

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57528; File No. SR-Phlx-2008-18)

March 19, 2008

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Imposition of Fines for Minor Rule Plan Violations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 12, 2008, 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 Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

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

The Exchange proposes to adopt Phlx Options Floor Procedure Advice (“OFPA”) F-35, Violations of Exercise and Exercise Advice Rules for Noncash-Settled Equity Option Contracts, to add a summary fine schedule for Expiring Exercise Declaration or Contrary Exercise Advice violations regarding noncash settled equity options.³ The Exchange also proposes to modify Phlx Rule 970, Floor Practice Advices: Violations, Penalties, and Procedures,⁴ to increase the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ These declarations or advices indicate, among other things, whether at expiration the holder of an in-the-money noncash settled equity option intends to waive The Options Clearing Corporation’s (“OCC”) Exercise-by-Exception procedure or exercise the option. See Phlx Rule 1042.

⁴ Phlx Rule 970 sets forth the criteria for the imposition of fines (currently not to exceed \$2,500) on any member, member organization, or any partner, officer, director, or person

maximum permissible fine to \$5,000 for a violation of a Floor Procedure Advice. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.Phlx.com/exchange/phlx-rule-fil.htm>.

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 Exchange 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 (a) implement new OFPA F-35 to establish a fine schedule for contrary exercise advice violations, and (b) expand Phlx Rule 970 to allow fines not to exceed \$5,000, for the purpose of increasing and strengthening the sanctions imposed by the Exchange's Minor Rule Plan ("MRP"). The Exchange believes that establishing the specified fines with respect to individual members and member organizations with a 24-month rolling surveillance period should serve as an effective deterrent to such violative conduct. The Exchange also

employed by or associated with any member or member organization, for any violation of a Floor Procedure Advice, which violation the Exchange shall have determined is minor in nature (known as "Minor Rule Plan Fines"). The fines are imposed in lieu of commencing a "disciplinary proceeding" as that term is used in Phlx Rules 960.1-960.12. Such Minor Rule Plan Fines are subject to Rule 19d-1 under the Act. See Securities Exchange Act Release No. 45421 (February 7, 2002), 67 FR 6961 (February 14, 2002) (SR-Phlx-2001-114).

believes that failure to submit exercise instructions is the type of objective requirement that is easy and appropriate to administer.

In addition, the Exchange, as a member of the Intermarket Surveillance Group (“ISG”),⁵ as well as certain other self-regulatory organizations (“SROs”) executed and filed on October 29, 2007, with the Commission, a final version of an Agreement pursuant to Section 17(d) of the Act (the “17d-2 Agreement”).⁶ As set forth in the 17d-2 Agreement, the SROs have agreed that their respective rules concerning the filing of Expiring Exercise Declarations, also referred to as Contrary Exercise Advices, of options contracts, are common rules. As a result, the proposal to amend Phlx’s MRP will further result in consistency in sanctions among the SROs that are signatories to the 17d-2 Agreement concerning Contrary Exercise Advice violations.

2. Statutory Basis

The Exchange believes that this proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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.

⁵ ISG is a regulatory information-sharing organization comprised of all U.S. national securities exchanges and national securities associations, most U.S. futures exchanges, and certain non-U.S. exchanges and associations trading securities and related products.

⁶ See Letter to Richard Holley, Division of Market Regulation, Securities and Exchange Commission, from Nyieri Nazarian, Assistant General Counsel, American Stock Exchange, October 29, 2007.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

Specifically, the Exchange believes that the proposed rule change should strengthen its ability to carry out its oversight responsibilities as an SRO and reinforce its surveillance and enforcement functions. Additionally, the Exchange believes that the proposed rule change should promote consistency in minor rule violation fines and respective SRO reporting obligations as set forth pursuant to Rule 19d-1(c)(2) under the Act,⁹ which governs minor rule violation plans.

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 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 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form at <http://www.sec.gov/rules/sro.shtml>; or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-Phlx-2008-18 on the subject line.

Paper Comments:

⁹ 17 CFR 240.19d-1(c)(2).

- 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 No. SR-Phlx-2008-18. 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 at <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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. 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 available publicly. All submissions should refer to File No. SR-Phlx-2008-18 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

After careful consideration, the Commission finds that the Exchange’s proposed rule change is consistent with the requirements of the Section 6 of the Act,¹⁰ and the rules and

¹⁰ 15 U.S.C. 78f.

regulations thereunder applicable to a national securities exchange.¹¹ In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹² which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; 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.

The Commission further believes that Phlx's proposal to sanction individuals and member organizations who fail to submit Advice Cancel or exercise instructions in a timely manner is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,¹³ which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. In addition, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,¹⁴ which governs minor rule violation plans. The Commission believes that the proposed rule change should strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as an SRO in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

¹¹ In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78f(b)(1) and 78f(b)(6).

¹⁴ 17 CFR 240.19d-1(c)(2).

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with the Phlx's rules and all other rules subject to the imposition of fines under the MRP. The Commission believes that the violation of any SRO rules, as well as Commission rules, is a serious matter. However, the MRP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that the Phlx will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the Phlx MRP or whether a violation requires formal disciplinary action.

The Phlx has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice thereof in the Federal Register. The Commission hereby grants that request. The Phlx's proposal is substantially similar to those of other options exchanges, which previously have been approved by the Commission.¹⁵ The Commission does not believe that Phlx's proposal raises any novel regulatory issues, and no comments were received on any of these earlier proposals. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁶ for approving the proposed rule change prior to the thirtieth day after publication of the notice thereof in the Federal Register.

¹⁵ See, e.g., Securities Exchange Act Release No. 57314 (February 12, 2008), 73 FR 9377 (February 20, 2008) (SR-CBOE-2007-143).

¹⁶ 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act¹⁷ and Rule 19d-1(c)(2) under the Act,¹⁸ that the proposed rule change (SR-Phlx-2008-18), be, and hereby is, approved and declared effective on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Florence E. Harmon
Deputy Secretary

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 240.19d-1(c)(2).

¹⁹ 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(44).