

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58045; File No. SR-Phlx-2007-33)

June 26, 2008

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment Nos. 1 thereto and 2, Relating to Margining

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹, and Rule 19b-4² thereunder, notice is hereby given that on April 5, 2007, 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 substantially prepared by Phlx. On July 31, 2007, Phlx filed Amendment No. 1 to the proposed rule change. On May 19, 2008, Phlx filed Amendment No. 2 to the proposed rule change.³ 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 Phlx proposes to amend its rules to streamline and make more efficient its margin rules and procedures by: (1) adding a new section to Rule 721 (Proper and Adequate Margin) requiring each member to indicate in writing to the Exchange that such member shall be bound by the initial and maintenance margin requirements of either the Chicago Board Options Exchange (“CBOE”) or New York Stock Exchange

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 2 replaced and superseded the original filing and Amendment No. 1 in their entirety.

(“NYSE”); and (2) eliminating Rules 724 (Guaranteed Accounts) and 725 (Daily Record of Required Margin). The Exchange also proposes to significantly shorten Rules 723 (Day Trading and Prohibition on Free-Riding in Cash Accounts) and 722 (Margin Accounts) to eliminate redundant language while retaining those margin requirements that are unique to current Exchange margin rules.

The text of the proposed rule change is available on the Exchange’s website at Phlx’s principal office, the Commission’s public reference room and, <http://www.phlx.com>.

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 Phlx 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 purpose of the proposed rule change is to streamline Phlx margin rules by requiring member organizations to elect in writing that they shall follow the margin rules of CBOE or NYSE, which should eliminate unnecessary or duplicative margin requirements. At the same time, the Exchange proposes to retain those margin provisions that are unique to current Exchange margin rules, particularly those pertaining to foreign

currency options, which only trade on Phlx. The proposal will also make portfolio margining available to Exchange members.⁴

The Exchange's current margin requirements are embodied in its Rules 721 through 725, with the bulk of them in Rule 722. The proposal would require member organizations to elect, via written notice to the Exchange, to use and follow the margin rules of either CBOE or NYSE as they are in effect from time to time (known as the "elected margin rules"). This would allow the Exchange to drastically reduce the length of Rule 722 while retaining those margin concepts that are not covered by the elected margin rules, such as Miscellaneous Securities options,⁵ currency pairs, and free-riding. Rule 722 as amended would specifically require that once an Exchange member organization elects to follow the margin rules of either CBOE or NYSE, it shall be bound to comply with such elected margin rules, as applicable, as though they were part of the Exchange's margin rules.

The election of appropriate margin rules enables the Exchange to eliminate Rules 724 and 725 because the topics of those rules - guaranteed accounts and daily record of required margin, respectively - are covered in the elected margin rules and retention of 724 and 725 would therefore be duplicative.⁶ The Exchange likewise proposes to shorten

⁴ The Exchange believes that the portfolio margin rules noted herein most likely will be used by Phlx clearing firm members for which the Exchange is not the designated examining authority (DEA). The Phlx does not, at this time, intend to approve member firms for which it is the DEA to engage in portfolio margining.

⁵ Miscellaneous Securities include cross rate currencies and cash index participations as defined in proposed Rule 722.

⁶ See CBOE Rules 12.4 and 12.12, and NYSE Rules 431 and 432. With the creation of the Financial Industry Regulatory Authority ("FINRA") through the consolidation of NASD and the member regulation, enforcement and arbitration

Rule 723 by retaining the unique prohibition on free-riding while eliminating the duplicative day-trading margin language. The language proposed to be deleted duplicates similar provisions in CBOE Rule 12.3 and NYSE Rule 431.

The elected margin rules contain the portfolio margin pilot programs that were initiated by CBOE and NYSE in 2005 and are currently codified in their margin rules (the “Pilots”).⁷ As stated above, the Exchange believes that the portfolio margin rules noted herein most likely will be used by Phlx clearing firm members for which the Exchange is not the designated examining authority (“DEA”).

