

Moreover, the proposed rule change sets forth in detail provisions relating to the content and signature requirements for offers of settlement, as well as waivers of certain rights upon submission of an offer of settlement. Additionally, the proposal provides for quarterly review by the BCC and the Board Appeals Committee of final disciplinary actions in order to provide the Department of Enforcement and General Counsel with guidance on future settlement practices and settlement amounts. The Commission believes that this provision is reasonably designed to provide for BCC and Board input, albeit on a prospective basis only, on the Exchange's disciplinary program, thereby providing a mechanism for the Board to comply with the self-regulatory organization's responsibility to maintain an adequate and effective disciplinary system.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. Accelerating approval of the proposal will allow the Exchange to implement, without undue delay, a more efficient process for reviewing and deciding upon offers of settlement, while maintaining ETP Holder involvement in the settlement process. In addition, the Commission notes that the NASD has a substantially similar rule with respect to offers of settlement.

## V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>24</sup> that the proposed rule change, as amended (SR-PCX-2005-76), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>25</sup>

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. E5-6026 Filed 10-31-05; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52667; File No. SR-Phlx-2005-25]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to a Proposed Rule Change and Amendments No. 2, 3, and 5 Thereto Relating to the Adoption of New Rules That Would Establish an Automated Opening System on the Exchange

October 25, 2005.

#### I. Introduction

On April 21, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") 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, a proposed rule change that would establish an automated opening system on the Exchange. The Exchange submitted Amendments No. 1,<sup>3</sup> 2,<sup>4</sup> and 3<sup>5</sup> to its proposal on June 1, 2005, September 1, 2005, and September 14, 2005, respectively. The proposed rule change, as amended, was published for comment in the **Federal Register** on September 22, 2005.<sup>6</sup> No comments were received on the proposal. The Phlx submitted Amendment No. 4<sup>7</sup> on September 23, 2005, and Amendment No. 5<sup>8</sup> on September 26, 2005. This order approves the proposed rule change, as amended.

<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 June 1, 2005 ("Amendment No. 1"). Amendment No. 1 replaced the original filing in its entirety.

<sup>4</sup> See Form 19b-4, dated September 1, 2005 ("Amendment No. 2"). Amendment No. 2 replaced Amendment No. 1 in its entirety.

<sup>5</sup> See Form 19b-4, dated September 14, 2005 ("Amendment No. 3"). In Amendment No. 3, Phlx, in part, deleted proposed rule text to clarify that during a manual opening all market orders are to be executed at one price.

<sup>6</sup> See Securities Exchange Act Release No. 52448 (September 15, 2005), 70 FR 55650.

<sup>7</sup> See Form 19b-4, dated September 23, 2005. The Exchange subsequently submitted Amendment No. 5, which was intended to supercede and replace Amendment No. 4. As a result, the Exchange withdrew Amendment No. 4 on October 19, 2005. See Form 19b-4, dated October 19, 2005.

<sup>8</sup> See Form 19b-4, dated September 26, 2005. In Amendment No. 5, the Exchange made technical changes to accurately reflect the differences between proposed rule language and current rule text, as well as made technical changes to better conform Exhibits 4 and 5 to each other. The Act does not require notice and comment for technical amendments.

## II. Description of the Proposed Rule Change

In July 2004, the Exchange began trading options on its new electronic options trading platform, Phlx XL.<sup>9</sup> Because Phlx XL does not currently include an automated opening functionality, specialists are currently required to open option series manually. The proposed rule change would establish a fully automated opening system for options traded on Phlx XL as part of the Phlx XL system.

#### Pre-Opening

For a period of time before the scheduled opening in the underlying security (and not less than one hour as determined by the Options Committee with notice to the membership via Exchange circular, Phlx XL will accept orders and quotes during the "Pre-Opening Phase." The Phlx XL system will disseminate to specialists, Streaming Quote Traders ("SQTs"), Remote Streaming Quote Traders ("RSQTs"), and non-SQT ROTs who are required to submit continuous two-sided electronic quotations pursuant to Exchange Rule 1014(b)(ii)(E)<sup>10</sup> (collectively, for purposes of proposed Phlx Rule 1017, "Phlx XL participants") information about resting orders on the book that remain from the previous trading session and orders submitted prior to the opening.

