

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51028; File No. SR-Phlx-2005-04)

January 12, 2005

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Electronic Audit Trail for Orders in Options Overlying the Standard and Poor's Depository Receipts

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 11, 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 Phlx. The Exchange has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ 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 Phlx Rule 1063, Responsibilities of Floor Brokers, and Option Floor Procedure Advice ("OFPA") C-2, Options Floor Broker Management System ("FBMS"), to extend the date on which Floor Brokers would be required to create an electronic audit trail for non-electronic orders in options overlying the Standard and Poor's Depository

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ 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).

Receipts (“SPDRs”) until March 28, 2005. The text of the proposed rule change is below.

Proposed new language is in italics.

Responsibilities of Floor Brokers

Rule 1063. (a) – (d) No change.

(e) (i) Options Floor Broker Management System. In order to create an electronic audit trail for options orders represented by Floor Brokers on the Exchange’s Options Floor, a Floor Broker or such Floor Broker’s employees shall, contemporaneously upon receipt of an order and prior to the representation of such an order in the trading crowd, record all options orders represented by such Floor Broker onto the electronic Options Floor Broker Management System (as described in Rule 1080, Commentary .06). The following specific information with respect to orders represented by a Floor Broker shall be recorded by such Floor Broker or such Floor Broker’s employees: (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 as described in 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 (collectively, the “required information”). Upon the execution of such an order, the Floor Broker shall enter the time of execution of the trade. Floor Brokers or their employees shall enter clearing information onto the Options Floor Broker Management System no later than five minutes after the execution of a trade. In the event of a malfunction in the Options Floor Broker Management System, Floor Brokers shall record the required information on trade tickets, and shall not represent an order for execution which has not been time stamped with the time of entry on the trading floor. Such trade tickets shall be

time stamped upon the execution of such an order. Floor Brokers or their employees shall enter the required information that is recorded on such trade tickets into AUTOM for inclusion in the electronic audit trail.

(ii) Orders in Options Overlying Standard and Poor's Depository Receipts ("SPDRs").

The requirements of sub-paragraph (e)(i) above shall apply to options overlying SPDRs beginning on March 28, 2005.

(f) No change.

C-2 Options Floor Broker Management System

Options Floor Broker Management System. In order to create an electronic audit trail for options orders represented by Floor Brokers on the Exchange's Options Floor, a Floor Broker or such Floor Broker's employees shall, contemporaneously upon receipt of an order and prior to the representation of such an order in the trading crowd, record all options orders represented by such Floor Broker onto the electronic Options Floor Broker Management System (as described in Rule 1080, Commentary .06). The following specific information with respect to orders represented by a Floor Broker shall be recorded by such Floor Broker or such Floor Broker's employees: (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 as described in 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 (collectively, the "required information"). Upon the execution of such an order, the Floor Broker shall enter the time of execution of the trade. Floor Brokers or their employees shall enter clearing information onto the Options Floor Broker Management

System no later than five minutes after the execution of a trade. In the event of a malfunction in the Options Floor Broker Management System, Floor Brokers shall record the required information on trade tickets, and shall not represent an order for execution which has not been time stamped with the time of entry on the trading floor. Such trade tickets shall be time stamped upon the execution of such an order. Floor Brokers or their employees shall enter the required information that is recorded on such trade tickets into AUTOM for inclusion in the electronic audit trail.

Floor Brokers or their employees shall enter the required information (as described above) for FLEX and foreign currency options, including customized foreign currency options, or ensure that such information is entered, 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 shall enter the required information for FLEX and foreign currency options, including 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 and foreign currency options, including customized foreign currency options (including, without limitation, orders, price or size changes, execution or cancellation) occurs.

Orders in Options Overlying Standard and Poor's Depository Receipts ("SPDRs"). The requirements of this Advice shall apply to options overlying SPDRs beginning on March 28, 2005.

FINE SCHEDULE No change.

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. 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 amend Phlx Rule 1063(e) and OFPA C-2 to reflect that the requirement that Floor Brokers create an electronic audit trail for non-electronic orders in options overlying SPDRs will commence on March 28, 2005.

The Commission recently approved, on a permanent basis, amendments to Phlx Rule 1063 and OFPA C-2 to require that, contemporaneously upon receipt of an order and prior to the representation of such an order in the trading crowd, Floor Brokers must record all options orders represented by such Floor Broker onto the electronic Options Floor Broker Management System.⁶

The requirements of Phlx Rule 1063(e) and OFPA C-2 that Floor Brokers record the “required information” as defined therein commenced on January 10, 2005. Options overlying SPDRs began trading on the Exchange on January 10, 2005. The Exchange believes that the

⁶ See Securities Exchange Act Release No. 50997 (January 7, 2005) (SR-Phlx-2003-40). The Options Floor Broker Management System is a component of AUTOM designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. The Options Floor Broker Management System also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. See Exchange Rule 1080, Commentary .06.

extension of the date for compliance with the electronic audit trail requirements for non-electronic orders in options overlying SPDRs until March 28, 2005 is reasonable and appropriate, because the manner in which these options trade, and the trading environment that exists in these options, is significantly different than that of equity options, and since options overlying SPDRs only very recently began trading on the Exchange, as described above.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(5)⁸ of the Act in particular, in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade, by requiring Exchange Floor Brokers to incorporate non-electronic orders in options overlying SPDRs while reasonably extending such requirement until March 28, 2005 respecting options overlying SPDRs.

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 not necessary or appropriate in furtherance of the purposes of the Act.

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

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

(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 Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

A proposed rule change filed under Rule 19b-4(f)(6)¹¹ 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 requests that the Commission waive the 5-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 notes that by waiving the operative period, the Exchange has stated that it will be able to implement trading in options on SPDRs expeditiously. For these reasons, consistent with the protection of investors and the public interest, the Commission designates that the proposed rule change has become effective and operative immediately.

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.

⁹ 15 U.S.C. 78s(b)(3)(A)

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6).

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. Please include File Number SR-Phlx-2005-04 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-2005-04. 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 offices of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-Phlx-2005-04 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

J. Lynn Taylor
Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).