

All submissions should refer to File Number SR-CFE-2005-02. 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, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. 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-CFE-2005-02 and should be submitted on or before October 3, 2005.

#### IV. Commission Findings and Order Granting Accelerated Approval of a Proposed Rule Change

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.<sup>28</sup> In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,<sup>29</sup> which requires, among other things, that the rules of the Exchange be designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest. In addition, the Commission believes that the proposed rule change is consistent with Section 7(c)(2)(B) of the Act,<sup>30</sup> which provides, among other things, that the margin requirements for security futures must preserve the financial integrity of markets trading security futures and prevent systemic

risk. The Commission also believes that the proposed rule change is consistent with the customer margin rules set forth in Rules 400 through 406 under the Act.<sup>31</sup>

The Exchange has requested that the Commission approve this proposed rule change prior to the thirtieth day after publication of notice of the filing in the **Federal Register**. The Commission believes that nothing in this proposed rule change raises any new, unique, or substantive issues from those previously raised in SR-OC-2002-01, as amended, which rule filing sets forth OneChicago's margin requirements for security futures, and in SR-OC-2004-01, which rule filing sets forth OneChicago's market maker program. The Exchange's proposed rules set forth herein are identical to the OneChicago's rules approved by the Commission in SR-OC-2002-01, as amended, and SR-OC-2004-01, with the exception of one market maker exemption from the margin rules which the CFE excluded because it did not correspond to its current practices. Further, the Exchange is ready to begin trading subject to the approval of this proposed rule change and the Exchange's opening would enhance competition in the marketplace. Accordingly, the Commission finds good cause for approving this proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Specifically, the Commission believes that it is consistent with Section 19(b)(2) of the Act<sup>32</sup> to approve CFE's proposed rule change prior to the thirtieth day after publication of the notice of filing thereof in the **Federal Register**.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>33</sup> that the proposed rule change (File No. SR-CFE-2005-02) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>34</sup>

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52379; File No. SR-CHX-2005-23]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change Relating to the Assignment of Securities to Specialists

September 2, 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 August 25, 2005, the Chicago Stock Exchange, Inc. (the "CHX" or the "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 CHX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal on an accelerated basis.

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

The Exchange proposes to amend Rule 1 of Article XXX relating to Registration and Appointment to permit its Committee on Specialist Assignment and Evaluation ("CSAE") to, in special circumstances, assign securities<sup>3</sup> to a specialist firm without the firm first identifying a particular co-specialist to trade the securities, so long as the specialist firm promptly provides the CSAE with the name of the co-specialist that would trade the issues, and the CSAE concludes that the co-specialist is qualified to trade the issues. Below is the text of the proposed rule change, as amended. Proposed new language is italicized; proposed deletions are in [brackets].

#### ARTICLE XXX

##### Specialists

##### Registration and Appointment

Rule 1. No change.

\* \* \* Interpretations and Policies:

##### .01 Committee on Specialist Assignment and Evaluation

\* \* \* \* \*

<sup>28</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>29</sup> 15 U.S.C. 78f(b)(5).

<sup>30</sup> 15 U.S.C. 78g(c)(2)(B).

<sup>31</sup> 17 CFR 242.400-406.

<sup>32</sup> 15 U.S.C. 78s(b)(2).

<sup>33</sup> 15 U.S.C. 78s(b)(2).

<sup>34</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> The Commission notes that the Exchange uses the terms "security(ies), stock(s) and issue(s)" interchangeably.

## II. Assignment Procedures

When a security is to be assigned or reassigned, the Committee will notify all specialist units and invite applications. This notice will include all relevant facts about the security. If the Committee believes that special qualifications should be sought in the successful applicant, the Committee after satisfying itself that these are reasonable and not exclusionary, should direct that they be included in the notice.

It should be noted that assignments are made to specialist units but that, *except as provided below in paragraph 6*, the specialist unit must indicate the individual co-specialist who will be registered in that stock. The registration of a co-specialist, however, does not diminish the responsibility of the specialist unit for the stock assigned to it.

\* \* \* \* \*

1. Applications. In applying, a specialist unit should state the reasons why it believes the stock should be assigned to it. A standard application form is available from the Exchange and should be used for this purpose. *Except as otherwise provided in paragraph 6, below*, t[he] application must, at a minimum, include the name and background of the co-specialist who will normally be trading the security and his ability and experience relative to the issue being applied for. Also, if any special or unique characteristics of the security have been identified by the Committee, such as unusually high capital requirements or institutional participation making trading difficult, the applicant should specifically note and comment on its ability to deal with the special characteristics.