#### Calculation of Opening Price

The system will calculate an Anticipated Opening Price ("AOP") and Anticipated Opening Size ("AOS") when a quote or trade has been disseminated by the primary market for the underlying security, under the conditions set forth below. The specialist assigned in the particular option must enter opening quotes not later than one minute following the dissemination of a quote or trade by the primary market for the underlying security.

An AOP may be calculated only if: (i) The Exchange has received market orders, or the book is crossed (highest bid is higher than the lowest offer) or locked (highest bid equals the lowest offer); and (ii) either (A) the specialist's

<sup>9</sup> See Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 44612 (August 3, 2004) (SR-Phlx-2003-59).

<sup>10</sup> Exchange Rule 1014(b)(ii)(E) requires non-SQT ROTs who transact more than 20% of their contract volume in an option electronically versus in open outcry during a particular calendar quarter to submit proprietary electronic quotations in such an option during the subsequent calendar quarter for a certain number of series in such option, depending on the percent of total volume transacted electronically versus in open outcry on the Exchange in such option.

<sup>24</sup> 15 U.S.C. 78s(b)(2).

<sup>25</sup> 17 CFR 200.30-3(a)(12).

quote has been submitted; (B) the quotes of at least two Phlx XL participants that are required to submit continuous, two-sided quotes in 100% of the series in all option issues in which such Phlx XL participant is assigned ("100% participants"),<sup>11</sup> have been submitted within two minutes of the opening trade or quote on the primary market for the underlying security (or such shorter time as determined by the Options Committee and disseminated to the membership via Exchange Circular); or (C) if neither the specialist's quote<sup>12</sup> nor the quotes of two 100% participants have been submitted within two minutes of the opening trade or quote on the primary market for the underlying security (or such shorter time as determined by the Options Committee and disseminated to the membership via Exchange Circular), one 100% participant has submitted its quote.

#### *Opening Order/Quote Imbalance*

In situations where an AOP may be calculated (*i.e.*, when the conditions described above are present) and there is an order/quote imbalance, the system will immediately send an imbalance notice indicating the imbalance side (buy or sell) and the AOP and AOS (an "Imbalance Notice") to Phlx XL participants assigned to the options class provided that the primary market for the underlying security has disseminated an opening quote or trade. Phlx XL participants may then submit their opening or revised opening quotes. Thereafter the system will disseminate an updated Imbalance Notice every five seconds (or such shorter period as determined by the Options Committee and disseminated to membership via Exchange Circular) until the series is open. If no imbalance exists, no Imbalance Notice will be sent, and the system will establish an opening price as described below.

#### *Actual Opening Price*

The proposal would establish the opening price of a series in situations where there is no opening quote/order imbalance. Proposed Phlx Rule 1017(c)(i) would define the opening price as the price at which the

maximum quantity of contracts would be traded. The proposed rule would establish a series of "tie-breakers" that the system would follow in establishing the opening price when two or more prices would satisfy the maximum quantity criteria. Specifically, when the maximum quantity of contracts could be traded at two or more prices, the system would establish the opening price based on the following criteria, in order: (1) The price at which the greatest number of customer orders would be traded; (2) the price at which the maximum number of Phlx XL participants would trade; and (3) the price that is closest to the closing price from the previous trading session.

#### *Priority on Openings*

The system will give priority to market orders first (including a limit order to buy which is at a higher price than the price at which the option is to be opened and a limit order to sell which is at a lower price than the price at which the option is to be opened, which will be treated as market orders), then to resting limit orders at the opening price.

#### *Contingency, Hedge, and Synthetic Option Orders*

Contingency Orders, Hedge Orders, and Synthetic Option Orders, as defined in Exchange Rule 1066, are not considered in the determination of the opening price, and do not participate in the opening trade because such order types generally include two or more option components, and may also include a stock component.

