AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Paper Comments

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

All submissions should refer to File Number SR–Phlx–2007–35. 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 such filing also will be available for inspection and copying at the principal office 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–2007–07 and should be submitted on or before July 30, 2007.

IV. Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities exchange [11] and, in particular, the requirements of Section 6 of the Act.[12] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[13] which requires, among other things, that the rules of a national securities exchange be designed 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.

Surveillance

The Commission notes that the Exchange has represented that it has an adequate surveillance program in place for options based on Commodity Pool ETFs. The Exchange may obtain trading information via the ISG from other exchanges who are members or affiliates of the ISG and expects that it will enter into numerous comprehensive surveillance sharing agreements with various commodity futures exchanges worldwide. Prior to listing and trading options on Commodity Pool ETFs, the Exchange represented that it will either have the ability to obtain specific trading information via ISG or through a comprehensive surveillance sharing agreement with the primary exchange or exchanges where the particular commodity futures and/or options on commodity futures are traded. In addition, the Exchange represented that the addition of Commodity Pool ETF options will not have any effect on the rules pertaining to position and exercise limits [14] or margin.[15]

Listing and Trading of Options on Commodity Pool ETFs

The Commission notes that, pursuant to the proposed rule change, a Commodity Pool ETF will be subject to the provisions of Exchange Rules 1009 and 1010. These provisions include requirements regarding initial and continued listing standards, as well as the creation/redemption process for Commodity Pool ETFs. All Commodity Pool ETFs must be traded through a national securities exchange or through the facilities of a national securities association and reported as a national market system security.

The Commission believes that this proposal is necessary to enable the Exchange to list and trade options on an expanding range of Commodity Pool ETFs currently approved for trading and that it is reasonable to expect other types of Commodity Pool ETFs to be introduced for trading in the future. This proposal would help ensure that the Exchange will be able to list options on Commodity Pool ETFs that have been recently launched, as well as any other similar Commodity Pool ETFs that may be listed and traded in the future thereby offering investors greater option choices.

Acceleration

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[16] for approving the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission notes that the proposal is consistent with previously approved proposals to enable the listing and trading of options on interests in Commodity Pool ETFs that trade directly or indirectly commodity futures products.[17] Therefore, the Commission does not believe that the proposed rule change, as amended, raises novel regulatory issues. Consequently, the Commission believes that it is appropriate to permit investors to benefit from the flexibility afforded by trading these products without delay.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–Phlx–2007–35), as amended, is hereby approved on an accelerated basis.[18]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–13155 Filed 7–6–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55993; File No. SR–Phlx–2007–44]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make Permanent a Pilot Program Relating to Split Price Priority in Open Outcry

June 29, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 [2] thereunder, notice is hereby given that on June 21, 2007, 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 substantially prepared by the Phlx. The Exchange filed the proposed rule

[11] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Phlx Rules 1001 and 1002.

[15] *See* Phlx Rule 722.

[16] 15 U.S.C. 78s(b)(2).

[17] *See* Securities Exchange Act Release Nos. 55547 (March 28, 2007), 72 FR 16388 (April 4, 2007) (SR–Amex–2006–110); 55630 (April 13, 2007), 72 FR 19993 (April 20, 2007) (SR–CBOE–2007–21); and 55635 (April 16, 2007), 72 FR 19999 (April 20, 2007) (SR–ISE–2007–16).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) [4] thereunder, which renders the proposed rule change effective upon filing with the Commission. 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 adopt, on a permanent basis, a rule that is currently subject to a pilot program (''pilot'') as set forth in Rule 1014(g)(i)(B) relating to priority on split-price transactions in open outcry. The pilot currently affords priority to a member with an order for at least 100 contracts [5] who buys (sells) at least 50 contracts at a particular price to have priority over all others in purchasing (selling) up to an equivalent number of contracts of the same order at the next lower (higher) price without being required to yield priority, including to existing customer interest in the limit order book. The pilot also establishes priority for in-crowd participants in split price transactions represented in open outcry over the quotations of participants that are not located in the crowd (*i.e.*, out-of-crowd Streaming Quote Traders (''SQTs'') [6] and Remote Streaming Quote Traders (''RSQTs'') [7]) even where the market has a bid/ask differential of one minimum trading increment.[8] The current pilot is scheduled to expire June 30, 2007.

The text of the proposed rule change is available on the Phlx Web site (*http://www.phlx.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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, on a permanent basis, Exchange Rule 1014(g)(i)(C), concerning priority in split-price transactions, which by virtue of their size and the need to execute them at multiple prices, may be difficult to execute without a limited exception to current Exchange priority rules, as described below. The pilot is scheduled to expire June 30, 2007.

The pilot was originally adopted in June 2005,[9] and subsequently extended in December 2005.[10] In May 2006, the pilot was expanded to include priority for in-crowd participants in both trades of the split price transaction where there is a minimum trading increment market, but only over RSQTs and out-of-crowd SQTs in that circumstance.[11] Such priority applies only when the bid and/or offer, as applicable, represent the quotation of an out-of-crowd SQT or RSQT.

