

notes that it previously approved the listing and trading of the Shares on NYSE.<sup>28</sup> The Commission also believes that the proposal is consistent with Rule 12f-5 under the Act,<sup>29</sup> which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the existing rules of the Exchange governing the trading of equity securities, including rules relating to trading hours, trading halts, odd lots, and the minimum trading increment.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>30</sup> which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last sale information regarding GLD are disseminated through the Consolidated Quotation System. Furthermore, as noted by the Exchange, various means exist for investors to obtain reliable gold price information exist and thereby monitor the underlying spot market in gold relative to the NAV of their Shares. Additionally, the Trust's Web site will also provide an updated IIV at least every 15 seconds. If the Trust ceases to maintain or to calculate the IIV or if the value of the index ceases to be widely available, the Exchange would cease trading GLD.

The Commission notes that, if GLD were to be delisted by NYSE, the Exchange would no longer have authority to trade GLD pursuant to this order.

In support of the proposal, the Exchange made the following representations:

1. The Exchange's surveillance procedures are adequate to deter manipulation and that its existing surveillance procedures for investment

the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange "extends UTP." When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

<sup>28</sup> See NYSE Approval Order, *supra* note 3.

<sup>29</sup> 17 CFR 240.12f-5.

<sup>30</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

company units will be utilized for the Shares. Among other things, the Exchange entered into an MOU with NYMEX for the sharing of information related to any financial instrument based, in whole or in part, upon an interest in or performance of gold.

2. The Exchange will distribute an information circular to its ETP Holders prior to the commencement of trading of GLD on the Exchange that explains its terms, characteristics, and risks of trading.

3. The Exchange will require an ETP Holder with a customer that purchases the Shares on the Exchange to provide that customer with a product prospectus and will note this prospectus delivery requirement in the information circular. This approval order is conditioned on the Exchange's adherence to these representations.

Finally, the Commission believes that the Exchange's rules imposing trading restrictions and information barriers on ETP Holder acting as a registered Market Maker in the Shares in GLD are reasonable and consistent with the Act. These rules generally require an ETP Holder acting as a registered Market Maker in the Shares to provide to the Exchange with information relating to its trading in physical gold, gold futures contracts, options on gold futures, or any other gold derivatives. Further, an ETP Holder acting as a registered Market Maker in the Shares is prohibited from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in physical gold, gold futures contracts, options on gold futures, or any other gold derivatives.

The Commission finds good cause for approving the proposal, as amended, prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of GLD on NYSE is consistent with the Act.<sup>31</sup> The Commission presently is not aware of any regulatory issue that should cause the Commission to revisit that earlier finding or preclude the trading of GLD on the Exchange pursuant to UTP. Therefore, accelerating approval of the proposal should benefit investors by creating, without undue delay, additional competition in the market for GLD.

<sup>31</sup> See *supra* note 3.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>32</sup> that the proposed rule change (SR-PCX-2004-117), is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>33</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51257; File No. SR-Phlx-2005-10]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereof Relating to Fees Applicable to Linkage P and P/A Orders

February 25, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 28, 2005, 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 prepared by the Exchange. On February 16, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is granting accelerated approval of the proposed rule change, as amended, on a pilot basis.

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

The Exchange proposes to amend its schedule of fees to: (1) Reduce from \$.45 per contract to \$.15 per contract the Exchange's equity option transaction charge<sup>4</sup> applicable to Principal Orders

<sup>32</sup> 15 U.S.C. 78s(b)(2).

<sup>33</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Form 19b-4 dated February 16, 2005 ("Amendment No. 1"). Amendment No. 1 replaced and superseded the original filing in its entirety.

<sup>4</sup> The equity option transaction charge would apply to equity options and to options overlying Exchange-Traded Fund Shares.

("P Orders") sent to the Exchange via the Intermarket Options Linkage ("Linkage") pursuant to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Plan");<sup>5</sup> and (2) adopt a \$.15 per contract equity option transaction charge for Linkage Principal Acting as Agent Orders ("P/A Orders").<sup>6</sup>

The Exchange would charge the clearing member firm of the sender of inbound Linkage P and P/A Orders. Consistent with current practice and with the Plan, the Exchange would not charge for the execution of Satisfaction Orders sent through Linkage.

The Exchange intends to incorporate this new fee structure as part of an existing pilot program, which is scheduled to expire July 31, 2005.<sup>7</sup>

The text of the proposed rule change is available on the Phlx's Web site (<http://www.phlx.com>), at the Phlx'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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it had 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 reducing the charge for P Orders from \$.45 to \$.15 is to encourage additional order flow to the Exchange and remain competitive. The purpose of adopting a \$.15 fee for P/A Orders is to raise revenue for the Exchange. The Exchange notes that other exchanges that are participants in the Plan ("Participants") also charge fees for P and P/A Orders.<sup>8</sup>

The Exchange specifically requests that the Commission approve the proposal such that it would apply to transactions that settle on or after February 1, 2005.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>10</sup> in particular, in that it is an equitable allocation of reasonable fees among Exchange members.

### 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

Written comments on the proposed rule change were neither solicited nor 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 is consistent with the Act. Comments may be submitted by any of the following methods:

<sup>8</sup> See e.g., Securities Exchange Act Release Nos. 50124 (July 30, 2004), 69 FR 47963 (August 6, 2004) (SR-BSE-2004-32); 50010 (July 13, 2004), 69 FR 43649 (July 21, 2004) (SR-ISE-2004-25); 50048 (July 20, 2004), 69 FR 45102 (July 28, 2004) (SR-CBOE-2004-40); 50082 (July 26, 2004), 69 FR 45875 (July 30, 2004) (SR-PCX-2004-68); and 50116 (July 29, 2004), 69 FR 47473 (August 5, 2004) (SR-Amex-2004-54).

