

it will continue to conduct surveillance with due diligence and make its determination, on a case by case basis, whether a fine under the MRP is appropriate, or whether a violation should be subject to formal disciplinary proceedings.

Finally, the Exchange proposes to use NYSE Arca Rule 10.12(h)(33) and Rule 10.12(k)(i)(33), which are presently designated as "Reserved," for new NYSE Arca Rule 10.12(h)(33), which would reference CEA/EED violations pursuant to Rule 6.24, and new NYSE Arca Rule 10.12(k)(i)(33), which would include the recommended fines for CEA/EED violations.

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 exchange.<sup>7</sup> In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to facilitate transactions in securities, 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.

The Commission further believes that NYSE Arca's proposal to sanction individuals and member organizations who fail to submit Advice Cancel or exercise instructions in a timely manner is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,<sup>9</sup> which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. In addition, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,<sup>10</sup> which governs

executed and filed on October 29, 2007 with the Commission, a final version of an Agreement pursuant to Section 17(d) of the Act (the "17d-2 Agreement"). As set forth in the 17d-2 Agreement, the SROs have agreed that their respective rules concerning the filing of Expiring Exercise Declarations, also referred to as Contrary Exercise Advices, of options contracts, are common rules. As a result, the proposal to amend NYSE Arca's MRVP will result in further consistency in sanctions among the SROs that are signatories to the 17d-2 Agreement concerning Contrary Exercise Advice violations.

<sup>7</sup>In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78f(b)(1) and 78f(b)(6).

<sup>10</sup> 17 CFR 240.19d-1(c)(2).

minor rule violation plans. The Commission believes that the proposed rule change should strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as an SRO in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with NYSE Arca rules and all other rules subject to the imposition of fines under the MRVP. The Commission believes that the violation of any SRO rules, as well as Commission rules, is a serious matter. However, the MRVP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that NYSE Arca would continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the NYSE Arca MRVP or whether a violation requires formal disciplinary action.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>11</sup> and Rule 19d-1(c)(2) under the Act,<sup>12</sup> that the proposed rule change (SR-NYSEArca-2008-08) be, and hereby is, approved and declared effective.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57482; File No. SR-Phlx-2007-69]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, Relating to Obvious Errors

March 12, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> 17 CFR 240.19d-1(c)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(44).

("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 4, 2007, the Philadelphia Stock Exchange, Inc. 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 substantially prepared by the Exchange. The Phlx filed Amendment No. 1 to the proposal on February 29, 2008. On March 11, 2008, the Phlx filed Amendment No. 2 to the proposal. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 1092, Obvious Errors, to: (i) Change the definition of Theoretical Price to mean either the last National Best Bid price with respect to an erroneous sell transaction or the last National Best Offer price with respect to an erroneous buy transaction, just prior to the trade; (ii) allow an Options Exchange Official<sup>3</sup> to establish the Theoretical Price when there are no quotes for comparison purposes, or when the National Best Bid/Offer ("NBBO") for the affected series, just prior to the erroneous transaction, was at least two times the permitted bid/ask differential under Exchange Rule 1014(c)(1)(A)(i)(a); (iii) establish the Theoretical Price for transactions occurring as part of the Exchange's automated opening system as the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s); (iv) determine the average quote width by adding the quote widths of sample quotations at regular 15-second intervals during the two minutes preceding and following an erroneous transaction; (v) delete the provision pertaining to trades that are automatically executed when the specialist or Registered Options Trader ("ROT") sells \$.10 or more below parity; (vi) permit nullification of transactions that occur during trading halts on the Exchange or in the underlying security in certain situations; and (vii) increase the time period within which a party to an erroneous transaction must notify Market Surveillance that they believe they are a party to a transaction resulting from an obvious error, and

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Exchange Rule 1(pp).

establish a specific notification time period for the opening.

The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.phlx.com>.

## 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 Exchange 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 Exchange states that the purpose of the proposed rule change is to enable Exchange members to better manage risk by amending the Exchange's Obvious Error rule to address situations that are not currently covered by the rule.

#### Definition of Theoretical Price

Currently, Rule 1092 defines the Theoretical Price of an option (for purposes of Rule 1092 only) as follows: (i) If the series is traded on at least one other options exchange, the mid-point of the NBBO just prior to the transaction; and (ii) if there are no quotes for comparison purposes, as determined by an Options Exchange Official and designated personnel in the Exchange's Market Surveillance Department.

The Exchange believes that in certain situations the application of the rule when determining to nullify or adjust transactions may lead to an unfair result for one of the parties to the transaction, particularly where the market for the affected series includes a bid price that is relatively small (for example, \$0.50) and a substantially higher offer (for example \$5.00). The result is that a transaction to sell that occurs correctly on the bid at \$0.50 could be adjusted based on the midpoint of the NBBO, which is, in this example, \$2.75. In such a case, the result is unfair to the bidder at \$0.50, whose price would be adjusted based on the Theoretical Price of \$2.75, and an unjust enrichment to the seller, who is entitled to \$0.50 based on the

bid, but who would receive the adjusted price of over \$2.00 higher because of the rule, and not due to market conditions.

Accordingly, the proposal would re-define "Theoretical Price" to mean either the last National Best Bid price with respect to an erroneous sell transaction or the last National Best Offer price with respect to an erroneous buy transaction, just prior to the trade. The purpose of this provision is to establish a Theoretical Price that is clearly defined when there are quotations to compare to the erroneous transaction price, and to eliminate the scenario above that arises from the "mid-point" test when the NBBO is particularly wide.

