

year, a Nominating Committee of nine persons, one of whom shall be nominated as Chair and one of whom shall be nominated as Vice Chair who are eligible for election in accordance with Section 4(b) of this Article III, none of whom shall be an officer of the Exchange. The Nominating Committee shall assume duties as provided in Section 4(d) of this Article III." Section 4(b) provides: "The nine members of the Nominating Committee eligible to be elected at each annual meeting shall be as follows: At least one Committee member shall be a representative of the public. At least seven Committee members shall be members or office members or office allied members, Equity Trading Permit Holders, Equity ASAP Holders or Allied Persons of an ETP firm or an Equity ASAP Holder." Therefore, eligible PCX governors are not restricted from serving on the Committee. The Constitution also permits a public Governor to serve as a representative of the public.

Permitting Governors to serve on the Committee is consistent with the PCX Constitutional language, and the basic composition is not affected. There must always be at least one public representative on the Committee, and there may be up to two. The Exchange maintains the flexibility it needs to meet its obligation to have a fair representation of Exchange members. Therefore, the Exchange submits this clarification to its interpretation of Article III, Section 4(b) of the PCX Constitution to eliminate the restriction that only public Governors may serve on the Committee.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>6</sup> in particular, in that it is designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Exchange also believes that the proposed rule change, as amended, furthers the objectives of Section 6(b)(3) of the Act,<sup>7</sup> in that it is designed to assure a fair representation of Exchange members in the selection of the Exchange's Governors.

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

The Exchange does not believe that the proposed rule change 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*

Written comments on the proposed rule change were neither solicited nor received.

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

The proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A)(i) of the Act<sup>8</sup> and subparagraph (f)(1) of Rule 19b-4 thereunder<sup>9</sup> because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of such proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### **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, 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 Section. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-2001-28 and should be submitted by October 16, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 01-23837 Filed 9-24-01; 8:45 am]

BILLING CODE 8010-01-M

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44809; File No. SR-Phlx-2001-38]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, by the Philadelphia Stock Exchange, Inc., Relating to the Definition of a Controlled Account**

September 18, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 12, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") 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. On August 16, 2001, the Exchange filed Amendment No. 1 to the proposal.<sup>3</sup> The Commission is publishing this notice, as amended, 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 amend the definition of controlled accounts under Phlx Rule 1014(g)(i) and Option Floor Procedure Advice ("Advice") B-6 to

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Senior Special Counsel, Division of Market Regulation, Commission, dated August 15, 2001 ("Amendment No. 1"). In Amendment No. 1, the Exchange clarified why the proposal is properly filed in response to the Order Instituting Public Administrative Proceeding Pursuant to Section 19(h)(1) of the Securities Exchange Act Release No. 43268 (September 11, 2000) and Administrative Proceeding File 3-10282 (the "Order"). The Exchange explained that in accordance with Section IV.B.j of the Order, the proposal would codify a market maker practice pertaining to the allocation of orders. Specifically, the proposal is intended to codify the practice whereby the term "controlled account," as used in Phlx Rule 1014, has been interpreted to yield the priority of non-member broker-dealer orders to customer orders, and treat non-member broker-dealer orders on par with specialists, Registered Options Traders and other "firm proprietary" accounts.

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78f(b)(3).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>9</sup> 17 CFR 240.19-4(f)(1).

include non-member broker-dealers. The Exchange also proposes to make a corresponding amendment to the portion of Phlx Rule 1014(g)(i) and Advice B-6 that currently requires order tickets to have the "yield" field circled.

## 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 statutory 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements. The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and at the Commission.

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

The purpose of the proposed rule change is to amend Phlx Rule 1014(g)(i) to expand the definition of the term "controlled account" to include non-member broker-dealers. Currently, a controlled account is defined as any account controlled by or under common control with a member broker-dealer. This includes specialist, Registered Options Trader ("ROT") and other "firm proprietary" accounts (if for the account of a member broker-dealer). Under the current rule, all other accounts, including non-member broker-dealer accounts, are customer accounts. Thus, the yielding requirements of this rule currently do not apply to non-member broker-dealer accounts, with the result that ROTs must yield priority to these accounts to the same extent as they must yield to "true" customers.