\* \* \* \* \*

6. *Assignment process when posting of large groups of stocks. If circumstances require the Exchange to allocate more than 100 stocks at any specific time, the Exchange recognizes that it may be difficult for a specialist firm to identify the specific co-specialist who would be assigned to trade each of the issues for which that firm seeks an assignment. In those circumstances, the CSAE may make a temporary 30-day assignment to a specialist firm (based on the firm's overall demonstrated ability, experience and financial responsibility, as well as the overall best interests of the Exchange). The CSAE may make that temporary assignment final if: (1) The specialist firm, within 15 days of the temporary assignment, provides the CSAE with the identification of the individual co-specialist who will be trading the*

*stock(s); and (2) the CSAE, after evaluating that co-specialist's demonstrated ability and experience, finds that the co-specialist is qualified to trade the stock(s). If the CSAE determines that the co-specialist is not qualified to trade the stock(s), the stock(s) shall be immediately posted for assignment.*

\* \* \* \* \*

## 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 changes 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 III 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 Exchange states that the Exchange's CSAE is responsible for assigning securities to specialist firms for trading.<sup>4</sup> Under current Interpretation and Policy .01 of Rule 1 of Article XXX, each participant firm seeking to act as a CHX specialist in a particular issue is required to identify, during the application process, the individual co-specialist who will be trading that security.<sup>5</sup> The Exchange believes that this process works efficiently when the CSAE is assigning a few securities at a time.

On rare occasions, however, the CSAE may need to assign larger groups of securities. In those situations, the Exchange represents that it may be difficult and impractical for specialist firms to identify individual co-specialists for all of the securities for which the firms will apply because, among other things, the firms may need to hire new co-specialists to trade the securities. To address these limited circumstances, the Exchange has proposed a change in its assignment rule that would allow the CSAE to make a temporary 30-day assignment to a specialist firm without the firm first identifying a particular co-specialist to trade the securities. According to the

Exchange, the assignment could not become final (and the firm could not begin trading the securities) unless: (1) The specialist firm, within 15 days of the temporary assignment, provides the CSAE with the identification of the individual co-specialist who will be trading the securities; and (2) the CSAE, after evaluating that co-specialist's demonstrated ability and experience, finds that the co-specialist is qualified to trade the securities. If the CSAE determines that the co-specialist is not qualified to trade the securities, the securities would be immediately posted for assignment to other specialist firms.

The Exchange believes that the proposal is narrowly tailored to provide an efficient and effective process for assigning securities in those rare situations when a large number of securities must be assigned in a relatively short period of time. As an initial matter, the proposed rule change would apply only in instances where the CSAE is allocating more than 100 stocks at any specific time, a circumstance that has occurred rarely at the Exchange. Additionally, the proposal would not allow a specialist firm to begin trading a security until it had notified the CSAE of the individual co-specialist who would trade a security, and the CSAE had determined that that individual was qualified to do so. Finally, the proposal would require the CSAE to determine which specialist firm should trade securities based on criteria that are consistent with those set out in the Exchange's rules. In these cases, the CSAE would review a firm's overall demonstrated ability, experience and financial responsibility, as well as the overall best interests of the Exchange.<sup>6</sup> The Exchange further represents that the best interests of the Exchange incorporates a variety of issues, including the issue of concentration of specialist assignments on the Exchange.<sup>7</sup> The Exchange also believes that the CSAE should be cognizant of concentration issues and should allocate securities in a manner that, consistent with the other factors and requirements of the assignment process, minimizes concentration as much as possible.<sup>8</sup>

<sup>6</sup> Under the Exchange's assignment rules, the CSAE ordinarily considers the demonstrated ability of the identified co-specialist, along with the firm's financial responsibility and the overall best interests of the Exchange. See Article XXX, Rule 1.01.III.1.

<sup>7</sup> Telephone conversation of August 26, 2005, between Ellen Neely, President and General Counsel, CHX and Hong-Anh Tran, Special Counsel, Division of Market Regulation, Commission.

<sup>8</sup> *Id.*

<sup>4</sup> See Article IV, Rule 6, and Article XXX, Rule 1.

<sup>5</sup> See Article XXX, Rule 1.01.II.1.

## 2. Statutory Basis

The CHX believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>9</sup> In particular, the Exchange believes that the proposed change is consistent with Section 6(b)(5) of the Act,<sup>10</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest by allowing the Exchange to establish an effective and efficient process to permit the assignment of a large number of securities within a relatively short period of time.

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

The Exchange does not believe that the proposed rule change will impose any 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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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-CHX-2005-23 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-CHX-2005-23. 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 such filing also will be available for inspection and copying at the principal office of the CHX. 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-CHX-2005-23 and should be submitted on or before October 3, 2005.

## IV. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change

The Commission has considered the Exchange's proposed rule change, and finds that the proposed rule change is consistent with Section 6(b) of the Act,<sup>11</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>12</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>13</sup> which requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest. The Exchange represents that it is currently considering the assignment of a large number of securities that are temporarily assigned to certain CHX specialist firms. The Exchange further represents that it needs to promptly make final assignment decisions for these securities. The Commission believes

that the proposal should facilitate the ability of the Exchange to expeditiously assign a large number of securities (*i.e.*, exceeding 100 securities) in a relatively short time frame in the rare circumstances it is necessary to do so, without compromising the overall interests of the assignment process.

