Proposed Rule Change by Philadelphia Stock Exchange
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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Pilot: Extension of Time Period for Commission Action | Date Expires: |
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Description
Provide a brief description of the proposed rule change (limit 250 characters).

Proposed rule change relating to the Exchange's automated opening system.

Contact Information
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
<th>First Name</th>
<th>Last Name</th>
<th>Title</th>
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</thead>
<tbody>
<tr>
<td>Richard</td>
<td>Vice President and Counsel</td>
<td>Richard</td>
<td>Rudolph</td>
<td>Vice President and Counsel</td>
</tr>
<tr>
<td>E-mail</td>
<td><a href="mailto:Richard.Rudolph@phlx.com">Richard.Rudolph@phlx.com</a></td>
<td>(215) 496-5074</td>
<td>(215) 496-6729</td>
<td></td>
</tr>
</tbody>
</table>

Signature
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date: 10/16/2007
By: Richard S. Rudolph, Vice President and Counsel

Note: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.
If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e., partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.
1. **Text of the Proposed Rule Change**

The Philadelphia Stock Exchange, Inc. (“Phlx” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)\(^1\) and Rule 19b-4 thereunder,\(^2\) proposes to amend Exchange Rule 1017, Openings in Options, that would establish additional criteria to determine the single opening price in a particular option series when the Exchange’s system could open trading in such series at two or more prices.

A notice of the proposed rule change for publication in the **Federal Register** is attached hereto as **Exhibit 1**. The text of the proposed rule change is set forth below. Brackets indicate deletions; underlining indicates new text.

**Openings In Options**

**Rule 1017.** (a) – (b) No change.

(c)(i) The opening price of a series is the price at which the maximum quantity of contracts will be traded. Should two or more prices satisfy the maximum quantity criteria, the opening price will be the price at which the greatest number of customer orders will be traded. Should there continue to be two or more prices that satisfy the maximum quantity criteria, the opening price shall be the price at which the maximum number of Phlx XL participants will trade. Thereafter, should there continue to be two or more prices that satisfy the maximum quantity criteria, the opening price will be the price that is closest to the closing price from the previous trading session. **Should there continue to be two or more prices that satisfy the maximum quantity criteria, the opening price will be the price that is closest to the closing price from the previous trading session.** Should there continue to be two or more prices that satisfy the maximum quantity criteria, the opening price will be the mid-point of the highest possible price and lowest possible price that satisfy the maximum quantity criteria (rounded as needed to the side of the market with the greatest number of Phlx XL participants). The system will give priority to market orders first (including limit orders that are treated as market orders as described in paragraph (i) below), then to resting limit orders at the opening price. One or more series of a given option may not open because of the conditions cited in paragraph (e) of this Rule.

(ii) – (iv) No change.

(d) – (j) No change.

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Commentary: No change

2. Procedures of the Self-Regulatory Organization

The Exchange’s Executive Committee, pursuant to delegated authority, approved the proposal for filing with the Securities and Exchange Commission (“SEC” or “Commission”) on October 9, 2007.

Questions and comments on the proposed rule change may be directed to Richard S. Rudolph, Vice President and Counsel, at (215) 496-5074, or Edith Hallahan, Senior Vice President and Deputy General Counsel, at (215) 496-5179.

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

The purpose of the proposed rule change is to ensure that the Exchange’s opening price in a particular option series is established at a single price when two or more opening prices would satisfy the requirement in Exchange Rule 1017(c) that such price be the price at which the maximum quantity of contracts will trade. The Exchange believes that this should facilitate fair and orderly markets on the opening of a particular option series on the Exchange at a single price.

Rule 1017(c) sets forth the methodology by which the Exchange’s system establishes the opening price of a series. Generally, the opening price of a series is the price at which the maximum quantity of contracts will be traded. Frequently, however, there will be more than one price that will satisfy the “maximum quantity” test in determining the opening price of a series. Accordingly, Rule 1017(c) lists a number of “tie-breakers” used by the system to determine the actual opening price of a series.
Currently, Rule 1017(c)(i) defines the opening price as the price at which the maximum quantity of contracts would be traded. The rule establishes a series of “tie-breakers,” which are additional criteria that the system follows in establishing the opening price when two or more prices would satisfy the maximum quantity criteria. Specifically, when the maximum quantity of contracts could be traded at two or more prices, the system establishes the opening price based on the following criteria, in order: (1) the price at which the greatest number of customer orders would be traded; (2) the price at which the maximum number of Phlx XL participants would trade; and (3) the price that is closest to the closing price from the previous trading session.\(^3\)

The Exchange has observed that the existing “tie-breakers” in Rule 1017(c) can still result in the situation where two or more prices could satisfy the maximum quantity criteria. Accordingly, the proposal would add another “tie-breaker” to be used in determining the opening price when two or more prices satisfy the maximum quantity criteria.

Rule 1017(c) would be amended to provide that, after all existing “tie-breakers” have been exhausted, should there continue to be two or more prices that satisfy the maximum quantity criteria, the opening price will be the mid-point of the highest possible price and lowest possible price that satisfy the maximum quantity criteria (rounded as needed to the side of the market with the greatest number of Phlx XL participants).

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b. **Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Act\(^4\) in general, and furthers the objectives of Section 6(b)(5) of the Act\(^5\) 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, by clarifying the single opening price in a particular series on the Exchange when two or more prices would result in the maximum number of contracts traded at the opening in such series.

4. **Self-Regulatory Organization’s Statement on Burden on Competition**

The Phlx does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

5. **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.