#### *Floor-Brokered Orders*

To be considered in the determination of the opening price and to participate in the opening trade, orders represented by Floor Brokers must be entered onto the book electronically.

#### *Inbound Orders and Quotes Received While the System Completes the Opening Trade*

Inbound orders and quotes will not be included in the calculation of the opening price for a brief period established by the system (and thus not within the discretion of any Phlx XL participant) while the system is in the process of completing the opening trade. During such brief period, such inbound orders and quotes will be entered into the Phlx XL system in order of their arrival.

Proposed Rule 1017(d) would provide that, as the opening price is determined by series, the system will disseminate through OPRA the opening trade price, if any, and then the quote after the

series is open. The system will process and open the series for a given option in random order. If there are no orders in a particular series when the underlying security opens, the Exchange will disseminate quotations at the best bid and offer in such series submitted by Phlx XL participants assigned in the particular option.

#### *Situations in Which the Option Series Will Not Open*

The proposed rule would set forth three conditions under which the system will not open a series. First, the system will not open a series when there is no quote from the specialist or a 100% participant. Second, the system will not open a series when the opening price is not within an acceptable range (as determined by the Options Committee and announced to Exchange members and member organizations by way of Exchange Circular) compared to the highest offer and the lowest bid (*e.g.*, the upper boundary of the acceptable range may be 125% of the highest quote offer and the lower boundary may be 75% of the lowest quote bid). Third, the system will not open a series when the opening trade would leave a market order imbalance (*i.e.*, there are more market orders to buy or to sell for the particular series than can be satisfied by the limit orders, market orders and quotes on the other side of the market).

#### *No Specialist or 100% Participant Quote or Quote Outside Acceptable Range*

If the specialist or a Phlx XL participant with a 100% quoting requirement is not quoting as described in proposed Phlx Rule 1017(e)(i), or if the opening price is not within an acceptable range as described in proposed Phlx Rule 1017(e)(ii), proposed Phlx Rule 1017(f) would provide that two Floor Officials may authorize the manual opening of the affected series where necessary to ensure a fair and orderly market. In such a circumstance, the Exchange's existing rules concerning manual openings would apply.<sup>13</sup>

#### *Manual Opening by Specialist*

Proposed Phlx Rule 1017(g)(i) would provide that if a condition or the absence of a required condition not otherwise covered by the proposed rule would prevent an opening trade to occur, the specialist may, with prior notification to Market Surveillance staff, determine to open a series manually in

<sup>11</sup> An example of a 100% participant is a new category of ROT on the Exchange known as a "Directed SQT" or a "Directed RSQT," defined as an SQT or RSQT that receives a Directed Order. See Securities Exchange Act Release No. 51759 (May 27, 2005), 70 FR 32860 (June 6, 2005) (SR-Phlx-2004-91).

<sup>12</sup> For example, a specialist may not submit a quote due to systems malfunctions. A specialist, however, who fails to submit opening quotes within one minute of the opening on the primary market would be subject to possible disciplinary action.

<sup>13</sup> See, *e.g.*, the Commentary to Phlx Rule 1017, Phlx Rules 1047, 1047A, and OFPAs A-12, A-14 and G-2.

the interest of a fair and orderly market, subject to the approval of two Floor Officials within five minutes of the opening of the affected series. Manual openings would be required to be conducted in accordance with current Commentary .01-.03 of Exchange Rule 1017.

#### *Index Options*

Under the proposal, with respect to automated openings in an Industry or Market Index conducted pursuant to Phlx Rule 1017, the specialist may engage the automated opening system to open such options when underlying securities representing 50% of the current index value of all the securities underlying the index have opened for trading on the primary market. The system will automatically open all index options when underlying securities representing 100% of the current index value of all the securities underlying the index have opened for trading on the primary market.<sup>14</sup>

#### *Reopening Following a Trading Halt*

The procedure described in the proposed Rule may be used to reopen an option after a trading halt.

