

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

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SECURITIES AND EXCHANGE COMMISSION

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Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Manner in Which a Contrary Exercise Advice Is Submitted and To Extend by One Hour the Cut-Off Time To Submit Contrary Exercise Advices

October 16, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4² thereunder, notice is hereby given that on October 14, 2003, 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 the Phlx. The Exchange filed the proposed rule change under paragraph (f)(6) of Rule 19b-4 under the Act.³ 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 1042 to simplify the manner in which a Contrary Exercise Advice ("CEA")⁴ is submitted to the Exchange and to extend by one hour the cut-off time by which members and member organizations must submit CEAs to the Exchange. The proposal also indicates when the Exchange could modify (expand or reduce) the cut-off time for decisions whether to exercise an option or submit a CEA. Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deleted text is [bracketed].

* * * * *

Rule 1042, Exercise of Equity Option Contract

Rule 1042. (a) Exercise Notices. [Subject to the restrictions established by the Exchange pursuant to Rule 1002 and to such other restrictions which may be imposed by the Exchange pursuant to Rules 1004 and 1005 or by the Options Clearing Corporation ("OCC") pursuant to the OCC Rules, an outstanding option contract may be exercised during the time period specified in the OCC Rules by the tender to the OCC of an exercise notice in accordance with OCC Rules.] *An outstanding option contract may be exercised by the tender to The Options Clearing Corporation ("OCC") of an exercise notice made during the periods, and using the procedures, specified in OCC rules.* An exercise notice may be tendered to OCC only by the clearing member in whose OCC account the option contract is carried. *Option exercises are also subject to restrictions that are established by or may be imposed by the Exchange in Rules 1002, 1004 and 1005, and in this rule.* Members and member organizations [shall] *may* establish fixed procedures as to the latest [hour at which] *time* they will accept exercise notices from their customers.

(b) [Exercise Cut-Off] *Exercise-by-Exception Procedure for Expiring Options.* [Final exercise decisions of option holders to either exercise or not exercise expiring equity options must be indicated to the Exchange by the respective member or member organization no later than 5:30 P.M. (EST) on the business day immediately prior to the expiration date ("exercise cut-off time") in either of the following manners.] *Special procedures apply to the exercise of equity options on the last business day before their expiration ("expiring options"). Unless waived by OCC, expiring options are subject to the Exercise-by-Exception ("Ex-by-Ex") procedure under OCC Rule 805. This rule provides that, unless contrary instructions are given, option contracts that are in-the-money by specified amounts shall be automatically exercised. In addition to OCC rules, the following Exchange requirements apply with respect to expiring options. Option holders desiring to exercise or not exercise expiring options must either:*

- (i) take no action and allow exercise determinations to be made in accordance with OCC's Rule 805 [exercise-by-exception] *Ex-by-Ex* procedure where applicable; or
- (ii) submit a Contrary Exercise Advice ("CEA") or Advice Cancel to the Exchange by the deadline specified in

paragraph (c) below. A CEA [Contrary Exercise Advice] is a *communication either* [form approved by the Exchange for use by a member or member organization to submit a final exercise decision committing an options holder] to not exercise an option [position which] *that would be* automatically [be] exercised pursuant to OCC's [exercise-by-exception] *Ex-by-Ex* procedure, or to exercise an [equity] option [position which] *that would not be* automatically [be] exercised pursuant to OCC's [exercise-by-exception] *Ex-by-Ex* procedure. A CEA [Contrary Exercise Advice] may be submitted by a [any] member or member organization [(1)] *either by using the Exchange's CEA Form, OCC's clearing system (ENCORE), or a CEA form of any other* [at a place designated for that purpose by any] national [options] *securities* exchange of which they are a member and where the option is listed, or [(2)] may be submitted to the Exchange via OCC in a form prescribed by OCC] *via such other method as the Exchange may prescribe. A CEA may be canceled or resubmitted at any time up to the exercise cut-off time specified below.*

(c) *Exercise Cut-Off Time.* *Option holders have until 5:30 p.m. (EST) on the business day immediately prior to the expiration date to make a final decision to exercise or not exercise an expiring option. For customer accounts, members and member organizations may not accept exercise instructions after 5:30 p.m. (EST) but have until 6:30 p.m. (EST) to submit a CEA. For non-customer accounts, members and member organizations may not accept exercise instructions after 5:30 p.m. (EST) but have until 6:30 p.m. (EST) to submit a CEA if such member or member organization employs an electronic submission procedure with an electronic time stamp (with fixed procedures to ensure security of the time stamp) to indicate the time of the submission of exercise instructions by option holders. Consistent with Commentary .04, members and member organizations are required to submit a CEA by 5:30 p.m. (EST) for non-customer accounts if such members and/or member organizations do not employ an electronic submission procedure with electronic time stamp for the submission of exercise instructions by option holders. [In those instances when the exercise by exception procedure has been waived by OCC (such that OCC will not for that security on that expiration effect automatic exercise or non-exercise of expiring equity option positions), a Contrary Exercise Advice is still*

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ The term CEA as used in the filing may also include Advice Cancels. Advice Cancels are documents used to cancel CEAs.