Specifically, with respect to yielding requirements, the rule currently provides that orders of controlled accounts are required to yield priority to customer orders when competing at the same price. Specialists, however, are not subject to the yielding requirements placed upon controlled accounts. Orders of controlled accounts must yield priority to customer orders, except that ROTs closing in-person are not required to yield priority to orders of customer accounts.

The rule further provides that orders of controlled accounts are not required to yield priority to other controlled account orders, except that when both

an order of a ROT closing in-person and some other order of a controlled account are established in the crowd at the same price, and then a customer order is established at that price, the order of the controlled account must yield to the customer order while the order of a ROT closing in-person does not have to so yield.

This means that, in most circumstances, an order of a non-member broker-dealer at a given price takes priority over a same-priced order of a ROT, and is on parity with a public customer order. The effect of the proposed rule change is to require a non-member broker-dealer order to yield priority to a public customer order, and to eliminate the requirements that a ROT yields priority to a non-member broker-dealer. For instance, under the current rule, where a non-member broker-dealer bids for 100 contracts at the same time as a ROT bids for 100 contracts at the same price, the non-member broker-dealer has priority over the ROT and is entitled to the entire execution of an incoming sell order for 100 contracts at that price. Under the proposal, the ROT and the non-member broker-dealer would each be entitled to 50 contracts. Thus, non-member broker-dealer orders would no longer be treated like customer orders for parity/priority purposes and the yielding requirements of this Rule.

A further result of the proposal is that non-member broker-dealers would be required to yield to customer accounts. Thus, the proposal creates an advantage for customer accounts, which would receive more preferential treatment in order execution under Phlx Rule 1014 than non-member broker-dealer accounts. Specifically, customers would no longer share parity status with non-member broker-dealers, such that, depending upon the specific circumstances, customers would be more likely to receive more prompt and full executions. For instance, currently, where both a customer and a non-member broker-dealer order bid for 100 contracts at the same time and at the same price, the customer and the non-member broker-dealer would each be entitled to 50 contracts of an incoming order to sell 100 contracts. Under the proposal, the customer's bid would have priority over the non-member broker-dealer and would receive the entire execution of an incoming sell order for 100 contracts at that price. Thus, "true" customers, the intended beneficiaries of priority rule in general, would benefit.

The Exchange believes that changing the status of non-member broker-dealers for purposes of controlled account definition is consistent with many other

instances in Exchange rules where non-member broker-dealers are not treated like customers. For instance, non-member broker-dealers are not treated like customers for purposes of the minimum guarantees of Phlx Rules 1015 and 1033; thus, a non-member broker-dealer order must be identified (marked and announced) as "BD" and would not be entitled to the ten-up (or larger) minimum guarantee.<sup>4</sup> Non-member broker-dealer orders are also not treated like customers for purposes of Phlx Rule 1080—accessing the AUTOM and AUTO—Z systems.<sup>5</sup> Access to systems such as AUTOM has long been limited to members representing orders of true customers. Non-member broker-dealers are also not treated like customers for purposes of Exchange fees, which are generally waived for customer options transactions, but not for broker-dealer orders.<sup>6</sup> Thus, the Exchange believes it is also appropriate to consider non-member broker-dealers as controlled accounts for purposes of parity/priority rules.<sup>7</sup>

As a consequence of re-defining the term "controlled account," the Exchange proposed to change an order ticket marking requirements to reflect actual custom and usage. Phlx Rule 1014(g)(i) (and the corollary provision in Advice B-6) would no longer require

<sup>4</sup> See Securities Exchange Act Release No. 44145 (April 2, 2001), 66 FR 18662 (April 10, 2001) (Notice of, and order granting partial accelerated temporary approval to, File No. SR-Phlx-2001-37 for a Sixty-Day Pilot Program Relating to the Application of the Quote Rule to Options Trading). The notice and order adopted new Phlx Rule 1082 and amended various other Exchange rules and advices (including Phlx Rules 1015 and 1033 as well as Advices A-11 and F-7) to conform with Rule 11Ac1-1 under the Act. Under the proposal the Exchange proposed to remove the ten-up guarantee, and replace the guarantee with new rules that provide for differing firm quote requirements for customer orders and broker-dealer orders, as permitted by Rule 11Ac1-1(d) of the Act, the amended Quote Rule. Subsequently, that portion of the proposal was approved on a permanent basis. See Securities Exchange Act Release No. 44383 (June 1, 2001), 66 FR 30959 (June 8, 2001).

