

[Release No. 34-35302; File No. SR-Phlx-94-77]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Philadelphia Stock Exchange, Inc. Relating to the Imposition of an Approved Lessor's Initiation Fee and a Requirement That Approved Lessors Pledge to Abide by the By-Laws and Rules

January 31, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 11, 1995, 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 self-regulatory organization. On January 26, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change, which is also described below.¹ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its By-Laws, Article XII, Section 12-8 by adding a new paragraph (e), which would impose an approved lessor's initiation fee of \$1,500.00 and a requirement that approved lessors pledge to abide by the Phlx By-Laws and Rules. The text of the proposed rule change is as follows [new text is italicized; deleted text is bracketed]:

By-Laws Article XII, Section 12-8(e)

An initiation fee of one thousand five hundred dollars shall be paid to the Corporation by a person or entity upon registration as an approved lessor. Additionally, no registration as an approved lessor shall become effective or entitle such person or entity to the privileges thereof, until such person or a designated representative of such entity has pledged to abide by the By-Laws as they have or shall from time to time amended, and by all rules and regulations adopted pursuant to the By-Laws.

The Exchange also submits a proposed rule change amending the

¹ See letter from Murray L. Ross, Secretary, Phlx, to Sharon Lawson, Assistant Director, SEC, dated January 26, 1995. Amendment No. 1 proposes to amend the Schedule of Fees and Charges to reflect the imposition of an approved lessor's initiation fee.

Schedule of Fees and Charges to conform to the change in the By-Laws with respect to the initiation fee. The text of the proposed rule change is as follows [new text is italicized; deleted text is bracketed]:

Initiation Fee:

The Phlx requires an initiation fee of \$1,500 to be paid by a new member, [or] participant *or an approved lessor*. A lapse in membership or participation for six months or more will necessitate the payment of the initiation fee subsequent to reapplication.²

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 self-regulatory organization 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 self-regulatory organization 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 proposed amendment to Article XII, Section 12-8 of the Exchange's By-Laws would add a new paragraph (e) imposing an approved lessor's³ initiation fee of \$1,500.00 and a requirement that approved lessors pledge to abide by the By-Laws and Rules of the Exchange. The Exchange is also amending the Schedule of Fees and Charges to conform to the change in the By-Laws with respect to the initiation fee. The Exchange will require that an approved lessor pay the initiation fee upon registration.

The Board of Governors undertook the amendment to the By-Laws to codify the practice of having approved lessors pledge to abide by the By-Laws and

² Appendix A of the Schedule of Fees and Charges has also been amended to indicate that the initiation fee will be imposed on "Members, Participants and Approved Lessors."

³ The term "approved lessor" means a lessor approved by the Exchange under its By-Laws and Rules. See *Philadelphia Stock Exchange Guide*, By-Laws, Article I, Section 1-1(h), (CCH) ¶ 1001. A "lessor" is a holder of equitable title to a membership in the Exchange, including a former member of the Exchange, who has leased legal title to his membership to a lessee and has retained equitable title to such membership. See *Philadelphia Stock Exchange Guide*, By-Laws, Article I, Section 1-1(f), (CCH) ¶ 1001.

Rules of the Exchange.⁴ The proposed fee amendments to the By-Laws and the Schedule of Fees and Charges are intended to equalize the treatment of new purchasers of equitable title to Phlx memberships and foreign currency options participations.⁵

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees, and other charges amongst its members and other persons using its facilities.

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

With respect to the proposed By-Laws change, the Exchange solicited comments from its memberships by Circular 94-109, dated July 21, 1994. After receiving no written comments on this matter, the Exchange's Board of Governors approved the amendment to the By-Laws for submission to the Commission.

No written comments were solicited or received with respect to the fee change in the Schedule of Fees and Charges.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other 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 self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

⁴ The By-Laws already impose this requirement on members. See *Philadelphia Stock Exchange Guide*, By-Laws, Article XII, Section 12-9, (CCH) ¶ 1284.

⁵ The Exchange does not require members who lease their memberships to a lessee to register as "approved lessors." Accordingly, the proposed rule change would not impose an additional initiation fee on such members. Conversation with Murray L. Ross, Secretary, Phlx, and Jennifer Choi, Attorney, SEC, dated January 19, 1995.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Phlx-94-77 and should be submitted by February 28, 1995.

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

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35306; File No. SR-Phlx-94-23]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Inter-Currency Spread Priority

January 31, 1995.