The proposal also would permit an Options Exchange Official to establish the Theoretical Price when there are no quotes available for comparison purposes, or when the bid/ask differential of the NBBO for the affected series, just prior to the erroneous transaction, was at least two times the permitted bid/ask differential under Rule 1014(c)(1)(A)(i)(a).<sup>4</sup> In each such circumstance, the Theoretical Price would be determined by an Options Exchange Official. In order to expedite the process, the current requirement for Market Surveillance input would be deleted.

The Exchange believes that the objective standard for the determination of a "wide market" based on existing permissible bid/ask differentials provides a sound guideline for Options Exchange Officials in determining Theoretical Price when there are no quotes for comparison purposes.

The proposed rule change also would state that for transactions occurring as part of the Exchange's automated opening system, the Theoretical Price would be the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s).

<sup>4</sup> Phlx Rule 1014(c)(1)(A)(i)(a) permits a difference of no more than \$.25 between the bid and the offer for each option contract for which the prevailing bid is less than \$2; no more than \$.40 where the prevailing bid is \$2 or more but less than \$5; no more than \$.50 where the prevailing bid is \$5 or more but less than \$10; no more than \$.80 where the prevailing bid is \$10 or more but less than \$20; and no more than \$1 where the prevailing bid is \$20 or more, provided that, in the case of equity options, the bid/ask differentials stated above shall not apply to in-the-money series where the market for the underlying security is wider than the differentials set forth above. For such series, the bid/ask differentials may be as wide as the quotation for the underlying security on the primary market, or its decimal equivalent rounded up to the nearest minimum increment. The Exchange may establish differences other than the above for one or more series or classes of options.

### Erroneous Quote in Primary Underlying Market

Currently, in order for an options trade to be nullified or adjusted due to an erroneous quote in the primary market for the underlying security, Market Surveillance is required to conduct complex and cumbersome research involving the average quote width in the underlying quote during the two minutes preceding and following the transaction.

In order to streamline and expedite the process, the proposal would amend this provision such that Market Surveillance would not be required to review each quote during this time period. Instead, the average quote width would be determined by adding the quote widths of sample quotations at regular 15-second intervals during the four minute time period referenced above, and dividing by the number of quotation samples used.

### Transactions During Trading Halts

The proposed rule change would permit nullification of transactions that occur during trading halts on the Exchange or in the primary market for the underlying security. Specifically, the Exchange proposes to adopt new Rule 1092(c)(iv), which would provide that trades would be nullified when: (i) The trade occurred during a trading halt in the affected option on the Exchange; (ii) respecting equity options (including options overlying ETFs), the trade occurred during a trading halt on the primary market for the underlying security; or (iii) respecting index options, the trade occurred during a trading halt on the primary market in underlying securities representing more than 10% of the current index value.

### Notification Period

The proposal would increase the current time period within which a party to an erroneous transaction must notify Market Surveillance that they believe they are a party to a transaction resulting from an obvious error, and establish a specific time period applicable to openings.

Specifically, a specialist or ROT must notify Market Surveillance within fifteen minutes of the transaction (increased from the current five-minute window). A member or member organization that initiated the order from off the floor of the Exchange must notify Market Surveillance within twenty minutes of the execution (increased from the current fifteen-minute window).

Additionally, Rule 1092(e)(i) would be amended to afford a longer time

period during which non-broker-dealer customers may notify Market Surveillance that they believe they participated in a transaction that was the result of an Obvious Error. Respecting transactions that occur as part of the Exchange's automated opening process, after the proposed twenty-minute notification period and until 4:30 p.m. Eastern Time ("ET") on the subject trade date, where parties to the transaction are a non-broker-dealer customer and an Exchange specialist, Streaming Quote Trader, ("SQT"),<sup>5</sup> Remote Streaming Quote Trader ("RSQT"),<sup>6</sup> or non-SQT ROT,<sup>7</sup> the non-broker-dealer customer may request review of the subject transaction, and the execution price of the transaction will be adjusted to the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s) (provided the adjustment does not violate the customer's limit price) by an Options Exchange Official,<sup>8</sup> if there was an Obvious Error. The Exchange believes that this provision should address the situation on the opening where a large opening order might cause the Exchange's opening transaction to result from an Obvious Error, because the Exchange's opening price is defined as the price at which the greatest number of contracts will trade.<sup>9</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</sup> in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and

<sup>5</sup> An SQT is an Exchange ROT who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. See Exchange Rule 1014(b)(ii)(A).

<sup>6</sup> An RSQT is a participant in the Exchange's electronic trading system, "Phlx XL" who has received permission from the Exchange to trade in options for his own account, and to generate and submit option quotations electronically from off the floor of the Exchange through AUTOM in eligible options to which such RSQT has been assigned.

<sup>7</sup> Currently, there are a number of ROTs on the Exchange's options floor that do not stream electronic quotations into the Phlx XL system, known as "non-SQT ROTs." A Non-SQT ROT is defined as an ROT who is neither an SQT nor an RSQT. See Exchange Rule 1014(b)(ii)(C).

<sup>8</sup> In order to correct an oversight, the Exchange is replacing the term "Floor Official" with "Options Exchange Official," which should have been changed in a previous proposed rule change. See Securities Exchange Act Release No. 55877 (June 7, 2007), 72 FR 32937 (June 14, 2007) (SR-Phlx-2006-87).

<sup>9</sup> See Exchange Rule 1017(c).

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by modernizing the Exchange's Obvious Error rule to address situations not covered in the current rule.

### 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 that is 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 did not solicit or receive any written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

A. By order approve the proposed rule change or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

## 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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2007-69 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2007-69. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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-2007-69 and should be submitted on or before April 8, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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