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 will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–46 and should be submitted by August 7, 2003.

IV. Discussion

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.[17] In particular, the Commission finds that the proposed rule is consistent with the requirements of section 6(b)(5) of the Act [18] because it is designed to facilitate 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; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of the publication of notice thereof in the **Federal Register**, and for granting approval retroactively to June 5, 2003, the effective date of the Commission's extension of the ITS exemption. The Commission believes that by extending the Exchange's proposed exemption for its members, the Exchange removes the specialist's obligation to provide trade-through protection in situations where it will not be permitted to seek satisfaction through ITS from the primary market.

This obligation was one the Phlx assumed voluntarily in order to make its market more attractive to sources of order flow, not an obligation the Act imposes on a market. The Commission believes that the business decision to potentially forego order flow by no longer providing print protection is a judgment the Act allows the Phlx to make.[19]

[17] In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] The Commission notes that the Phlx's proposed rule change will remain in effect only until the expiration of the extension of Commission's ITS Exemption Order on March 4, 2004.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[20] that the proposed rule change (SR–Phlx–2003–46) is approved on an accelerated basis and is effective retroactively to June 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

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[20] 15 U.S.C. 78f(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48160; File No. SR–Phlx–2003–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Prohibition Against Specialists Accepting Discretionary Orders on the Limit Order Book

July 10, 2003.

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 13, 2003, 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, II, and III below, which Items have been prepared by the Exchange. On June 5, 2003, the Phlx filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The proposed rule change has been submitted in response to the Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the Act, Making Findings and Imposing Remedial Sanctions.[3] Specifically, the Phlx proposes to amend Option Floor Procedure Advice (''OFPA'') A–2, Types of Orders to be Accepted onto the Specialist's Book, to codify the prohibition against specialists accepting discretionary orders on the limit order book. The text of the proposed rule change is set forth below. Additions are italicized.

* * * * *

A–2 Types of Orders To Be Accepted onto the Specialist's Book

(i)–(iii) No change.

(iv) A Specialist shall not accept discretionary orders.

FINE SCHEDULE (Implemented on a Three-year Running Calendar Basis)

A–2

1st Occurrence—$250.00
2nd Occurrence—$500.00
3rd Occurrence—$1,000.00
4th Occurrence and Thereafter—Sanction is discretionary with Business Conduct Committee

* * * * *

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 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

Currently, OFPA A–2 sets forth the types of orders that a specialist must accept, and the types of orders a specialist may not accept onto the limit order book.[4] OFPA A–2 provides that a specialist may refuse to accept contingency orders,[5] except that a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43268 (September 11, 2000) (File No. 3–10282).

[4] The electronic ''limit order book'' is the Exchange's automated specialist limit order book, which automatically routes all unexecuted AUTOM orders to the book and displays orders real-time in order of price-time priority. Orders not delivered through AUTOM may also be entered onto the limit order book. *See* Phlx Rule 1080, Commentary .02.

[5] Phlx Rule 1066 (c) defines a contingency order as a limit or market order to buy or sell that is contingent upon a condition being satisfied while the order is at the post. The Rule lists the following types of contingency orders:

(i) Stop-Limit Order. A stop-limit order is a contingency order to buy or sell at a limited price when the market for a particular option contract reaches a specified price. A stop-limit order to buy becomes a limit order executable at the limit price or better when the option contract trades or ibid at specialist may only refuse to accept customer contingency orders with the prior approval of two Floor Officials. Specialists must accept all non-contingent limit orders tendered for placement on the limit order book.[6]

The purpose of the proposed rule change is to amend OFPA A–2 specifically to prohibit a specialist from accepting discretionary orders[7] on the limit order book. The Exchange believes that this clarifying provision is consistent with the Act, in that a specialist is responsible to effect transactions on behalf of the accounts of the persons that have placed limit orders on the limit order book when such limit orders become marketable.[8] The Exchange believes that this proposed provision should provide Exchange specialists with more specific guidance as to the types of orders that they may, and may not, accept onto the limit order book by codifying a prohibition contained in the Act into Phlx rules.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b)[9] of the Act in general, and section 6(b)(5)[10] in particular in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest by amending its rules to more closely track the provisions of the Act.

