SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58454)

Order Granting Application for Exemption Pursuant to Section 36(a) of the Exchange Act
by the Philadelphia Stock Exchange, Inc. from the Rule Filing Requirements of Section
19(b) of the Exchange Act with Respect to Certain Rules Incorporated by Reference

September 3, 2008

I.   Introduction

On June 27, 2007,[1] the Philadelphia Stock Exchange, Inc., n/k/a NASDAQ OMX

PHLX, Inc., ("Phlx" or the "Exchange") filed with the Securities and Exchange

Commission ("Commission") pursuant to Rule 0-12[2] under the Securities Exchange Act

of 1934 ("Exchange Act") an application for an exemption under Section 36(a)(1) of the

Exchange Act[3] from the rule filing requirements of Section 19(b) of the Exchange Act[4]

with respect to certain margin rules of other self-regulatory organizations ("SROs") that

the Exchange seeks to incorporate by reference.

II.   Application for Section 36 Exemption from Section 19(b) Rule Filing
        Requirements for SRO Rules Incorporated by Reference

On August 11, 2008, the Commission approved a proposed rule change – SR-

Phlx-2007-33 – which, among other things, permits Phlx members to elect to be bound

by the margin rules of either the New York Stock Exchange LLC ("NYSE") or the

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[1]   See Letter from Edith H. Hallahan, Esq., Senior Vice President and Deputy
        General Counsel, Phlx, to Nancy M. Morris, Secretary, Commission, dated June
        26, 2007.

[2]   17 CFR 240.0-12.

[3]   15 U.S.C. 78mm(a)(1).

[4]   15 U.S.C. 78s(b).

Chicago Board Options Exchange, Incorporated ("CBOE").[5] More specifically, Phlx

amended its Rule 721 to state a member organization must elect to be bound by the initial

and maintenance margin requirements of either the NYSE or CBOE as the same may be

in effect and amended from time to time.[6] Phlx Rule 721 further states that upon the

filing of such election, a Phlx member shall be bound to comply with the margin rules of

the NYSE or CBOE, as applicable, as though said rules were part of Phlx's margin rules.

On June 26, 2007, Phlx submitted a formal request, pursuant to Rule 0-12 under the

Exchange Act,[7] seeking an exemption under Section 36 of the Exchange Act from the

rule filing procedures of Section 19(b) of the Exchange Act with respect to changes to the

margin rules of either the NYSE or CBOE.[8]

III.   Order Granting Section 36 Exemption

Section 36 of the Exchange Act[9] authorizes the Commission to conditionally or

unconditionally exempt any person, security, or transaction, or any class thereof, from

any provision of the Exchange Act or rule thereunder, if necessary or appropriate in the

public interest and consistent with the protection of investors. The Commission believes

that it is appropriate to issue exemptions, subject to the conditions described below, to

allow SROs to incorporate by reference the rules of other SROs without being subject to

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[5]   See Exchange Act Release 58340, 73 FR 48268 (August 18, 2008).

[6]   Exchange Act Release No. 58340 (August 11, 2008); see also Exchange Act
        Release No. 58045 (June 26, 2008), 73 FR 38487 (July 7, 2008) (SR-Phlx-2007-
        33).

[7]   See 17 CFR 240.0-12.

[8]   See Letter from Edith H. Hallahan, Esq., Senior Vice President and Deputy
        General Counsel, Phlx, to Nancy M. Morris, Secretary, Commission, dated June
        26, 2007.

[9]   15 U.S.C. 78mm.

the rule filing requirements of Section 19(b) of the Exchange Act whenever the SROs'

rules that are incorporated by reference change. Such exemptions promote efficient use

of Commission and SRO resources by avoiding duplicative rule filings based on

simultaneous changes to identical rule text sought by more than one SRO.

The Commission will consider granting requests for exemption, pursuant to

Section 36 of the Exchange Act, from the rule filing requirements imposed by Section

19(b) of the Exchange Act, provided that:[10]

(1) an SRO wishing to incorporate rules of another SRO by reference has

submitted a written request for an order exempting it from the requirement in

Section 19(b) of the Exchange Act to file proposed rule changes relating to the

rules incorporated by reference, has identified the applicable originating

SROs, together with the rules it wants to incorporate by reference, and

otherwise has complied with the procedural requirements set forth in the

Commission's release governing procedures for requesting exemptive orders

pursuant to Rule 0-12 under the Exchange Act;[11]

(2) an incorporating SRO has requested incorporation of categories of rules

(rather than individual rules within a category) that are not trading rules (e.g.,

the SRO has requested incorporation of rules such as margin, suitability,

arbitration); and

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[10]   Exchange Act Release No. 49260 (February 17, 2004), 69 FR 8500 (February 24, 2004).

[11]   See 17 CFR 240.0-12 and Exchange Act Release No. 39624 (February 5, 1998), 63 FR 8101 (February 18, 1998) (Commission Procedures for Filing Applications for Orders for Exemptive Relief Pursuant to Section 36 of the Exchange Act; Final Rule).

(3) the incorporating SRO has reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO.

The Commission believes that it is appropriate to issue an exemption, subject to the conditions described above, to allow Phlx to incorporate by reference the margin rules of the NYSE or CBOE (by allowing its members to elect to be bound by the margin rules of either the NYSE or CBOE), without being subject to the rule filing requirements of Section 19(b) of the Exchange Act whenever the SRO's margin rules that are incorporated by reference change. The Commission believes that this exemption will promote more efficient use of Commission and Phlx resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO. The Commission notes in granting this exemption, that Phlx by incorporating by reference another SRO's margin rules would agree to be governed by the incorporated rules, as amended from time to time, but not be required to file a separate proposed rule change with the Commission each time either the NYSE or CBOE seeks to modify its margin rules.

Phlx is requesting to incorporate by reference the whole category of the NYSE and CBOE margin rules (i.e., did not "cherry-pick" certain individual rules within a category), which are regulatory rules and not trading rules. The Commission also has previously approved the incorporation by reference of the NYSE and CBOE margin rules for the International Securities Exchange and the Boston Options Exchange.[12] The

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[12] Exchange Act Release No. 49260 (February 17, 2004), 69 FR 8500 (February 24, 2004).

Commission notes that the Exchange previously requested, and the Commission granted, a request by Phlx to incorporate by reference, the NASD Code of Arbitration Procedure, subject to certain conditions.[13] Consistent with the conditions attendant to its prior exemptive request, the Exchange has agreed to continue to provide written notice to its members whenever the NYSE or CBOE proposes a change to its margin rules.[14] This procedure will provide Phlx members with notice of a proposed rule change that affects their interests, so that they would have the opportunity to comment on it.

For the reasons discussed above, the Commission finds that the exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

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[13] See Exchange Act Release No. 49260 (February 17, 2004), 69 FR 8500 (February 24, 2004).

[14] See supra note 1.

Accordingly, IT IS ORDERED, pursuant to Section 36 of the Exchange Act,[15] that Phlx, with respect to the margin rules of the NYSE and CBOE that Phlx proposes to incorporate by reference as specified above, and subject to the conditions described above, shall be exempt from rule filing requirements of Section 19(b) of the Exchange Act to the extent that Section 19(b) would otherwise require submission of a proposed rule change filing with the Commission.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon
Acting Secretary

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[15]   15 U.S.C. 78mm.

[16]   17 CFR 200.30-3(a)(76).