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

<sup>10</sup> 15 U.S.C. 78f(b)(4).

### 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-2005-10 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Phlx-2005-10. 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 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 publicly available. All submissions should refer to File Number SR-Phlx-2005-10 and should be submitted on or before March 25, 2005.

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

After careful consideration, 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>11</sup> and in particular, the requirements of Section 6(b) of the Act<sup>12</sup> and the rules

<sup>11</sup> In approving this proposal, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>5</sup> See Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000); (order approving the Plan); and 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (order approving Phlx as a participant in the Plan).

<sup>6</sup> Under Section 2(16) of the Plan and Exchange Rule 1083(k), a "Linkage Order" means an Immediate or Cancel order routed through the Linkage as permitted under the Plan. There are three types of Linkage Orders:

(i) "Principal Acting as Agent Order," which is an order for the principal account of a specialist (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent;

(ii) "Principal Order," which is an order for the principal account of an Eligible Market Maker and is not a P/A Order; and

(iii) "Satisfaction Order," which is an order sent through the Linkage to notify a member of another Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

<sup>7</sup> See Securities Exchange Act Release No. 50125 (July 30, 2004), 69 FR 47479 (August 5, 2004) (SR-Phlx-2004-44). In that filing, the Exchange established, on a pilot basis, a fee of \$.45 per contract for inbound P Orders. The instant proposed rule change would reduce the fee for inbound P Orders from \$.45 per contract to \$.15 per contract, and would establish, as part of the pilot, a fee of \$.15 per contract for inbound P/A Orders.

and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>13</sup> which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission believes that lowering the fee for inbound P Orders retroactively to transactions that settled on or after February 1, 2005 should reduce a financial disincentive to send P Orders to the Phlx. The Commission also believes that implementing a fee for inbound P/A Orders is consistent with the practices of the other Participants. The Commission believes that approving the proposed rule change, as amended, on a pilot basis, until July 31, 2005, will give the Exchange and the Commission further opportunity to evaluate whether Linkage fee are appropriate.

The Commission believes that the proposed rule change, as amended, is generally consistent with the practices of other Participants and presents no new regulatory issues. Accordingly, the Commission finds good cause pursuant to Section 19(b)(2) of the Act,<sup>14</sup> for approving this proposed rule change, as amended, prior to the thirtieth day after publication of notice thereof in the **Federal Register**.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-Phlx-2005-10), as amended, is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51272; File No. SR-Phlx-2004-75]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Floor Official Conflicts of Interest

February 28, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 9, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or the "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 proposes to amend Exchange Rule 124, Disputes, and Option Floor Procedure Advices-27, Floor Official Rulings—Options ("OFPA F-27"), to authorize Exchange staff to determine that a Floor Official is ineligible to participate in a particular ruling where it appears that such Floor Official has a conflict of interest.

Below is the amended text of the proposed rule change. Proposed new language is in *italics*.

\* \* \* \* \*

#### Disputes

Rule 124. (a)–(d) \* \* \* No change. Commentary:

*.01. Exchange staff may determine that a Floor Official is ineligible to participate in a particular ruling where it appears that such Floor Official has a conflict of interest. For purposes of this Rule, and without limitation, a conflict of interest exists where a Floor Official: (a) is directly or indirectly affiliated with a party seeking a Floor Official ruling; (b) is a participant or is directly or indirectly affiliated with a participant in a transaction that is the subject of a Floor Official ruling; (c) is a debtor or creditor of a party seeking a Floor Official ruling; or (d) is an immediate family member of a party seeking a Floor Official ruling. Exchange staff may consider other circumstances,*

*on a case-by-case basis, in determining the eligibility or ineligibility of a particular Floor Official to participate in a particular ruling due to a conflict of interest.*

\* \* \* \* \*

#### F-27 Floor Official Rulings—Options

Floor Officials are empowered to render rulings on the trading floor to resolve trading disputes occurring on and respecting activities on the trading floor. All rulings rendered by Floor Officials are effective immediately and must be complied with promptly. Failure to promptly comply with a ruling concerning a trading dispute may result in referral to the Business Conduct Committee. Failure to promptly comply with other rulings issued pursuant to Order and Decorum Regulations or Floor Procedure Advices and not concerning a trading dispute may result in an additional violation. Floor Officials need not render decisions in any instance where the request for a ruling was not made within a reasonable period of time. A Floor Official should not render a decision or authorize a citation where such Floor Official was involved in or affected by the dispute, as well as in any situation where the Floor Official is not able to objectively and fairly render a decision.

Floor Officials shall endeavor to be prompt in rendering decisions. However, in any instance where a Floor Official has determined that the benefits of further discovery as to the facts and circumstances of any matter under review outweigh the monetary risks of a delayed rulings, the Floor Official may determine to delay rendering the ruling until such time as that further discovery is completed. In issuing decisions for the resolution of trading disputes, Floor Officials shall institute the course of action deemed by the ruling Floor Official to be more fair to all parties under the circumstances at the time. A Floor Official may direct the execution of an order on the floor, to adjust the transaction terms or participants to an executed order on the floor. However, two Floor Officials may nullify a transaction if they determine the transaction to have been in violation of Rules 1014 (Obligations and Restrictions Applicable to specialist and ROTs), 1015 (Quotation Guarantees), 1017 (Priority and Parity at Openings in Options), 1033 (Bids and Offers) or 1080 (AUTOM).

A minimum of three members of the Sub-Committee on Rules and Rulings, a sub-committee of the standing committee, or the Chairperson of the standing committee (or his designee) if three Sub-Committee members cannot

<sup>13</sup> 15 U.S.C. 78f(b)(4).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

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

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

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