

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57134; File No. SR-Phlx-2005-68)

January 11, 2008

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Deletion of Rule 702, Carrying Accounts

I. Introduction

On November 9, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and 19b-4 thereunder,² a proposal to delete Phlx Rule 702. regarding Carrying Accounts. Phlx filed Amendment No. 1 to the proposed rule change on January 18, 2007. Notice of the proposal, as amended, was published for comment in the *Federal Register* on February 14, 2007.³ The Commission received no comments regarding the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The purpose of the proposed rule change to delete Rule 702, Carrying Accounts, is to eliminate an unnecessary and confusing Exchange rule. Currently, Rule 702 provides that "[n]o member, doing business as an individual, shall carry accounts for customers, except as provided in Rule 903."⁴

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Exchange Act Release No. 55256 (Feb. 8, 2007), 72 FR 7106 (Feb. 14, 2007).

⁴ The reference to Rule 903 is clearly an incorrect reference which should be to Rule 904, Use of a Partnership Name, which provides that "[n]o member shall conduct business under a partnership firm name unless he has at least one general partner, provided, however, that if by death or otherwise a member becomes the

Rule 702 is unnecessary because a Phlx member's ability to carry customer accounts is dictated by its ability to comply with relevant securities laws and regulations, including Exchange Act Rules 15c3-1 and 15c3-3, which do not make distinctions on the basis of a broker-dealer's organizational and corporate structure.

Rule 702 creates confusion because virtually all "members" are individuals. The term "member" (as opposed to "member organization") is defined in Exchange Rules as a permit holder which has not been terminated in accordance with the by-laws of the Exchange.⁵ Currently, the only issued and outstanding Exchange permits are Series A-1 Permits, the terms and conditions of which are governed by Rule 908. Among other things, section (b) of Rule 908 provides that a Series A-1 permit shall only be issued to an *individual*.⁶ Pursuant to Rule 908, all Series A-1 permit holders must maintain an affiliation with a "member organization," which are not subject to Rule 702.

sole general partner in a member organization that is a partnership he may continue business under the partnership name for such period as may be allowed by the Committee."

⁵ See Exchange By-Law Article I, Section 1(t) and Exchange Rule 1(n). Exchange By-Law Article XII, Section 1(b) provides in part that "[e]xcept as otherwise set forth in the rules of the Exchange or any resolution of the Board of Governors authorizing a specific class or series of permits, a permit will confer upon and subject the holder thereof to all the privileges and obligations of a member pursuant to these By-Laws and the rules of the Exchange, . . . and to conduct business on the Exchange as provided in these By-Laws and such rules."

⁶ Rule 908 does contain one exception, which is not relevant to this analysis, that provides that a Series A-1 Permit may also be issued to "a corporation meeting the requirements of Section 12-4 of the By-Laws." Section 12-4 of the By-Laws, Admission of Corporation, provides that "[a] corporation may be issued a permit by the Exchange, provided such corporation is incorporated under the laws of the Commonwealth of Pennsylvania, and all of its capital stock is owned by the Exchange." This By-Law provision was intended to permit Exchange membership for the Exchange's subsidiary, Stock Clearing Corporation of Philadelphia.

III. Discussion

The Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁷ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

The Commission believes it is reasonable and consistent with the Act for the Exchange to eliminate an unnecessary and confusing Exchange rule.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (File No. SR-Phlx-2005-68) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon
Deputy Secretary

⁷ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).