

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49151; File No. SR-Phlx-2004-01]

Self-Regulatory Organizations; Notice of Filing and Amendments No. 1 and 2 Thereto and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Automatic Execution of Registered Options Trader ("ROT") Limit Orders on the Limit Order Book

January 29, 2004.

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 January 6, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I, II, and III, below. On January 15, 2004, the Exchange filed Amendment No. 1.³ On January 28, 2004, the Exchange filed Amendment No. 2.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, and Amendments No. 1 and 2, from interested persons, and granting accelerated approval to the proposal, as amended.

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

The Phlx proposes to amend Exchange Rule 1080, Commentary .04, to modify the timing of the deployment of a feature of its Automated Options Market (AUTOM)⁵ system in light of the

Exchange's proposal to introduce its new electronic trading platform for options, to be known as "Phlx XL."⁶ The text of the proposed rule change is set forth below.

Brackets indicate deletions; italics indicate new text.

Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X)

Rule 1080.

(a)-(j) No change.
Commentary:
 .01-.03 No change.
 .04 * * *

[The Exchange shall modify its AUTO-X system not later than January, 2004, so that it shall automatically execute eligible incoming orders against Phlx Price Improving ROT and specialist price improving orders and orders matching such price-improving orders entered via electronic interface with AUTOM resting on the limit order book. The Exchange will deploy the modified system over a 15-month period.]

Not later than ten days following approval by the Securities and Exchange Commission of the rules applicable to the Exchange's electronic trading platform, Phlx XL, the Exchange will commence the initial deployment of Phlx XL by allowing specialists and ROTs who are Streaming Quote Traders ("SQTs," as defined in the Phlx XL rules) to submit electronic quotations in Streaming Quote Options (as defined in the Phlx XL rules), and ROTs who are not SQTs to submit limit orders onto the limit order book via electronic interface with AUTOM or manually through a Floor Broker or the Specialist. Eligible incoming orders and quotations will automatically execute against quotations of specialists and SQTs and orders of ROTs in accordance with the functionality of the Phlx XL system, as set forth in the Phlx XL rules.

Over a period following the commencement of operation of the Phlx XL system, the Exchange expects to gradually increase the number of

Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO-X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. See Exchange Rule 1080.

⁶ See File No. SR-Phlx-2003-59 and Amendments No. 1 and 2 thereto, which describes the proposed functionality and rule changes associated with Phlx XL, and is currently pending with the Commission ("Phlx XL Proposal").

Streaming Quote Options eligible to be traded via Phlx XL. If the Phlx XL system is in operation on April 30, 2005, but less than all of the options traded on the Exchange are Streaming Quote Options, then the Exchange shall, as of April 30, 2005, ensure that the AUTOM system automatically executes eligible incoming orders in options that are not then Streaming Quote Options against Phlx Price Improving ROT and specialist price improving orders and orders matching such price-improving orders entered via the electronic interface with AUTOM described in this Commentary .04 and that are resting on the limit order book.

If the Exchange for any reason determines not to deploy Phlx XL, or if, following the initial deployment of the Phlx XL system, the deployment of Phlx XL is terminated for any reason, then the Exchange shall, within 30 days of such determination not to deploy Phlx XL or termination, ensure that the AUTOM system (or any successor thereto) automatically executes eligible incoming option orders against Phlx Price Improving ROT and specialist price improving orders and orders matching such price-improving orders entered via the electronic interface with AUTOM described in this Commentary .04 and that are resting on the limit order book. In such event, the Exchange shall, at the time of such termination, identify to the Commission and to members and member organizations the options subject to such automatic execution, and shall cause all options to be subject to automatic execution by April 30, 2005.

