

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, 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 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

The purpose of the proposed rule change is to establish rules that require Floor Brokers that receive non-electronic (non-AUTOM) equity option and index option orders for representation in the trading crowd to record certain information (described more fully below) into the System to create an electronic options order audit trail for such non-electronic orders.⁵

The various proposed changes also reflect the new requirements that Floor Brokers make the appropriate notations on the System respecting orders they represent, as described below.

The Options Floor Broker Management System

Proposed Phlx Rule 1080, Commentary .06 would provide a general description of the System as a component of AUTOM designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from option orders received on the Exchange. Floor Brokers or their employees would access the System through an electronic Exchange-provided handheld device on which they would have the ability to

enter the required information as set forth in proposed Phlx Rule 1063(e), either from their respective posts on the options trading floor or in the trading crowd. The System will replace the Exchange's current Floor Broker Order Entry System ("FBOE"),⁶ as part of a roll-out of the new System floor-wide. The proposed rule would also include a rollout schedule for the System, setting forth that the Exchange will begin deployment of the Options Floor Broker Management System on July 31, 2003, with floor-wide deployment to be completed not later than August 29, 2003.

Proposed Phlx Rule 1063(e) would include a description of the purpose of the System, which, as stated above, is to create an electronic audit trail for option orders represented by Floor Brokers on the Exchange Options Floor. The proposed rule also sets forth the requirement that a Floor Broker or such Floor Broker's employees must, contemporaneously upon receipt of an order and prior to the representation of such an order in the crowd, record the required information regarding all option orders represented by such Floor Broker onto the System.⁷ The Exchange believes that the requirement that Floor Brokers or their employees enter order information onto the System contemporaneously upon receipt preserves the integrity of the electronic audit trail.⁸

⁶ See Securities Exchange Act Release No. 41524 (June 14, 1999), 64 FR 33127 (June 21, 1999) (SR-Phlx-99-11). The FBOE, a component of AUTOM, currently provides a means for (but does not require) Floor Brokers to route eligible orders to the specialist's post, consistent with the order delivery criteria of the AUTOM System set forth in Phlx Rule 1080(b). The new System (which Floor Brokers would be required to use under the instant proposal) would include the same functionality as the FBOE, in addition to providing an electronic audit trail for non-electronic orders received by Floor Brokers by way of the entry of the required information in proposed Phlx Rule 1063(e).

⁷ The Exchange recognizes the need for effective and proactive surveillance for activities such as trading ahead and front-running. It currently conducts automated surveillance for such activities and will incorporate a review of order entry into the System as part of such surveillance. The Exchange also intends to implement supplementary surveillance and examination programs related to the requirement to enter order information into the System promptly after this requirement is instituted, which are designed to address, among other things, trading ahead and front-running.

⁸ Currently, OFPA C-2 requires Floor Brokers to time stamp an order ticket when it is received, and provides that a Floor Broker shall not represent an order for execution in the crowd that is not time stamped with the time of entry on the trading floor. While this current OFPA is intended to capture the time of receipt of the order on the trade ticket, it does not currently create an electronic audit trail for non-electronic options orders represented and executed by Floor Brokers on the Exchange as required by the Order. The Exchange is proposing herein to amend OFPA C-2 to convert the time

Additionally, the proposed rule would provide that upon the execution of such an order, the Floor Broker shall enter the time of execution of the trade.⁹

Proposed Phlx Rule 1063(e) would require Floor Brokers or their employees to record the following specific information onto the System upon receipt of an order: (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 Phlx 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; and (vii) whether the transaction is to open or close a position. These enumerated elements of an order are currently written on trade tickets; the proposed new rule would simply require them to be entered onto the System.

Upon entry of the order into the system, the system would automatically record the time of entry, and would assign an identification code that is particular to that order for purposes of the electronic audit trail.

Clearing Information

Proposed Phlx Rule 1063(e) would also require Floor Brokers or their employees to enter clearing information onto the System no later than five minutes after the execution of a trade. Such clearing information would include the account number(s) of each contra-side participant to the Floor Broker's trade in the crowd and the number of contracts bought or sold, which would be immediately reported via AUTOM to the clearing firm of each crowd participant involved in the trade. Once the clearing information is reported, crowd participants involved in the trade would receive a position update, enabling them to know their respective positions on a real-time basis and to make appropriate, informed and timely hedging and transactional decisions. The purpose of this provision is to assist both Floor Brokers and crowd participants involved in a trade to better manage their risk by knowing

stamping requirement to the requirement to enter order information onto the System concurrently upon receipt by the Floor Broker, which immediately captures the information, including the time of entry, into the electronic audit trail. Once an order is entered into the System, AUTOM is able to track the life of such an order through its execution or partial execution, cancellation or partial cancellation, and report to the consolidated tape, as well as any changes made concerning the size of the order or its limit price, if applicable.

⁹ Once the Floor Broker executes an order using the System, the time of execution would be automatically recorded into the electronic audit trail.

⁵ In September, 2000, the Commission directed that the respondent options exchanges design and implement a consolidated options audit trail system ("COATS"), and to incorporate into the audit trail all non-electronic orders such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on such respondent exchange. See Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000) and Administrative Proceeding File 3-10282 (the "Order"). The instant proposal is intended to enable the Exchange to comply with the Commission's mandate under the Order.