#### *Conforming Amendments to Current Exchange Rules and OFPAs*

In addition to the proposed amendments to Exchange Rule 1017, the Exchange is proposing various conforming amendments to current Exchange rules and OFPAs that relate to openings and re-openings following a trading halt, as well as deleting references to obsolete procedures and modifying certain processes.

The Exchange proposes to delete Commentary .03(d)(iii) from Exchange Rule 1017, which currently states that the specialist will not open a series when there is a market on opening order with no corresponding order. The Exchange currently does not accept market on opening orders and thus Commentary .03(d)(iii) is unnecessary.

The Exchange proposes to amend Exchange Rules 1047 and 1047A and OFPAs A-12 and G-2 to reflect an automated opening conducted pursuant to Exchange Rule 1017 shall be considered a "trading rotation" for purposes of these rules and OFPAs. These rules would also be amended to include the term "Market Surveillance officer" to conform to current Exchange staff structure.

<sup>14</sup> The Exchange proposes to amend Phlx Rule 1047A and OFPA G-2 to require the opening of an Industry Index when 100% of the current index value of all the securities underlying the index have opened for trading on the primary market.

Exchange Rule 1047(c) would be amended to reflect that two Floor Officials (with the concurrence of a Market Surveillance officer) and not the appropriate Floor Standing Committee as reflected in the current rule would have the authority, respecting a particular class or series of option, to delay the opening, to halt and reopen after a halt, and to open where the underlying stock or ETF has not opened.

Exchange Rule 1047 would be further amended to delete all references to the Series Opening Request Ticket ("SORT") Procedure, an obsolete procedure that is no longer in use on the Exchange. The Exchange proposes a similar amendment to OFPA A-12 Opening Rotations and SORT Procedures.

Commentary .02 to Exchange Rule 1047 would be amended to require the specialist to inform the Market Surveillance staff in the event that trading in an underlying stock or Exchange-Traded Fund Share has not opened in the primary market for such stock or Exchange-Traded Fund Share within a reasonable time after the opening of business, or, in the event that current quotations for any underlying foreign currency are for any reason unavailable. Market Surveillance staff would then take the appropriate steps to determine the cause of such delay or unavailability, rather than the chairman of the appropriate Floor Standing Committee or his delegate on the floor, as the rule currently provides.

For consistency, OFPA A-12 would be amended to establish that the acceptable range within which the opening price must be established, would apply to both automated openings and manual openings conducted pursuant to Exchange Rule 1017 and the Commentary thereto. A similar amendment is proposed respecting OFPA A-14, Equity Option and Index Option Opening Parameters. The Exchange also proposes to delete references to Super Cap Index options from OFPA G-2, because the Exchange no longer lists this product.

#### *Deployment of the Automated Opening System*

The Exchange represents that it would deploy the automated opening system on an issue-by-issue basis. According to the Exchange, at least 10 issues would be deployed on the system within four weeks from the date of Commission approval of the proposed rule change, and all options traded on the Exchange would be deployed on the system within twelve weeks of such approval.

### III. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 of the Act.<sup>15</sup> Specifically, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,<sup>16</sup> which requires, in part, that the rules of an exchange be designed 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, to protect investors and the public interest.<sup>17</sup>

The Commission believes that the proposed automated opening system may facilitate an expedited opening of options on Phlx and thereby improve market efficiency for all market participants. Moreover, the Commission believes that the proposed rules should provide transparency to all market participants with respect to the manner in which an opening price is determined on the Exchange and ensure that the opening is conducted in a fair and orderly fashion.

The Commission also believes that the Exchange's proposal to allow two Floor Officials with the concurrence of a Market Surveillance Officer, rather than the appropriate Floor Standing Committee, to, among other things, delay the opening, halt and reopen after a halt, and open where the underlying stock or ETF has not opened, may facilitate the decision making process. Furthermore, the Commission notes that this approval structure is substantially similar to an existing rule of the American Stock Exchange LLC.<sup>18</sup>

### IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-Phlx-2005-25), as amended, is approved.

<sup>15</sup> 15 U.S.C. 78f.

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> 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).

<sup>18</sup> See Amex Rule 918(c).