.05-.07 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 III 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 amend Exchange Rule 1080, Commentary .04, to reflect the proposed

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Richard S. Rudolph, Director and Counsel, Legal Department, Phlx to Deborah Lassman Flynn, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 15, 2004 ("Amendment No. 1"). In Amendment No. 1, the Exchange proposes to amend the rule text to clarify that if Phlx XL is not deployed for any reason, the Exchange would implement a functionality whereby eligible incoming orders and quotations would automatically execute against quotations of specialists and Streaming Quote Traders ("SQTs") and orders of Registered Options Traders ("ROTs") within 30 days of the date of the determination not to deploy.

⁴ See letter from Richard S. Rudolph, Director and Counsel, Legal Department, Phlx to Deborah Lassman Flynn, Assistant Director, Division, Commission, dated January 28, 2004 ("Amendment No. 2"). In Amendment No. 2, the Exchange proposes to amend the rule text to clarify that Phlx XL, if approved, would be deployed not later than 10 days after Commission approval.

⁵ AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the

deployment of the Exchange's proposed new options trading platform, Phlx XL.

a. Background

In November 2002, the Commission approved proposed amendments to Exchange Rules 1080 and 1014 adopting a feature of AUTOM known as "ROT Access" to: (i) allow ROTs and specialists to enter price improving limit orders via electronic interface with AUTOM, subject to certain contingencies, and (ii) set forth special crowd priority, parity and trade allocation rules that would only apply to price-improving ROT and specialist price improving orders entered via electronic interface with AUTOM.⁷

b. The Modified System

Currently, under ROT Access, inbound orders eligible for execution against price-improving ROT limit orders entered via the electronic interface and orders matching such price-improving limit orders are manually executed by the specialist. The Exchange represented in its rules relating to ROT Access that the Exchange would modify its AUTO-X system not later than January 2004, so that it would automatically execute eligible incoming orders against Phlx Price Improving ROT and specialist price improving orders and orders matching such price-improving orders entered via electronic interface with AUTOM resting on the limit order book (the "Modified System"). Pursuant to Commentary .04 to Phlx Rule 1080, the Exchange would deploy the Modified System over a 15-month period.

Since the adoption of that provision, the Exchange has commenced the technological development of, and filed for Commission approval of rules relating to, its electronic trading platform, "Phlx XL," on a six-month pilot basis.⁸ The Exchange represents to the Commission that: (i) Phlx XL, which would allow ROTs to stream competitive proprietary option

quotations into the Exchange's system in certain options designated by the Options Committee as "Streaming Quote Options," would represent the Exchange's permanent response to the Competitive Quoting Undertaking, and (ii) ROT limit orders placed electronically onto the limit order book via the electronic interface in Streaming Quote Options would be executed automatically, thus obviating the need for the Modified System for Streaming Quote Options (*i.e.*, those options traded on Phlx XL).

c. ROT Access and Phlx XL

Currently, ROTs are permitted by rule to enter electronic price improving limit orders (and orders matching such limit orders entered electronically by the specialist or other ROTs in the trading crowd) onto the limit order book via electronic interface with AUTOM, and are entitled to receive a special allocation in trades stemming from such price improving limit orders. Such price-improving limit orders must be for at least the lesser of the AUTO-X guarantee for the option (currently defined as the Exchange's disseminated size) or 20 contracts. Under the Phlx XL Proposal, ROTs would continue to be permitted under Exchange Rule 1080(b)(i)(B) and Commentary .04 to that rule to place certain limit orders on the limit order book electronically.

Under the Phlx XL Proposal, the requirement that such limit orders be price-improving orders would be deleted. Instead, ROTs would be permitted to place limit orders, including Good-Till-Cancelled ("GTC") orders, on the limit order book, regardless of whether such an order improves the then-prevailing Exchange market. This would apply to ROT limit orders entered onto the limit order book electronically in both Streaming Quote Options trading on Phlx XL, and in non-Streaming Quote Options that are not traded on Phlx XL. ROTs entering limit orders on the book in both Streaming Quote Options and non-Streaming Quote Options would be required to submit such orders with a size of at least 10 contracts. Respecting non-Streaming Quote Options (not traded on Phlx XL), inbound orders eligible for execution against such limit orders would be executed and allocated manually by the specialist, as they are today.