Whereas current Phlx Rule 722 requires that margin must be calculated using fixed percentages, on a position-by-position basis, the Pilots permit a broker-dealer to calculate customer margin requirements by grouping all eligible products in an account(s) based on the same index or issuer into a single portfolio. Products eligible for margining according to the portfolio margining methodology of the Pilots include listed, broad-based, and market index options, index warrants, futures, futures options and related exchange-traded funds. The Pilots were subsequently extended and modified by

operations of the NYSE, NYSE Rules 431 and 432 are now part of the FINRA rulebook which currently consists of both NASD Rules and certain NYSE Rules that FINRA has incorporated (Incorporated NYSE Rules). See <http://www.finra.org/RulesRegulation/FINRARules/index.htm>.

⁷ See Exchange Act Release Nos. 52032 (July 14, 2005), 70 FR 42118 (July 21, 2005)(SR-CBOE-2002-03); and 52031 (July 14, 2005), 70 FR 42130 (July 21, 2005)(SR-NYSE-2002-19). The Exchange notes that the OCC has amended its rules and by-laws to accommodate the Pilots. See, e.g., for example, Exchange Act Release No. 52030 (July 14, 2005), 70 FR 42405 (July 22, 2005)(SR-OCC-2003-04)(establishes new OCC “customers’ lien account” for customers of clearing members that are margined on a portfolio risk basis or pursuant to a cross-margining arrangement in accordance with exchange rules). See also *infra* note 8.

expanding the scope of products eligible for portfolio margining to include margin equity securities, unlisted derivatives, listed options and securities futures.⁸

This proposal to incorporate CBOE or NYSE margin rules is similar to the approach used by the International Securities Exchange (“ISE”) and the Boston Options Exchange (“BOX”) requiring their members to elect and follow CBOE or NYSE margin rules and incorporating such rules by reference into their own rules.⁹ The Exchange believes that the proposal to have its members elect appropriate CBOE or NYSE margin rules, in conjunction with retaining the needed portions of the Exchange’s current margin rules, should enable it to maximize and maintain its competitive position among options exchanges to the benefit of investors.

⁸ See Exchange Act Release Nos. 56107 (July 19, 2007), 72 FR 41377 (July 27, 2007)(SR-NYSE-2007-56); 56109 (July 19, 2007), 72 FR 41365 (July 27, 2007)(SR-CBOE-2007-75); and 56108 (July 19, 2007), 72 FR 41375 (July 27, 2007)(SR-NASD-2007-045) (orders extending the Pilots until July 31, 2008). See also Exchange Act Release No. 54918 (December 12, 2006), 71 FR 75790 (December 18, 2006)(SR-NYSE-2006-13); Exchange Act Release No. 54919 (December 12, 2006), 71 FR 75781 (December 18, 2006)(SR-CBOE 2006-14); and Exchange Act Release No. 54125 (July 11, 2006), 71 FR 40766 (July 18, 2006)(SR-NYSE-2005-93) (orders expanding the scope of products eligible for portfolio margining). The Exchange could have adopted the Pilots and relevant updates piecemeal but instead has determined to incorporate them by adopting the margin rules of CBOE and NYSE as described herein.

⁹ See Exchange Act Release Nos. 48355 (August 22, 2003), 68 FR 50813 (August 22, 2003)(SR-BSE-2002-15); and 49260 (February 14, 2004), 69 FR 8500 (February 24, 2004)(approval, among other things, of ISE rule incorporating CBOE and NYSE margin rules). The Exchange has, under separate cover, submitted a letter seeking an exemption under Section 36 of the Act from the rule filing procedures of Section 19(b) of the Act with respect to changes to the proposed incorporated CBOE and NYSE margin rules going forward. See generally Exchange Act Release No. 49260.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act¹¹ 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 a national market system, and, in general to protect investors and the public interest, by streamlining its margin rules commensurate with industry practice.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, 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 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

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

(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. Please include File Number SR-Phlx-2007-33 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2007-33. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such 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-2007-33 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon
Acting Secretary

¹² 17 CFR 200.30-3(a)(12).