The current rule is applicable to equity options (including options overlying Exchange Traded Fund Shares (''ETFs'')).[12] The rule operates in two ways. First, it permits a member with an order for at least 100 contracts [13] who buys (sells) at least 50 contracts at a particular price to have priority over all others in purchasing (selling) up to an equivalent number of contracts of the same order at the next lower (higher) price without being required to yield priority, including to existing customer interest in the limit order book. Absent this rule, such orders would be required to yield priority.[14]

For example, where the market is \$.25—\$.35, a Floor Broker representing an order to purchase 100 contracts that executes a purchase of 50 of those contracts at a price of \$.30 has priority over all market participants to purchase the remaining 50 contracts in the order at \$.25. Two trades would be reported to the tape, one a purchase of 50 contracts at \$.30, and the other a purchase of 50 contracts at \$.25. The effect to that Floor Broker's customer would be a net purchase price of \$.275 for 100 contracts.

Second, as stated above, the rule contemplates that a member who purchases (sells) 50 or more option contracts of a particular series at a particular price or prices has priority at the next lower (higher) price in purchasing (selling) up to the equivalent number of option contracts of the same series that he purchased (sold) at the higher (lower) price or prices. The pilot, respecting split price transactions, also affords priority to members physically located in the crowd even where the market has a bid/ask differential of one minimum trading increment. The Exchange believes that this provision should enable it to compete for order flow in situations where Floor Brokers seek split price executions in open outcry when the market consists of RSQT quotations and/or SQT quotations where the SQT is located out of that trading crowd with a bid/ask differential of one minimum trading increment, and the bid and/or offer represent quotations of members physically located out of the crowd.

For example, assume a Floor Broker represents an order to purchase 100 contracts in a series where the market is \$.25 bid, \$.30 offer, and both the bid and offer represent quotations submitted by out-of-crowd SQTs [15] or RSQTs. Under the proposal, the Floor Broker and the contra-side participant in the trading crowd would be afforded priority over the out-of-crowd SQT or RSQT at both \$.25 and \$.30, because the bid/ask differential is one minimum

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Orders for a size of less than 100 contracts are not affected by the current pilot and would not be affected by this proposed rule change.

[6] An SQT is an Exchange Registered Options Trader (''ROT'') who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such SQT is assigned. (AUTOM is Phlx's Automated Options Market.) An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. *See* Phlx Rule 1014(b)(ii)(A).

[7] An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Phlx Rule 1014(b)(ii)(B).

[8] Generally, all options on stocks, indexes, and exchange traded funds quoting in decimals at \$3.00 or higher have a minimum increment of \$.10, and those quoting in decimals under \$3.00 have a minimum increment of \$.05. *See* Phlx Rule 1034(a).

[9] *See* Securities Exchange Act Release No. 51820 (June 10, 2005), 70 FR 35759 (June 21, 2005) (SR–Phlx–2005–28).

[10] *See* Securities Exchange Act Release No. 53021 (December 23, 2005), 70 FR 77435 (December 30, 2005) (SR–Phlx–2005–86).

[11] *See* Securities Exchange Act Release No. 53874 (May 25, 2006), 71 FR 32171 (June 2, 2006) (SR–Phlx–2006–18).

[12] In a separate filing, the Exchange has requested approval of an amendment that would standardize the rule such that it would apply equally to options on equities, ETFs and index options. See SR–Phlx–2007–27.

[13] Orders for a size of less than 100 contracts are not affected by the current pilot and would not be affected by this proposed rule change.

[14] *See e.g.* Phlx Rule 119(a).

[15] The specialist and/or SQTs participating in a trading crowd may, in response to a verbal request for a market by a floor broker, state a bid or offer that is different than their electronically submitted bid or offer, provided that such stated bid or offer is not inferior to such electronically submitted bid or offer. *See* Phlx Rule 1014, Commentary .05(c).

trading increment ($.05). This would enable the Floor Broker to execute a split-price order at a net price ($.275) that improves the market. The effect (and ultimate benefit) to that Floor Broker's customer would be a net purchase price of $.275 for 100 contracts. This provision only applies regarding quotations submitted by out-of-crowd SQTs and RSQTs, and thus would not operate to afford priority over, for example, customer or broker-dealer orders or in-crowd SQT quotes.

The Exchange believes that, in situations where the market has a bid/ask differential of one minimum trading increment, it is potentially difficult for the Floor Broker to achieve price improvement for the Floor Broker's customer on the Phlx. Instead, the order might trade at another exchange that has no impediments, *i.e.*, rules that afford priority to in-crowd participants over out-of-crowd participants generally, regardless of split price priority.

The Exchange is seeking permanent approval of the pilot in order to ensure continuity of the rule and to eliminate the need for continued pilot extensions.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [16] in general, and furthers the objectives of Section 6(b)(5) of the Act [17] in particular, in that it is designed to promote just and equitable principles of trade, 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, enabling Floor Brokers representing split price orders in open outcry to provide split-price executions at improved prices on behalf of customers by establishing a limited priority rule regarding split-price transactions.

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

No written comments were either solicited or received.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

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

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act,[18] and Rule 19b–4(f)(6) thereunder.[19] At any time within 60 days of the filing of the 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.

A proposed rule change filed under Rule 19b–4(f)(6) [20] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day pre-operative delay. The Commission believes that implementing the pilot program on a permanent basis does not present any new issues, and waiving the 30-day pre-operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange's split-price priority rule in its present form to remain in effect without interruption. For these reasons, the Commission designates the proposed rule change to be effective upon filing with the Commission.[22]

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:

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of accelerating the operative date of this proposal, the Commission has considered the rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

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–2007–44 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–2007–44. 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 the filing also will be available for inspection and copying at the principal office 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–2007–44 and should be submitted on or before July 30, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Florence E. Harmon,

Deputy Secretary.

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[23] 17 CFR 200.30–3(a)(12).