

The Internal Revenue Service (“IRS”) reviewed this issue and proposed rulemaking that would not require that strike prices established by equity options with flexible terms be taken into account in determining whether standard term equity options are too deep in the money to receive qualified covered call treatment.⁴ The IRS approved this proposal on January 25, 2000.⁵ The effect of the IRS rulemaking and the Exchange’s proposed withdrawal of the limitation on the exercise price of Equity FLEX call options is that certain taxpayers, particularly institutional and other large investors, can engage in transactions in Equity FLEX call options with a wider range of exercise prices (as was originally intended) without affecting the applicability of Section 1092 of the Internal Revenue Code for qualified covered call options involving equity options with standard terms.

The Exchange believes that the proposed rule change, by eliminating a restriction on Equity FLEX call options which has restricted their usefulness as a risk managing mechanism, will remove impediments to and perfect the mechanism of a free and open market in FLEX Equity Options, and thus is consistent with the objectives of Section 6(b)(5)⁶ of the Act.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5)⁷ of the Act in that it is designed to remove impediments to a free and open market and to protect investors and the public interest.

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

The CBOE does not believe that the proposed rule change will impose any 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 solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is

consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. 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 CBOE. All submissions should refer to File No. SR-CBOE-99-63 and should be submitted by February 28, 2000.

IV. Commission’s Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposal is consistent with the requirements of the Act.⁸ In particular, the Commission finds the proposal is consistent with Section 6(b)(5)⁹ of the Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to remove impediments to a free and open market and to protect investors and the public interest.

The Commission believes that the proposal allows sophisticated, high net-worth investors to take full advantage of FLEX options. In part, FLEX options were created to allow investors to manage their risks by having the ability to negotiate strike prices, contract terms for exercise style (*i.e.*, American, European, or capped), and expiration dates. However, because of the potential adverse tax effect on qualified covered calls, the Exchange limited FLEX call strike prices to those available for standardized equity calls. Now that the tax issue has been clarified, this limitation is being removed. With the removal of this limitation, the Commission believes that sophisticated, high net-worth investors will better be able to take advantage of the risk-management mechanisms provided by FLEX options.¹⁰

⁸ In addition, pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ The Commission expects that the Options Disclosure Document (“ODD”) will promptly be amended to reflect the removal of the risk strike

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. A virtually identical proposal, SR-CBOE-98-39, was published in the **Federal Register** for the full 21-day comment period and the Commission received no public comment.¹¹ CBOE later withdrew SR-CBOE-98-39 because the IRS had not yet acted on its proposed rulemaking. The current proposal mirrors the changes that were originally proposed in SR-CBOE-98-39. In addition, the proposal allows FLEX options to be used as they were originally intended to be used, and therefore raises no new regulatory issues. The Commission believes, therefore, that granting accelerated approval to the proposed rule change is appropriate and consistent with Section 6 of the Act.¹²

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-CBOE-98-39) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 00-2606 Filed 2-4-00; 8:45 am]
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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42365; File No. SR-Phlx-99-46]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Registration of Trading Floor Personnel

January 28, 2000.

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 November 19, 1999, the Philadelphia Stock Exchange, Inc. (“Phlx” or “Exchange”)

price limitation for FLEX equity call options. See October 1996 Supplement to the ODD. Telephone call between Timothy Thompson, Director, Regulatory Affairs, CBOE, and Katherine A. England, Assistant Director, Division of Market Regulation, Commission, on January 31, 2000.

¹ See Release No. 34-40584 (October 21, 1998), 63 FR 58080 (October 29, 1998) (notice of filing of SR-CBOE-98-39.)

² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12)

¹⁵ 15 U.S.C. 78s(b)(1).

¹⁷ 17 CFR 240.19b-4.

⁴ Department of the Treasury, IRS REG-104641-97, 63 FR 34616 (June 25, 1998).

⁵ Department of the Treasury, IRS REG-104641-97, 65 FR 3812 (January 25, 2000).

⁶ 15 U.S.C. 78f(b)(5).