<sup>5</sup> AUTOM is the Exchange's electronic order routing and delivery system for option orders. AUTO-X is the automatic execution feature of AUTOM, which provides customers with automatic executions of eligible option orders at displayed markets. Securities Exchange Act Release No. 38792 (June 30, 1997), 62 FR 36602 (July 8, 1997) (Order approving File No. SR-Phlx-97-24 adopting an AUTOM Rule).

<sup>6</sup> See Securities Exchange Act Release No. 43558 (Nov. 14, 2000) 65 FR 69984 (Nov. 21, 2000) (Notice of File No. SR-Phlx-00-85 relating to equity transaction charges for broker-dealers and firms).

<sup>7</sup> Pursuant to Section 11(a) under the Act, a member broker-dealer, if entering an order from on the floor of the Exchange for its own account in reliance upon the exception for "G" order contained in Section 11(a)(1)(G) may, notwithstanding the operation of the Phlx yield requirements, be required to yield to non-member broker-dealers.

that market maker order tickets have the "yield" field circled, because the tickets used for orders by ROTs and other exchanges' market makers (due to the processing needs of clearing firms), do not have such a category, as do customer order tickets. This change merely corresponds to expanding the definition of controlled account to include non-member broker-dealers, such as market makers from other exchanges. Other controlled accounts would still be required to circle the yield field. Currently, specialists and ROTs market making in person are not required to circle the yield field; the requirement would not change.

Broker-dealers are not treated the same as members for all purposes under the Exchange's rules. Certain functions and entitlements are unique to membership status. For example, only members may transact business on the Exchange trading floor.<sup>8</sup> Nevertheless, the proposal would generally place non-member broker-dealers at parity with member broker-dealers for purposes of Phlx Rule 1014(g), except that certain yielding provisions differ with respect to ROTs and specialists, as explained above, due to their unique market making obligations, which non-member broker-dealers do not have. Therefore, the Exchange does not believe that the proposal is unfairly discriminatory against non-member broker-dealers. Parity with certain other broker-dealers is fair and consistent with other exchange rules, as described above.

For these reasons, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>10</sup> in particular, in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest, and promote just and equitable principles of trade by equalizing all broker-dealers in terms of how their orders are treated in Exchange rules, regardless of whether they are members of the Exchange, as well as by providing a benefit to customer accounts in terms of execution priority. The Exchange also believes that the proposal is consistent with the provisions in Section 6(b)(5)<sup>11</sup> that provides that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

The Phlx 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*

Written comments were neither solicited nor 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 Phlx consents, the Commission will:

- (A) by order approve such 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 proposal 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 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 Phlx. All submissions should refer to File No. SR-Phlx-2001-38 and should be submitted on or before October 16, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**  
Deputy Secretary.  
[FR Doc. 01-23906 Filed 9-24-01; 8:45 am]  
**BILLING CODE 8010-01-M**

**SMALL BUSINESS ADMINISTRATION**

**[Declaration of Disaster #3365]**

**State of California**

Butte County and the contiguous counties of Colusa, Glenn, Plumas, Sutter, Tehama and Yuba in the State of California constitute a disaster area as a result of damages caused by severe wildfires that occurred on September 6, 2001. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 19, 2001 and for economic injury until the close of business on June 18, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853-4795.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere .....	6.750
Homeowners Without Credit Available Elsewhere .....	3.375
Businesses With Credit Available Elsewhere .....	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere .....	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere .....	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere ..	4.000

The number assigned to this disaster for physical damage is 336505 and for economic damage is 9M7500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)  
Dated: September 18, 2001.

**John Whitmore,**  
Acting Administrator.  
[FR Doc. 01-23884 Filed 9-24-01; 8:45 am]  
**BILLING CODE 8025-01-P**

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>8</sup> See Phlx Rules 104 and 109 regarding the role of members.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78f(b)(5).