

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.

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

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

(A) By order approve such proposed rule change, as amended; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2004-173 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-NASD-2004-173. 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 Nasdaq. 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-NASD-2004-173 and should be submitted on or before February 22, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 05-1697 Filed 1-28-05; 8:45 am]

BILLING CODE 8010-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-51071; File No. SR-Phlx-2005-05]

**Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change to Increase Position Limits and Exercise Limits for Options on Standard and Poor's Depository Receipts (SPDRs®)**

January 21, 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 19, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change.

<sup>20</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.

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

The Exchange proposes to amend Exchange Rule 1001, Position Limits, to increase position limits and exercise limits for options on the Standard and Poor's Depository Receipts ("SPDRs®").<sup>3</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 Exchange proposes to amend Exchange Rule 1001 to increase the position limits and exercise limits<sup>4</sup> applicable to options on SPDRs from 75,000 to 300,000 contracts on the same side of the market. The Exchange began trading options on SPDRs on the Exchange's electronic trading platform for options, Phlx XL, on January 10, 2005. Given the expected institutional demand for options on SPDRs, the Exchange believes that the current equity position limit of 75,000 contracts<sup>5</sup> is too low and could be a deterrent to the successful trading of the product. Options on SPDRs are 1/10th the size of options on the Standard and Poor's 500 Index ("SPX"). Thus, a position limit of 75,000 contracts in options on SPDRs is equivalent to a

<sup>3</sup> "Standard & Poor's®", "S&P®", "S&P 500®", "Standard & Poor's 500", and "500" are trademarks of The McGraw-Hill Companies, Inc. Neither Standard & Poor's nor its index compilation agent makes any recommendation concerning the advisability of investing in options on SPDRs®.

<sup>4</sup> Exchange Rule 1002, Exercise Limits, refers to exercise limits that correspond to aggregate long positions as described in Exchange Rule 1001. The position limit established in a given option under Exchange Rule 1001 is also the exercise limit for such option.

<sup>5</sup> See Exchange Rule 1001, Commentary .05(a).

7,500 contract position limit in options on SPX. Traders who trade options on SPDRs to hedge positions in SPX options are likely to find a position limit of 75,000 contracts in options on SPDRs too restrictive, which may adversely affect the Exchange's ability to provide liquidity in this product.

Comparable products, such as options on the Nasdaq-100 Index Tracking Stock ("QQQ"),<sup>6</sup> are subject to a 300,000 contract limit.<sup>7</sup> The Exchange proposes that options on SPDRs similarly be subject to position limits and exercise limits of 300,000 contracts. The Exchange believes that increasing position limits and exercise limits for options on SPDRs would lead to a more liquid and competitive market environment for options on SPDRs that would benefit customers interested in this product.

Consistent with the reporting requirement for QQQ options, the Exchange would require that each member or member organization that maintains a position on the same side of the market, for its own account or for the account of a customer, report certain information.<sup>8</sup> This data would include, but would not be limited to, the option position, whether such position is hedged and if so, a description of the hedge and if applicable, the collateral used to carry the position. Exchange specialists and Registered Options Traders ("ROTs") would continue to be exempt from this reporting requirement as specialist and ROT information can be accessed through the Exchange's market surveillance systems. In addition, the general reporting requirement for customer accounts that maintain an aggregate position of 200 or more option contracts would remain at this level for options on SPDRs.<sup>9</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act,<sup>10</sup> in general, and furthers

the objectives of section 6(b)(5) of the Act,<sup>11</sup> in particular, in that it is designed to perfect the mechanisms of a free and open market and the national market system, promote just and equitable principles of trade and protect investors and the public interest.

### *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:

### *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-2005-05 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-2005-05. 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-2005-05 and should be submitted on or before February 22, 2005.

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

After careful review, 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>12</sup> and, in particular, the requirements of Section 6(b)(5) of the Act.<sup>13</sup> Specifically, the Commission finds that the proposed rule change should ensure that the Exchange's position limits and exercise limits on options on SPDRs provide its members and member organizations with sufficient flexibility to participate in the market for such options in a manner that should provide greater depth and liquidity for all market participants.

The Commission finds good cause for approving this proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. Specifically, the Commission believes that granting accelerated approval to the proposed rule change should permit greater depth and liquidity in the options on SPDRs market that should benefit all market participants, including retail investors. Because the higher position limits and exercise limits mirror those that the Commission has previously approved for like products, the Commission believes it is consistent with sections 6(b)(5)<sup>14</sup> and 19(b)(2)<sup>15</sup> of the Act to approve the Phlx's proposed rule change on an accelerated basis.

