

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51114; File No. SR-Phlx-2005-07]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Extension of a Pilot Limiting Trade-Through Liability at the End of the Options Trading Session

January 31, 2005.

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 January 27, 2005, 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 the Exchange. On January 28, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Exchange has filed the proposal as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act,<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission.<sup>6</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 Phlx proposes to amend proposes to amend Exchange Rule 1085(a)(2)(ii)(B), Order Protection, to correspond to the extension of the current pilot (“pilot”) under the Plan for the Purpose of Creating and Operating

an Intermarket Option Linkage (“Linkage Plan”),<sup>7</sup> which limits Trade-Through<sup>8</sup> liability at the end of the options trading session, until January 31, 2006. The extended pilot would increase the limit on liability at the end of the trading session from 25 contracts to 50 contracts per Satisfaction Order.<sup>9</sup> The text of the proposed rule change is available on the Phlx Web site (<http://www.phlx.com>), at the Phlx’s Office of the Secretary, and at the Commission’s Public Reference Room.

#### 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 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 extend the pilot contained in Exchange Rule 1085(a)(2)(ii)(B), which limits trade-through liability at the end of the options trading session. Currently under the pilot, an Exchange member’s trade-through liability is limited to 25 contracts per Satisfaction Order received during the period between five minutes prior to the close of trading in the underlying security and the close of trading in the options class. The Commission temporarily approved the pilot on January 31, 2003,<sup>10</sup> followed by approval on June 18,

2003.<sup>11</sup> The Commission then granted an extension of the pilot until June 30, 2004<sup>12</sup> and then until January 31, 2005.<sup>13</sup>

The Exchange proposes to extend the pilot for an additional year, until January 31, 2006. In addition, the Exchange proposes to increase the limit on trade-through liability from 25 contracts to 50 contracts per Satisfaction Order received during the period between five minutes prior to the close of trading in the underlying security and the close of trading in the options class. This increase in the limit on liability would be effective on February 1, 2005, after the current pilot expires.

As a condition to granting permanent approval of this limitation, the Commission required that the options exchanges participating in the Linkage Plan (“Participants”) provide the Commission with a report (“Report”) regarding data on the use of the exemption no later than 60 days before seeking permanent approval. The Participants have provided the Commission with certain information required in the Report, and continue to discuss with Commission staff what additional information the staff may need to evaluate possible permanent approval of the trade-through limitation. This extension of the pilot would allow the limitation to continue in effect, as amended, while the Commission staff and the Participants continue to discuss permanent approval.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>15</sup> in particular, in that the proposed rule change is designed to perfect the mechanisms of a free and open market and a national market system, protect investors and the public interest, and promote just and equitable principles of trade by extending the pilot limiting trade-through liability during the period between five minutes prior to the close of trading in the underlying security and the close of trading in the options class until January 31, 2006, and by

<sup>7</sup> See Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001) (Amendment to Linkage Plan to Conform to the Requirements of Securities Exchange Act Rule 11Ac1-7); 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (Approval of Phlx Joining the Linkage Plan); and 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (Order approving the Linkage Plan).

<sup>8</sup> “Trade-Through” means a transaction in an options series at a price that is inferior to the NBBO. See Exchange Rule 1083(t).

<sup>9</sup> A “Satisfaction Order,” is an order sent through the Linkage to notify a member of another Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through. See Exchange Rule 1083(k)(iii).

<sup>10</sup> See Securities Exchange Act Release No. 47298 (January 31, 2003), 68 FR 6524 (February 7, 2003) (Temporary effectiveness of pilot program on a 120-day basis).

<sup>11</sup> See Securities Exchange Act Release No. 48055 (June 18, 2003), 68 FR 37869 (June 25, 2003) (Order approving Joint Amendment No. 4).

<sup>12</sup> See Securities Exchange Act Release No. 49146 (January 29, 2004), 69 FR 5618 (February 5, 2004) (Order approving Joint Amendment No. 8).

<sup>13</sup> See Securities Exchange Act Release No. 49863 (June 15, 2004), 69 FR 35081 (June 23, 2004) (Order approving Joint Amendment No. 12). This extension increased the maximum liability from 10 to 25 contracts.

<sup>14</sup> 15 U.S.C. 78f(b).

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

<sup>12</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 Form 19b-4 dated January 28, 2005

(“Amendment No. 1”). In Amendment No. 1, the Exchange made technical corrections to the rule text included in the original rule filing. Amendment No. 1 replaced the original filing in its entirety.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> The Phlx asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

increasing the limit on trade-through liability from 25 contracts to 50 contracts per Satisfaction Order received during the same period.

#### 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

The Exchange has neither solicited nor received comments on the proposed rule change.

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

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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>18</sup> normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii), and designate the proposed rule change immediately operative.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>19</sup> By waiving the pre-filing requirement and accelerating the operative date, the Pilot Program can continue without interruption. The Commission believes that allowing the pilot to continue will

allow Participants to either gather sufficient information to justify the need for the pilot program or determine that the exemption from trade-through liability is no longer necessary. Increasing the maximum number of contracts to be satisfied with respect to Satisfaction Orders in the last seven minutes of trading in options to 50 contracts will enhance customer order protection.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such 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.<sup>20</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 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-2005-07 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-2005-07. 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 Room. 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 SR-Phlx-2005-07 and should be submitted on or before January 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>21</sup>

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51116; File No. SR-Phlx-2005-06]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Extend Its Pilot Fee Schedule for Electronic Communications Networks

February 1, 2005.

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 January 26, 2005, 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 its schedule of fees to extend its current pilot program for an additional one-year period (until January 31, 2006), to continue to impose a \$2,500 monthly fee for electronic communications networks ("ECNs") that are member

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>18</sup> *Id.*

<sup>19</sup> For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>20</sup> For purposes of calculating the 60-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 the period to commence on January 28, 2005, the date the Exchange filed Amendment No. 1 to the proposed rule change. See 15 U.S.C. 78s(c)(3)(C).

<sup>21</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.