Pursuant to Section 19(b)(2) of the Act,<sup>14</sup> the Commission may not approve any proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof, unless the Commission finds good cause for so doing. The Commission hereby finds good cause for approving the proposed rule change prior to the thirtieth day after publishing notice of filing thereof in the **Federal Register**. The Commission notes that the Exchange's assignment procedures, pursuant to Interpretation and Policy .01 of Rule 1 of Article XXX, generally requires that, during the application process, specialist firms identify the co-specialist (or co-specialists) whom the specialist firm believes will trade the securities. Because of the large number of securities that are available for allocation in this case, the Commission believes that the specialist firms might, in some cases, find it difficult to identify individual co-specialists for all of the securities for which they apply. The Commission believes that the proposed rule change is necessary to facilitate the orderly assignment of a large number of securities within a relatively short period of time. The Commission expects the Exchange to assign securities, on a 30-day temporary basis, to a particular specialist firm based on the firm's overall demonstrated ability, experience and financial responsibility, subject to the firm's identification (within 15 days of the assignment) of the particular co-specialist(s) who will trade the securities and the Exchange CSAE's determination that the individual co-specialist(s) have the demonstrated ability and experience to trade the issues. In addition, the Commission notes that assignment could not become final and the firm could not begin trading securities allocated pursuant to the proposal unless the firm promptly provided the Exchange's CSAE with the name of the co-specialist, and the CSAE concluded that the co-specialist is qualified to trade the issues. Finally, the Commission expects the CSAE to be cognizant of the issue of concentration of specialist securities assignments on the Exchange, consistent with the representations of the Exchange

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

<sup>12</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

referenced above. For the reasons set forth above, the Commission finds good cause to accelerate approval of the proposed rule change pursuant to Section 19(b)(2) of the Act.<sup>15</sup>

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-CHX-2005-23) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. E5-4948 Filed 9-9-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52380; File No. SR-Phlx-2005-56]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Extension of the Pilot Program on Dividend Spread and Merger Spread Fee Caps Until March 1, 2006

September 2, 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 August 29, 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 Phlx. The Exchange designated the proposed rule change as establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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

Phlx proposes to extend for a period of six months its fee caps on equity option transaction and comparison charges on dividend spread transactions<sup>5</sup> and merger spread transactions.<sup>6</sup> The current fee caps are in effect as a pilot program that expires on September 1, 2005. The Exchange proposes to extend the pilot program for the fee caps for a six-month period until March 1, 2006. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.phlx.com>), at the Office of the Secretary, Phlx, and at the Commission.

### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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. 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

Currently, the Exchange imposes a fee cap on equity option transaction and comparison charges on merger spread transactions and dividend spread transactions executed on the same trading day in the same options class. Specifically, ROTs’ and specialists’ equity option transaction and comparison charges are capped at \$1,750 for transactions effected pursuant to a merger spread strategy or

<sup>5</sup> For purposes of this proposal, a “dividend spread” transaction is any trade done within a defined time frame pursuant to a strategy in which a dividend arbitrage can be achieved between any two deep-in-the-money options. See Securities Exchange Act Release No. 48983 (December 23, 2003), 68 FR 75703 (December 31, 2003) (SR-Phlx-2003-80).

<sup>6</sup> For purposes of this proposal, the Exchange defines a “merger spread” transaction as a transaction executed pursuant to a merger spread strategy involving the simultaneous purchase and sale of options of the same class and expiration date, but different strike prices, followed by the exercise of the resulting long options position, each executed prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.*, cash or stock. See Securities Exchange Act Release No. 51596 (April 21, 2005), 70 FR 22381 (April 29, 2005) (SR-Phlx-2005-19).

dividend spread strategy when the dividend is \$0.25 or greater. However, for dividend spread transactions for a security with a declared dividend or distribution of less than \$0.25, the ROTs’ and specialists’ equity option transaction and comparison charges are capped at \$1,000 for transactions effected pursuant to a dividend spread strategy executed on the same trading day in the same options class. The fee caps are implemented after any applicable rebates are applied to ROT and specialist equity option transaction and comparison charges.<sup>7</sup> The purpose of extending the pilot program for a six-month period is to continue to attract additional liquidity to the Exchange and to remain competitive.<sup>8</sup>

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>10</sup> in particular, in that it is an equitable allocation of reasonable fees among Exchange members.

#### 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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and paragraph (f)(2) of Rule 19b-4 thereunder<sup>12</sup> because it is establishing or changing a due, fee, or other charge applicable only to the Exchange’s members. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission

<sup>7</sup> Currently, the Exchange provides a rebate for certain contracts executed in connection with transactions occurring as part of a dividend spread strategy or merger spread strategy. See notes 5 and 6, *supra*.

<sup>8</sup> Similar to the Exchange’s current rebate process, members who wish to benefit from the fee cap are required to submit to the Exchange a written rebate request with supporting documentation.

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

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

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

<sup>16</sup> *Id.*

<sup>17</sup> 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> 15 U.S.C. 78s(b)(3)(A)(ii).

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