⁷ *Id.*

filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 Phlx proposes to adopt new Phlx Rule 620, Trading Floor Registration. The proposed rule requires that all trading floor personnel be registered with the Exchange; trading floor personnel successfully complete specified examinations,³ and all member/participant organizations notify the Exchange of any change in the status of such personnel. The Exchange also is proposing to amend Regulation 7(b), Required Filing for Floor Member Firm Employee Status Notices with the Exchange, to include members, non-members and clerks to be consistent with the test of new Phlx Rules 620.⁴ Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Rule 620. Trading Floor Registration

(a) *Trading Floor Member*
Registration—Registered Options Trader on any Exchange trading floor must register as such with the Exchange by completing the appropriate form(s) (with period updates submitted by the firm, as determined by the Exchange) and successfully complete the appropriate floor trading examination(s), if prescribed by the Exchange, in addition to requirements imposed by other Exchange rules. The Exchange may also require periodic examinations due to changes in trading rules, products or automated systems. Following the termination of, or the initiation of a change in the trading

³ The Phlx's current practice is to administer an examination to specialists, market makers and other floor trading personnel before giving them access to the trading floor. This examination, developed by the Phlx, is undergoing conversion from a paper test to a computer-generated test of 100 random questions covering Phlx trading rules. Although the Phlx does not currently administer an examination to clerks and other "non-member" floor personnel, the Phlx will explore the feasibility of such a test during the current year. Telephone conversion among Adrienne Hart, First Vice President, Regulatory Group, Cynthia Hoekstra, Counsel, Phlx, and Joseph Morra and Geoffrey Pemble, Attorneys, Division of Market Regulations, SEC, December 10, 1999.

⁴ Regulation 7 was enacted pursuant to Phlx Rule 60, Assessments for Breach of Regulations. See Securities Exchange Act Release No. 27629 (January 16, 1990), 55 FR 2469 (Jan. 24, 1990) (File No. SR-Phlx-90-1).

status of any such members/participant who has been issued an Exchange access card and a trading floor badge, the appropriate Exchange form must be completed, approved and dated by a firm principal, officer, or member of the firm with authority to do so, and submitted to the appropriate Exchange department as soon as possible, but no later than 9:30 A.M. the next business day by the member/participant organization employer. Every effort should be made to obtain the person's access card and trading floor badge and to submit these to the appropriate Exchange department.

(b) Non-member/Clerk Registration—All trading floor personnel, including clerks, interns, stock execution clerks and any other associated person, of member/participant organizations not required to register pursuant to Rule 620(a) must register as such with the Exchange by completing the appropriate form(s) for non-registered persons (with periodic updates submitted by the firm, as determined by the Exchange). Further, the Exchange may require successful completion of an examination, in addition to requirements imposed by other Exchange rules. The Exchange may also require periodic examinations due to changes in trading rules, products or automated systems. Following the termination of, or the initiation of a change in the status of any such personnel of a member/participant organization who has been issued an Exchange access card and a trading floor badge, the appropriate Exchange form must be completed, approved and dated by a firm principal, officer, or member of the firm with authority to do so, and submitted to the appropriate Exchange department as soon as possible, but no later than 9:30 A.M. the next business day by the member/participant organization employer. Every effort should be made to obtain the person's access card and trading floor badge and to submit these to the appropriate Exchange department.

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Regulation 7

(a) No Change
 (b) Required Filing for Floor Member Firm Employee Status Notices with the Exchange

Following the termination of, or the initiation of a change in the trading status of any member/participant or any non-member/clerk and trading floor personnel including clerks, interns, stock execution clerks and any other associated person, of member/participant organizations [employee of a member/participant firm] who have

been issued an Exchange access card and trading floor badge, the appropriate Exchange form must be completed, approved and dated by a firm principal, officer, or member of the firm with authority to do so, and [a completed "Status Notice" must be submitted to the appropriate Exchange Department [Director of Regulatory Services of the exchange] as soon as possible, but no later than 9:30 A.M. the next business day by the member/participant organization employer. Further, every effort should be made to obtain the employee's access card and trading floor badge and to submit these to the appropriate Exchange Department [Security Department].