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

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 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. 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 will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to file number SR–Phlx–2003–15 and should be submitted by August 7, 2003.

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

Margaret H. McFarland,

Deputy Secretary.

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or above the stop-limit price, after the offer is represented in the trading crowd. A stop-limit order to sell becomes a limit order executable at the limit price or better when the option contract trades or is offered at or below the stop-limit price, after the order is represented in the trading crowd.

(ii) Stop (stop-loss) Order. A stop order is a contingency order to buy or sell when the market for a particular option contract reaches a specified price. A stop order to buy becomes a market order when the option contract trades or is bid at or above the stop price, after the order is represented in the trading crowd. A stop order to sell becomes a market order when the option contract trades or is offered at or below the stop price, after the order is represented in the trading crowd.

(iii) Multi-Part Order. A multi-part order is an order to buy and/or sell a stated number of foreign currency option contracts and a stated number of foreign currency future contracts. A multi-part order may be executed in accordance with the procedures outlined in Phlx Rule 1068.

(iv) Delta Order. A ''delta order'' is a contingency order that is dependent upon the amount an option's price changes in relation to a corresponding change of price in the underlying security.

(v) All-or-None Order. An all-or-none order is a market or limit order which is to be executed in its entirety or not at all.

(vi) Opening-Only-Market Order. An opening-only-market order is a market order which is to be executed in whole or in part during the opening rotation of an options series or not at all.

(vii) Market-on-Close Order. A market-on-close order is a market limit order to be executed as close as possible to the closing bell, or during the closing rotation and should be near to or at the closing price for the particular series.

(viii) Cancel-Replacement Order. A cancel-replacement order is a contingency order consisting of two or more parts which require the immediate cancellation of a previously received order prior to the replacement of a new order with new terms and conditions. If the previously placed order is already filled partially or in its entirety the replacement order is automatically canceled or reduced by such member.

[6] *See* Securities Exchange Act Release No. 34721 (September 26, 1994), 59 FR 50310 (October 23, 1994) (SR-Phlx-92–03) (Order approving amendments to OFPA A–2 permitting specialists to accept contingency orders and reflecting that Exchange specialists are not permitted to accept discretionary orders, including spread, straddle, and combination orders).

[7] Section 3(a)(35) of the Act provides that a person exercises ''investment discretion'' with respect to an account if, directly or indirectly, such person (A) is authorized to determine what securities or other property shall be purchased or sold or for the account, (B) makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions, or (C) otherwise exercises such influence with respect to the purchase and sale of securities or other property by or for the account as the Commission, by rule, determines, in the public interest or for the protection of investors, should be subject to the operation of the provisions of this title and the rules and regulations thereunder. 15 U.S.C. 78c(35).

[8] Section 11(a)(1) of the Act prohibits any member of a national securities exchange from effecting any transaction on such exchange for its own account, the account of an associated person, *or an account with respect to which it or an associated person thereof exercises investment discretion.* 15 U.S.C. 78k(a)(1) (emphasis added). The Act provides an exception from this prohibition for any transaction by a dealer acting in the capacity of market maker. 15 U.S.C 78k(a)(1)(A). Furthermore, Section 11(b) of the Act provides that it shall be unlawful for a specialist permitted to act as a broker and dealer to effect on the exchange as broker any transaction except upon a market or limited price order. 15 U.S.C. 78k(b). In this situation, once the limit order is placed on the limit order book, the specialist becomes a ''broker'' by definition, engaged in the business of effecting transactions in securities for the account of others, is not acting in the capacity of market maker, and therefore does not qualify for the market maker exception to the prohibition. 15 U.S.C. 78c(4)(A).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).