Respecting Streaming Quote Options, inbound AUTOM orders or electronic quotations eligible for execution against ROT orders entered into AUTOM via electronic interface by ROTs who elect not to stream proprietary quotations in such options would be automatically executed and would be allocated

automatically pursuant to proposed Exchange rules relating to Streaming Quote Options.⁹

d. The Phlx XL Rollout and the Competitive Quoting Undertaking

Because the Exchange believes that Phlx XL will ultimately be deployed for all options traded on the Exchange floor-wide, the Exchange does not believe it is necessary or prudent to invest the resources required to deploy the Modified System described in current Rule 1080, Commentary .04, unless the Phlx XL trading platform ceases to be used by the Exchange for any reason (which the Exchange does not contemplate), or if the Exchange ultimately determines not to deploy the Phlx XL platform for all options. Because Phlx XL provides for the automatic execution of eligible incoming orders against ROT limit orders, the Exchange believes that it can satisfy the requirement of the Competitive Quoting Undertaking as it relates to the automatic execution of ROT limit orders upon the deployment of Phlx XL and as the Exchange successively introduces additional options to trade on that platform.

Contingent upon Commission approval of the proposed rules relating to Phlx XL, and the completion of system development, the Exchange would commence deployment of Phlx XL beginning with approximately 10 options, pursuant to the deployment schedule set forth in the Phlx XL Proposal.¹⁰ The Exchange has not yet determined a floor-wide deployment date.

The Exchange, following the initial deployment of Phlx XL, would not be automatically executing inbound orders against ROT limit orders in options that are not traded on Phlx XL (thus not providing such automatic executions in all options). To ensure that the Exchange is in compliance with the Competitive Quoting Undertaking, the Exchange has filed this proposal.

The proposed rule provides that the Exchange would commence the automatic execution of ROT limit orders on the limit order book in options traded on Phlx XL within 10 days of the Commission's approval of the system, subject to the various extenuating circumstances described below.¹¹

⁹ *Id.*

¹⁰ *Id.*

¹¹ The automatic execution of eligible orders against ROT limit orders on the limit order book is a proposed functionality of Phlx XL. Thus, such automatic execution would be effective for those options traded on Phlx XL upon deployment of the Phlx XL platform.

⁷ See Securities Exchange Act Release No. 46763 (November 1, 2002), 67 FR 68898 (November 11, 2002) ("ROT Access Proposal"). According to Phlx, the ROT Access Proposal was submitted as a temporary solution in response to the *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"), which requires, among other things, that the respondent exchanges, including the Phlx, adopt new, or amend existing, rules concerning its automated quotation systems which substantially enhance incentives to quote competitively and substantially reduce disincentives for market participants to act competitively (the "Competitive Quoting Undertaking").

⁸ See Phlx XL Proposal, *supra* note 6.

i. If Phlx XL Is Not Deployed or Is Terminated for Any Reason

If the Exchange determines not to deploy Phlx XL or if the deployment of Phlx XL is terminated for any reason (which is not contemplated by the Exchange), then the Exchange would, within 30 days of such determination or termination, ensure that the AUTOM system automatically executes eligible incoming option orders against Phlx Price Improving ROT and specialist price improving orders and orders matching such price-improving orders entered via the electronic interface with AUTOM, consistent with the Modified System. The Exchange would identify the options subject to such automatic execution, and would cause all options to be subject to automatic execution by April 30, 2005.

