

that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁷ because it assigns the responsibility for trade allocation and reporting in an appropriate and reasonable manner. The Phlx seeks in addition to permit a floor broker to delegate his or her responsibility to the specialist in view of the different set of burdens that floor brokers face due to changed economic and technological realities on the Exchange floor. The Commission believes it is reasonable to allow the specialist, who is always in the trading crowd, to assume the responsibility if he or she is willing to do so. The Commission further notes that the proposed rule change would add a provision requiring the allocating party in each trade to record his or her role in a manner that would facilitate investigation of any allocation after the fact should questions arise. The Commission believes that the proposed increases to the fine schedule associated with the trade allocation function and reporting responsibility are reasonable to help ensure compliance with these rules.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (File No. SR-Phlx-2001-28) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47739; File No. SR-Phlx-2001-39]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Allocation of Trades

April 25, 2003.

On March 12, 2001, 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")¹ and rule 19b-4 thereunder,² a proposed rule change

relating to the allocation of trades on the Exchange's options floor.³ On May 11, 2001, February 19, 2002, May 22, 2002, November 19, 2002, December 16, 2002, and February 25, 2003, Phlx submitted Amendment Nos. 1, 2, 3, 4, 5, and 6 to the proposed rule change, respectively.⁴ The proposed rule change, as amended, was published for comment in the **Federal Register** on March 25, 2003.⁵ The Commission received no comments on the proposal.

Specifically, the proposed rule change would revise Phlx Rule 1014(g) and Option Floor Procedure Advice B-6 to: (1) Eliminate current exceptions to the Exchange's rule that an order of a "controlled account" (any account controlled by or under common control with a broker-dealer) must yield priority to a customer order; (2) establish that specialists and Registered Options Traders ("ROTs") are entitled to participate only in the portion of an incoming order that remains ("Remainder of the Order") following the allocation of contracts to customers that are on parity; (3) establish that each Enhanced Specialist Participation granted by the Exchange's rules is applied to the Remainder of the Order, and is a form of entitlement, rather than a mandatory participation;⁶ (4) set forth

³ The proposed rule change was submitted by Phlx pursuant to subparagraph IV.B.j. of the Commission's Order of September 11, 2000, which requires the Exchange (among other respondent options exchanges) to adopt new, or amend existing, rules to make express any practice or procedure "whereby Market-Makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class, or the allocation of orders in that option class." Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000).

The proposed rule change applies to trades that are not executed through the Exchange's automatic execution system. In addition, the Commission notes that the Exchange has adopted special allocation rules that pertain to its "ROT Access" system. See Securities Exchange Release Act No. 46763 (November 1, 2002), 67 FR 68898 (November 13, 2002).

⁴ See letters from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 10, 2001 (Amendment No. 1), February 15, 2002 (Amendment No. 2), May 21, 2002 (Amendment No. 3), November 18, 2002 (Amendment No. 4), December 12, 2002 (Amendment No. 5), and February 24, 2003 (Amendment No. 6).

⁵ See Securities Exchange Act Release No. 47499 (March 13, 2003), 68 FR 14459 ("Notice"). The Notice contains a detailed description of the proposed rule change, the major aspects of which are summarized below.

⁶ The Enhanced Specialist Participation programs in the Exchange's rules for certain options classes allocate to the specialist a greater than equal share of the portion of the order that is divided among the specialist and any controlled accounts that are

how the Remainder of the Order is to be allocated among all participants on parity, establishing a method that, after applying any Enhanced Specialist Participation, allocates contracts based on the "stated size" of each participant,⁷ and accommodates smaller stated sizes first when the stated sizes of participants are not equal;⁸ (5) set forth the procedures by which a specialist or ROT may waive some or all of the contracts to which he or she is entitled, and how such waived contracts would be allocated; (6) stipulate that a pattern or practice of waiving may be considered conduct inconsistent with just and equitable principles of trade; and (7) state that it would be considered conduct inconsistent with just and equitable principles of trade for a member to enter into any agreement with another member concerning allocation of trades, or to harass, intimidate, or coerce, any member to enter into any waiver or to make or refrain from making any complaint or appeal.

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 exchange⁹ and, in particular, the requirements of Section 6 of the Act¹⁰ and the rules and regulations thereunder. The Commission believes that the proposed rule change is

on parity. The percentage awarded to the specialist varies according to the number of controlled accounts on parity. Most of the relevant provisions in Phlx Rule 1014(g) currently state that the specialist is entitled to the applicable percentage, but other provisions do not. See Notice.

⁷ The proposed rule change would also define how a participant's "stated size" is determined. See Notice.

⁸ As discussed in greater detail in the Notice, the proposed rule change would provide that if all participants' stated sizes were equal, they would receive equal allocations. If all participants' stated sizes were not equal, they would be allocated contracts according to a process whereby, in an initial round of allocation, each participant would receive a number of contracts equal to the stated size of the participant(s) with the smallest stated size (provided that if the sum of such allocations would exceed the number of contracts available, the contracts would be divided equally among all participants). Each participant whose stated size was not filled in the initial round of the process would be allocated in the next round a number of contracts equal to the stated size of the participant(s) with the smallest stated size in that round. The process would continue as necessary until all the contracts are allocated. In any round where the number of contracts remaining does not suffice to allocate the smallest stated size to all participants, or when the stated sizes of all remaining participants are equal, the contracts would be divided equally.

⁹ In approving this proposed rule change, the Commission notes that it 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.

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.