## V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-Phlx-2005-

<sup>6</sup> The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 SharesSM, Nasdaq-100 TrustSM, Nasdaq-100 Index Tracking StockSM, and QQQSM are trademarks or service marks of The Nasdaq Stock Market, Inc. ("Nasdaq") and have been licensed for use for certain purposes by the Phlx pursuant to a license agreement with Nasdaq. The Nasdaq-100 Index® ("Index") is determined, composed, and calculated by Nasdaq without regard to the licensee, the Nasdaq-100 TrustSM, or the beneficial owners of Nasdaq-100 SharesSM. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

<sup>7</sup> See Exchange Rule 1001.

<sup>8</sup> See Exchange Rule 1003.

<sup>9</sup> See Exchange Rule 1003.

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

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

<sup>12</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

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

<sup>16</sup> 15 U.S.C. 78s(b)(2).

05) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

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

[FR Doc. E5-353 Filed 1-28-05; 8:45 am]

**BILLING CODE 8010-01-P**

## DEPARTMENT OF STATE

[Public Notice 4982]

### Culturally Significant Objects Imported for Exhibition Determinations: "Degas Sculptures"

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Degas Sculptures", imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Milwaukee Art Museum, from on or about February 19, 2005, until on or about June 5, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Richard Lahne, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202-453-8058). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: January 21, 2005.

**C. Miller Crouch,**  
*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 05-1741 Filed 1-28-05; 8:45 am]

**BILLING CODE 4710-08-P**

## DEPARTMENT OF STATE

[Public Notice 4981]

### Culturally Significant Objects Imported for Exhibition Determinations: "Fra Angelico"

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Fra Angelico," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, NY from on or about October 25, 2005 to on or about January 29, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/453-8048). The address is Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: January 25, 2005.

**C. Miller Crouch,**  
*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 05-1742 Filed 1-28-05; 8:45 am]

**BILLING CODE 4710-08-P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Determination Regarding Waiver of Discriminatory Purchasing Requirements With Respect to Goods and Services Covered by Chapter 15 of the U.S.-Australia Free Trade Agreement

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Determination under Trade Agreements Act of 1979.

**EFFECTIVE DATE:** January 24, 2005.

**FOR FURTHER INFORMATION CONTACT:** Jean Heilman Grier, Senior Procurement Negotiator, Office of the United States Trade Representative, (202) 395-5097, or Melida Hodgson, Assistant General Counsel, Office of the United States Trade Representative, (202) 395-9512.

On May 18, 2004, the United States and Australia entered into the United States-Australia Free Trade Agreement ("the USAFTA"). Chapter 15 of the USAFTA sets forth certain obligations with respect to government procurement of goods and services, as specified in Annex 15-A of the USAFTA. On August 3, 2004, the President signed into law the United States-Australia Free Trade Agreement Implementation Act ("the USAFTA Act") (Pub. L. 108-286, 19 U.S.C. 3805 note). In section 101 of the USAFTA Act, the Congress approved the USAFTA and the statement of administrative action proposed to implement the USAFTA that the President submitted to Congress. The USAFTA entered into force on January 1, 2005.

Section 1-201 of Executive Order 12260 of December 31, 1980 (46 FR 1653) delegates the functions of the President under Sections 301 and 302 of the Trade Agreements Act of 1979 ("the Trade Agreements Act") (19 U.S.C. 2511, 2512) to the United States Trade Representative.

Now, therefore, I, Robert B. Zoellick, United States Trade Representative, in conformity with the provisions of Sections 301 and 302 of the Trade Agreements Act, and Executive Order 12260, and in order to carry out U.S. obligations under Chapter 15 of the USAFTA, do hereby determine that:

1. Australia is a country, which, pursuant to the USAFTA, will provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products. In accordance with section 301(b)(3) of the Trade Agreements Act, Australia is designated for purposes of section 301(a) of the Trade Agreements Act.

2. With respect to eligible products of Australia (*i.e.*, goods and services covered by the Schedules of the United States in Annex 15-A of the USAFTA) and suppliers of such products, the application of any law, procedure, or practice regarding government procurement that would, if applied to such products and suppliers, result in treatment less favorable than accorded—

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