ii. If Phlx XL Is Deployed For Less Than All Options

The proposed rule would further provide that, if the Phlx XL system is in operation on April 30, 2005, but less than all of the options traded on the Exchange are Streaming Quote Options (thus traded on Phlx XL), then the Exchange would, as of April 30, 2005, ensure that the AUTOM system automatically executes eligible incoming orders in options that are not then Streaming Quote Options against Phlx Price Improving ROT and specialist price improving orders, consistent with the original proposal for the Modified System.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,¹² in general, and furthers the objectives of section 6(b)(5) of the Act,¹³ in particular, in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade by enabling the Exchange to continue the development and deployment of Phlx XL while continuing to enhance the automatic execution of ROT limit orders on the limit order book which, as interpreted by Commission staff, forms a part of the requirements of the Competitive Quoting Undertaking.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-Phlx-2004-01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hard copy or by e-mail, but not by both methods. 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 will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-2004-01 and should be submitted by March 1, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

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.¹⁴ In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and

open market and a national securities system, and protect investors and the public interest.¹⁵

The Commission believes that this proposed rule change should assist the Exchange by allowing it to focus its resources on the development and deployment Phlx XL, which, if approved by the Commission, will be its new electronic trading platform for options and its permanent response to the Competitive Quoting Undertaking. The instant proposal should help Phlx to avoid the duplication of technological efforts by allowing the Exchange to fulfill its Competitive Quoting Undertaking with the deployment of Phlx XL, which would occur within 10 days of Commission approval of the system. Thus, Phlx will be able to avoid altering the Modified System for compliance purposes while simultaneously developing a successor system, which would also be designed to fulfill the undertaking. The Exchange represents that Phlx XL would be designed to automatically execute eligible incoming option orders against orders placed electronically on the Exchange's limit order book by ROTs. The Exchange also represents that if the Phlx XL is either never deployed or deployed and subsequently terminated for any reason the Exchange would ensure that the AUTOM system, or any successor system, would include the functionality to automatically execute eligible incoming option orders against Phlx Price Improving ROTs' and specialists' price improving orders and orders matching such price-improving orders entered via the electronic interface with AUTOM within 30 days of the determination not to deploy or termination of Phlx XL. In addition, the Exchange would insure that the AUTOM system would provide the automatic execution functionality described above by April 30, 2005, if Phlx XL were not operable for all options traded on the Exchange by that date.

The Commission believes this proposed rule change, as amended, should allow Phlx to maximize the use of its resources in its efforts to comply with the Competitive Quoting Undertaking in a timely fashion as set forth in the Order. Further, the Commission notes that Phlx had previously committed to modify its Automatic Execution System (AUTO-X) no later than January 2004, and deploy the system over a 15-month period.¹⁶ In the instant proposal, Phlx maintains its commitment to cause all options to be

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ See ROT Access Proposal, *supra* note 7.

subject to automatic execution by April 30, 2005 (*i.e.*, 15 months from January 2004), thus, the ultimate timetable that ROT Limit Orders in all options on the Exchange would be subject to automatic execution would be unchanged. Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,¹⁷ for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of notice thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-Phlx-2004-01), as amended, is hereby approved on an accelerated basis.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 04-2647 Filed 2-6-04; 8:45 am]

BILLING CODE 8010-01-P

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement for Paradise-Wilson 500-kV Transmission System Upgrades

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR 1506.6), Section 106 of the National Historic Preservation Act and its implementing regulations (36 CFR part 800) and the Tennessee Valley Authority (TVA) procedures for implementing the National Environmental Policy Act (NEPA). TVA will prepare an environmental impact statement (EIS) addressing the proposed construction and operation of a new 500-kilovolt (kV) transmission line and other transmission system upgrades in Kentucky and Tennessee. The proposed transmission line would extend from TVA's Paradise Fossil Plant in Muhlenberg County, Kentucky, to TVA's Wilson 500-kV Substation in Wilson County, Tennessee. Depending on the route, the proposed line could involve portions of Muhlenberg, Butler, Simpson, Warren, Logan, Allen, and Ohio Counties in Kentucky and parts of Robertson, Sumner, and Wilson Counties in Tennessee. Proposed transmission system upgrades include

upgrading 52 miles of TVA's Paradise-Montgomery 500-kV line from 2000 amps to 3000 amps and the replacement of conductors (*i.e.*, wires) on approximately 6 miles of TVA's Wilson-Gladeville 161-kV transmission line. In the EIS, TVA will evaluate the potential environmental impacts of the construction, operation, and maintenance of the new line and other system upgrades. As part of its EIS process, TVA will include public involvement on this proposal. Public comment is invited concerning both the scope of the EIS and environmental issues that should be addressed as a part of this EIS.

