes that because the proposed amendments raise no new issues of regulatory concern, it is appropriate to accelerate approval of these amendments so that the rules may be implemented on a timely basis.

V. 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. Please include SR–Phlx–2003–40 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 SR–Phlx–2003–40. 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 such filing also will be available for inspection and copying at the principal office of the Exchange. 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 SR–Phlx–2003–40 and should be submitted on or before February 3, 2005.

VI. Conclusion

For all of the aforementioned reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–Phlx–2003–40), as amended, is approved, and Amendments No. 2, 3, 4, and 5 are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–123 Filed 1–12–05; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

Demonstration Project for Direct Payment to Non-Attorney Representatives

AGENCY: Social Security Administration (SSA).

ACTION: Notice.

SUMMARY: Section 303 of the Social Security Protection Act of 2004 (SSPA), Public Law No. 108–203, requires the Commissioner of Social Security (the Commissioner) to develop and implement a five-year nationwide demonstration project that will extend to certain non-attorney representatives of claimants under titles II and XVI of the Social Security Act (the Act) the option to have approved representatives' fees withheld and paid directly from a beneficiary's past-due benefits. Currently, this option is available only to representatives who are attorneys. Non-attorney

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[14] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).