

of the rules and OFPAs. Finally, these rules would also be amended to include the term "Market Surveillance officer" to conform to the current Exchange staff structure.

#### *Deployment of the Automated Opening System*

The Exchange will deploy the automated opening system on an issue-by-issue basis. The Exchange anticipates that at least 10 issues will be deployed on the system within four weeks from the date of approval of the rules relating to the system by the Commission, and that the system will be deployed for all options traded on the Exchange within twelve weeks of such approval.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>22</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>23</sup> 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 the national market system, and, in general, to protect investors and the public interest, by establishing rules for an automated opening system, thereby increasing the number of option orders handled electronically on the Exchange.

#### *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.<sup>24</sup>

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments were neither solicited nor 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 the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, 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, as amended, 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-2005-25 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-Phlx-2005-25. 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-2005-25 and should be submitted on or before October 13, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>25</sup>

**Jonathan G. Katz,**  
*Secretary.*

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#### **SMALL BUSINESS ADMINISTRATION**

##### **Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest**

Notice is hereby given that Harbert Mezzanine Partners SBIC II, L.P. ("Applicant"), One Riverchase Parkway South, Birmingham, AL 35244, an SBIC Applicant under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financials which Constitute Conflicts of Interest, of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2004)). Harbert Mezzanine Partners SBIC II, L.P. proposes to provide financing in the form of subordinated debt and Series B convertible preferred stock to Optical Experts Manufacturing, Inc. ("OEM"), 8500 Tyron Street, Charlotte, NC 28273. The proceeds will be used to finance the recapitalization of OEM.

This investment requires an exemption from the prohibitions in 13 CFR 107.730, Conflicts of Interest, because OEM is an Associate of the Applicant by virtue of the greater than 10 percent ownership interest held by Harbinger Mezzanine Partners, L.P. ("Harbinger").

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

**Jaime Guzman-Fournier,**

*Associate Administrator for Investment.*

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#### **SMALL BUSINESS ADMINISTRATION**

##### **Audit and Financial Management Advisory (AFMAC)**

##### **Committee Meeting**

The U.S. Small Business Administration's Audit and Financial

<sup>22</sup> 15 U.S.C. 78f(b).

<sup>23</sup> 15 U.S.C. 78f(b)(5).

<sup>24</sup> Telephone conversation between Richard S. Rudolph, Vice President and Counsel, Phlx, and Terri L. Evans, Special Counsel, Division, Commission on September 14, 2005 (clarifying Phlx's statement on burden on competition).

<sup>25</sup> 17 CFR 200.30-3(a)(12).