DATES: Comments on the scope and environmental issues for the EIS must be postmarked or e-mailed no later than March 26, 2004, to ensure consideration. Late comments will be considered if possible.

ADDRESSES: Written comments should be sent to James F. Williamson, Jr., Senior NEPA Specialist, Environmental Policy and Planning, Tennessee Valley Authority, WT 8C, 400 West Summit Hill Drive, Knoxville, Tennessee 37902-1499. Comments may be e-mailed to jfwilliamson@tva.gov.

FOR FURTHER INFORMATION CONTACT: Hugh S. Barger, Environmental Engineer, Transmission/Power Supply, Tennessee Valley Authority, MR 4G-C, 1101 Market Street, Chattanooga, Tennessee 37402-2801, or telephone 1-800-362-4355. E-mail may be sent to hsbarger@tva.gov.

SUPPLEMENTARY INFORMATION:

Background

Peabody Energy Corporation plans to construct and operate the Thoroughbred Energy Campus, which would consist of a 1,500 megawatt power plant and mine complex, in northern Muhlenberg County, Kentucky. The Federal Power Act, as amended, requires operators of transmission systems to provide interconnection access to independent power generators. Peabody has requested interconnection to the TVA power transmission system and would use the TVA transmission system to distribute as much as half of the 1,500 megawatts of electric power generated by the Thoroughbred plant. Because interconnection service would be provided at Peabody's request, Peabody will reimburse TVA for the cost of necessary upgrades to its transmission system. The planned upgrades are necessary to accommodate Peabody's request and maintain the reliability of the TVA transmission system.

Project Description

In order to interconnect to the TVA transmission system, Peabody Energy Corporation would construct and operate a new 13-mile-long 500-kV transmission line from the Thoroughbred plant to the switchyard at TVA's Paradise Fossil Plant. To maintain reliability of its transmission system, TVA would construct and operate a new 500-kV transmission line from TVA's Paradise Fossil Plant to TVA's Wilson 500-kV substation located about 10 miles west of Lebanon, Tennessee. This proposed line would likely be about 90 miles long, depending on the final route alignment. Neither detailed routing studies nor line design studies have yet been conducted. The Kentucky portion of the proposed line route is primarily rural, consisting of forested areas, reclaimed strip mines, and scattered agriculture. The Tennessee portion contains developing suburban areas along with mixed agricultural land uses. The line would likely be built using self-supporting, laced steel towers on 175-foot-wide right-of-way. The structure type, right-of-way characteristics, and line length remain to be determined and could change when additional information is gathered.

Line construction would require removal of trees within the line right-of-way as well as any other nearby tall trees that would endanger the safe operation of the line.

Construction of the support structures would require the excavation of foundations for the tower legs. Cranes and other heavy equipment would be needed for tower construction and to pull the electrical conductors into place. After construction, the disturbed areas would be restored, and the right-of-way would be maintained periodically to control the growth of tall vegetation that could endanger the line. A detailed description of these activities, as well as applicable and appropriate environmental protection measures, will be provided in the EIS.

TVA also proposes to upgrade portions of two of its existing transmission lines. The 52-mile-long Paradise-Montgomery 500-kV transmission line would be upgraded from 2000 amps to 3000s amps by re-tensioning the line (*i.e.*, removing excess slack to allow adequate clearance between the conductors and the ground). This line is located in Muhlenberg and Todd Counties, Kentucky, and in Montgomery County, Tennessee. Also, the electrical conductors would be replaced on about 6 miles of the Wilson-Gladeville 161-kV

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).