<sup>19</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. E5-6027 Filed 10-31-05; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52651; File No. SR-SCCP-2004-03]

### Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Order Granting Approval of a Proposed Rule Change Relating to Anonymous Features on Trading Systems

October 21, 2005.

#### I. Introduction

On August 5, 2004, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-SCCP-2004-03 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> On September 7, 2004, SCCP amended the proposed rule change. Notice of the proposal was published in the **Federal Register** on August 10, 2005.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change with the conditions set forth below.

#### II. Description

The rule change allows SCCP to process trades executed on a trading system that provides for anonymous trading.<sup>3</sup> Pursuant to the rule change, SCCP will be able in the future to receive locked-in trade data from a trading system that provides anonymity. In such a situation, SCCP would report such trades to its members using an anonymous acronym instead of naming or identifying the actual contraside.

In the event that SCCP ceases to act for a member involved in anonymous trading, the operator of the trading system shall have the responsibility to identify to its users the trades, which

are generally included in reports produced by SCCP, involving the affected member. SCCP would forward to the operator of the trading system the appropriate information to facilitate its notification of its users. In addition, should SCCP receive information from NSCC that NSCC had ceased to act for an NSCC member that was an unidentified contraside of any such trade, SCCP would also forward this information to the operator of the trading system.<sup>4</sup>

#### III. Discussion

Section 17A(b)(3)(F) of the Act provides that the rules of a clearing agency should be designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>5</sup> To benefit from the advantages of an anonymous trading system, parties to anonymous trades need to keep their identities anonymous in any reports provided to counterparties as part of the clearance and settlement of the trades. By allowing SCCP to use an acronym in place of the name or identity of contrasides of anonymous trades in the trade reports it provides to its members, the proposed rule change allows the parties to anonymous trades to preserve their anonymity and thus to preserve the benefits associated with executing anonymous trades. Accordingly, the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions conducted on anonymous trading systems by allowing such trades to be cleared and settled through SCCP and therefore receive the benefits and efficiencies SCCP offers as a registered clearing agency.

As a condition of this approval, SCCP will notify the Commission in writing before it begins processing trades executed on each anonymous trading system. Such notification shall include such information as the name of the anonymous trading system, the operator and/or owner of the anonymous trading system, the proposed processing start date, and any other relevant information requested by the Commission.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that the

proposed rule change (File No. SR-SCCP-2004-03) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. E5-6016 Filed 10-31-05; 8:45 am]

BILLING CODE 8010-01-P

## SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10180 and #10181]

### Alabama Disaster Number AL-00003

**AGENCY:** Small Business Administration.

**ACTION:** Amendment 4.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Alabama (FEMA-1605-DR), dated 08/29/2005.

*Incident:* Hurricane Katrina.

*Incident Period:* 08/29/2005 through 09/26/2005.

*Effective Date:* 10/20/2005.

*Physical Loan Application Deadline Date:* 01/11/2006.

*EIDL Loan Application Deadline Date:* 05/29/2006.

**ADDRESSES:** Submit completed loan applications to: Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for the State of Alabama, dated 08/29/2005, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 01/11/2006.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 05-21678 Filed 10-31-05; 8:45 am]

BILLING CODE 8025-01-P

## SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10176 and #10177]

### Louisiana Disaster Number LA-00002

**AGENCY:** Small Business Administration.

<sup>20</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 52201 (August 3, 2005), 70 FR 46565.

<sup>3</sup> SCCP's rule change is similar to a rule change approved by the Commission in 2003 that allowed the National Securities Clearing Corporation ("NSCC") to accommodate the reporting of trades executed on a system that provides trading anonymity. Securities Exchange Act Release No. 48526 (September 23, 2003), 68 FR 56367 (September 30, 2003) [File No. SR-NSCC-2003-14].

<sup>4</sup> NSCC's anonymous trading procedure includes similar notification requirements.

<sup>5</sup> 15 U.S.C. 78q-1(a)(A)(B).

<sup>6</sup> 17 CFR 200.30-3(a)(12).