6. **Extension of Time Period for Commission Action**

The Exchange does not consent to an extension of the time period for Commission action.

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**


The proposed rule change is being designated by the Exchange as a “non-controversial” rule pursuant to Section 19(b)(3)(A)\(^6\) of the Act and subparagraph (f)(6) of Rule 19b-4 thereunder,\(^7\) because the proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not 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, provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing of the proposed rule change.\(^8\)

Consequently, the rule is being filed for immediate effectiveness and the Exchange requests that the Commission waive the 30-day period for the proposal to become effective in order to add the new “tie-breaker” expeditiously, thus promoting fair and orderly markets at the opening of trading on the Exchange.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Exhibits

1. Notice of proposed rule for publication in the Federal Register.

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\(^8\) As required under Rule 19b-4(f)(6)(iii), the Exchange has provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date of this proposal.
SECURITIES AND EXCHANGE COMMISSION
(Release No. [Redacted]; File No. SR-Phlx-2007-81)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Exchange’s Automated Opening System

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 ______________________ 2007, 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, which Items have been prepared by the Phlx. 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, pursuant to Section 19(b)(1) of the Act\(^3\) and Rule 19b-4 thereunder,\(^4\) proposes to amend Exchange Rule 1017, Openings in Options, that would establish additional criteria to determine the single opening price in a particular option series when the Exchange’s system could open trading in such series at two or more prices.

The text of the proposed rule change is set forth below.

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Openings In Options

Rule 1017. (a) – (b) No change.

(c)(i) The opening price of a series is the price at which the maximum quantity of contracts will be traded. Should two or more prices satisfy the maximum quantity criteria, the opening price will be the price at which the greatest number of customer orders will be traded. Should there continue to be two or more prices that satisfy the maximum quantity criteria, the opening price shall be the price at which the maximum number of Phlx XL participants will trade. Thereafter, should there continue to be two or more prices that satisfy the maximum quantity criteria, the opening price will be the price that is closest to the closing price from the previous trading session. Should there continue to be two or more prices that satisfy the maximum quantity criteria, the opening price will be the mid-point of the highest possible price and lowest possible price that satisfy the maximum quantity criteria (rounded as needed to the side of the market with the greatest number of Phlx XL participants). The system will give priority to market orders first (including limit orders that are treated as market orders as described in paragraph (i) below), then to resting limit orders at the opening price. One or more series of a given option may not open because of the conditions cited in paragraph (e) of this Rule.

(ii) – (iv) No change.

(d) – (j) 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 ensure that the Exchange’s opening price in a particular option series is established at a single price when two or more
opening prices would satisfy the requirement in Exchange Rule 1017(c) that such price be the price at which the maximum quantity of contracts will trade. The Exchange believes that this should facilitate fair and orderly markets on the opening of a particular option series on the Exchange at a single price.

Rule 1017(c) sets forth the methodology by which the Exchange’s system establishes the opening price of a series. Generally, the opening price of a series is the price at which the maximum quantity of contracts will be traded. Frequently, however, there will be more than one price that will satisfy the “maximum quantity” test in determining the opening price of a series. Accordingly, Rule 1017(c) lists a number of “tie-breakers” used by the system to determine the actual opening price of a series.

Currently, Rule 1017(c)(i) defines the opening price as the price at which the maximum quantity of contracts would be traded. The rule establishes a series of “tie-breakers,” which are additional criteria that the system follows in establishing the opening price when two or more prices would satisfy the maximum quantity criteria. Specifically, when the maximum quantity of contracts could be traded at two or more prices, the system establishes the opening price based on the following criteria, in order: (1) the price at which the greatest number of customer orders would be traded; (2) the price at which the maximum number of Phlx XL participants would trade; and (3) the price that is closest to the closing price from the previous trading session.5

The Exchange has observed that the existing “tie-breakers” in Rule 1017(c) can still result in the situation where two or more prices could satisfy the maximum quantity criteria. Accordingly, the proposal would add another “tie-breaker” to be used in

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determining the opening price when two or more prices satisfy the maximum quantity criteria.

Rule 1017(c) would be amended to provide that, after all existing “tie-breakers” have been exhausted, should there continue to be two or more prices that satisfy the maximum quantity criteria, the opening price will be the mid-point of the highest possible price and lowest possible price that satisfy the maximum quantity criteria (rounded as needed to the side of the market with the greatest number of Phlx XL participants).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act\(^6\) in general, and furthers the objectives of Section 6(b)(5) of the Act\(^7\) 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, by clarifying the single opening price in a particular series on the Exchange when two or more prices would result in the maximum number of contracts traded at the opening in such series.

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 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.

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\(^7\) 15 U.S.C. 78f(b)(5).
III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is being designated by the Exchange as a “non-controversial” rule pursuant to Section 19(b)(3)(A)\(^8\) of the Act and subparagraph (f)(6) of Rule 19b-4 thereunder,\(^9\) because the proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not 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, provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing of the proposed rule change.\(^{10}\) Consequently, the rule is being filed for immediate effectiveness and the Exchange requests that the Commission waive the 30-day period for the proposal to become effective in order to add the new “tie-breaker” expeditiously, thus promoting fair and orderly markets at the opening of trading on the Exchange.

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:

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\(^{10}\) As required under Rule 19b-4(f)(6)(iii), the Exchange has provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date of this proposal.
• 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-2007-81 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-2007-81. 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 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-2007-81 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 11

Nancy M. Morris
Secretary