1st Occurrence	\$100.00
2nd Occurrence	\$200.00
3rd Occurrence	Sanction is discretionary with the Business Conduct Committee.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with Commission, the Exchange 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 III 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

The proposed rule change requires, in a single Exchange rule, all floor personnel to be registered with the Exchange and all member/participant organizations to notify the Exchange of any change in the status of such personnel. The Phlx believes that this will enable the Exchange to more efficiently monitor individuals on the Exchange's trading floors, as well as their current status.

Currently, Regulation 7(b) governs the termination of, or the initiation of change in the trading status of, an employee of a member/participant firm who has been issued an exchange access card and trading floor badge. New Phlx Rule 620 codifies Regulation 7(b) into a more comprehensive Exchange Rule. Phlx Rule 620(a) sets forth a comprehensive rule that addresses registration, examinations, termination

and change in status of trading floor members, which includes floor brokers, specialists, and market makers, including Registered Options Traders on any Exchange trading floor. Phlx Rule 620(b) addresses non-member/clerk registration of all trading floor personnel, including clerks, interns, stock execution clerks and any other associated persons of member/participant organizations who are not required to be registered pursuant to Phlx Rule 620(a).⁵

The exchange believes that the proposal to require all floor personnel to be registered with the Exchange and to require all member/participant organizations to notify the exchange of any change in the status of such personnel is consistent with Section 6 of the Act,⁶ in general, and with Sections 6(b)(5)⁷ and 6(c)(3)(B),⁸ in particular. Specifically, new Phlx Rule 620 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 ensuring that all trading floor personnel are properly registered and, thus, monitored. In addition, Section 6(c)(3)(B)⁹ provides that a national securities exchange may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the Exchange and require any person associated with a member, or any class of such persons, to be registered with the Exchange in accordance with procedures so established.

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

The Exchange does not believe that the proposed rule will impose any inappropriate burden on competition.

⁵ The Exchange presently requires the completion of forms and procedures for registering new floor members pursuant to various Phlx Rules, including Rule 202, Registrant (Specialists); Rule 214, Violations of Rules (Specialists); Rule 604, Registration and Termination of Registered Person; Rule 623, Fingerprinting; Rule 1020, Registration and Functions of Options Specialists; Rule 1014, Obligations and Restrictions Applicable to Specialists and Registered Options Traders; and Rule 1061, Registration of Floor Brokers.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78f(c)(3)(B).

⁹ *Id.*

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 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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 20540-0609. 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 at the Commission's Public Reference Room. 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-99-46 and should be submitted by February 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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¹⁰ 17 CFR 200.30-3(a)(12).

OFFICE OF SPECIAL COUNSEL

Appointment of Member to Agency Performance Review Board

AGENCY: Office of Special Counsel (OSC).

ACTION: Notice.

Authority: 5 U.S.C. § 4314(c)(4).P='04'≤

SUMMARY: This notice announces the appointment of the following individual to serve as a new member of the Performance Review Board previously established by the OSC pursuant to 5 U.S.C. 4314(c)(2): Steven J. Mandel, Associate Solicitor, Fair Labor Standards Division, Office of the Solicitor, U.S. Department of Labor.

FOR FURTHER INFORMATION, CONTACT: M. Marie Glover, Director of Personnel, Management Division, U.S. Office of Special Counsel, 1730 M Street, NW, Washington, DC 20036-4505, telephone (202) 653-8964.

Dated: February 1, 2000.

Elaine Kaplan,
Special Counsel.

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DEPARTMENT OF STATE

[Public Notice 3217]

Culturally Significant Objects Imported for Exhibition Determinations: "The Renaissance Portrait in Northern Italy: The Art of Giovanni Battista Moroni"

AGENCY: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "The Renaissance Portrait in Northern Italy: The Art of Giovanni Battista Moroni," imported from abroad for temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Kimbell Art Museum, Fort Worth, Texas, from on or about