On August 1, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to allow spread priority for eligible spreads between two different foreign currency options ("FCOs").

Notice of the proposed rule change was published for comment and appeared in the **Federal Register** on December 7, 1994.³ No comments were

received on the proposal. This order approves the proposal.

I. Description of the Proposal

The purpose of this proposal is to amend the current definition of spread order contained in Rule 1066(f)(1) to include transactions involving options in two different foreign currencies ("inter-currency spread") and to extend the spread priority principles to inter-currency spread orders.

Rule 1066(f)(1) currently defines a spread as an order to buy a stated number of option contracts and to sell the same number of option contracts, in a different series of the same class of options. The Exchange proposes to extend this definition by adopting Rule 1066(f)(1)(A), Inter-Currency Spread Order, as a subcategory of spread order.⁴ Furthermore, the Exchange proposes to adopt Rule 1033(i), Inter-Currency Spread Priority, in order to extend the current spread priority principles to inter-currency spreads. As a result, an inter-currency spread involving any two FCOs, American-⁵ or European-style⁶ expiration, and any expiration date (regular, month-end, or long-term) will not be eligible for spread priority treatment, as described below. Inter-currency spread priority pursuant to the proposed rule change would not, however, be available for cross-rate, cash/spot, or the Exchange's customized FCOs.

Inter-currency spreads are currently executed as contingency orders pursuant to Phlx Rule 1066. For example, an FCO floor broker would quote a French franc market as well as a Swiss franc market, in each respective trading crowd; then, the floor broker would announce "99 bid for 99 Sep 99 French franc calls if I can sell 99 Dec 99 Swiss franc puts at 99." However, each component of the spread must be bid/offered individually, which, according to the Exchange, generally means that each component is executed at a price better than the established bid/offer. In addition, the Exchange believes that because each leg must be executed between the established market, such contingency orders are more likely to be broken up by market interest in one leg,

⁴ Proposed Phlx Rule 1066(f)(1)(A) defines Inter-Currency Spread Order in the following manner: In the case of foreign currency options, a spread order may consist of an order to buy a stated number of option contracts in one foreign currency and to sell the same number of option contracts in a different foreign currency option.

⁵ An American-style option is one that can be exercised at any time prior to expiration of the option.

⁶ A European-style option is one that can only be exercised during a specified period immediately prior to expiration of the option.

such that the end result may be a different number of contracts for each leg.

The Phlx's current priority rule, Rule 1033(d), allows a spread order (which includes a spread involving only one foreign currency) to be executed as a single transaction at a total net debit or credit with one contra-side. Furthermore, an eligible spread can be afforded priority as long as the net credit/debit improves the established market for the spread, provided, however, that at least one option leg is executed at a better price than the established market for that option and no option leg is executed outside of the established market for that option. The same principles apply to three-way, ratio, and multi-spread transactions in foreign currency.⁷

The Exchange believes that extending priority treatment to inter-currency spreads is appropriate for several reasons. First, the Exchange believes that spread priority for inter-currency spreads will facilitate a more simplified procedure for the execution of such orders. In this context, Phlx notes that the execution of inter-currency spreads as contingency orders may present a logistical problem given that floor brokers must, in exercising due diligence, shuttle between two trading crowds or, to prevent a trade from occurring while the floor broker is in the second crowd, utilize two floor brokers to execute such an order. Second, inter-currency spreads provide a trading strategy for FCO market participants based on the interplay between the currencies of two countries, similar to the advantages and opportunities associated with cross-rate FCOs.⁸ The Exchange believes that the availability of such strategies should enhance liquidity in existing FCOs. Finally, the Exchange believes that the requirement in proposed Phlx Rule 1033(i) that each leg of an inter-currency spread be executed at or within the market for the individual leg, and that at least one leg be executed at a price which improves the established market, will benefit investors. The Exchange states that this requirement is also consistent with Phlx Rule 118 which provides that when a bid/offer is clearly established, no bid/offer outside that price shall be established.

⁷ See Securities Exchange Act Release No. 34015 (November 29, 1994).

⁸ A cross-rate currency option is an option to purchase or sell a foreign currency at an exercise price that is denominated in another foreign currency. The exercise price, therefore, represents an exchange rate between two foreign currencies.

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1992).

³ See Securities Exchange Act Release No. 35023 (November 29, 1994), 59 FR 63149.