

2002-09 and should be submitted by [June 17, 2002].

## VI. Conclusions

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,<sup>95</sup> that the proposed rule changes (SR-NASD-2002-21; SR-NYSE-2002-09), as amended, are approved.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-12207 Filed 5-15-02; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45905; File No. SR-Phlx-2002-09]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. To Amend Rules Relating to the Administration of Order, Decorum, Health, Safety and Welfare on the Exchange

May 10, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on February 1, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On May 7, 2002, the Phlx amended the proposal.<sup>3</sup> Amendment No. 1 completely replaces and supersedes the original filing. 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 Exchange proposes to amend the following:

- Phlx Rule 60, Assessments for Breach of Regulations ("Rule 60");
- Regulation 4, Order ("Regulation 4");
- Phlx Article VIII, section 8-1 of the By-laws, Presiding Floor Officials of the Exchange ("Article VIII section 8-1"); and

—Phlx Article X, section 10-11 ("Article X, section 10-11"), Business Conduct Committee ("BCC").

The text of the proposed rule change is available at the Phlx and at the Commission.

#### 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 Phlx proposes to add procedures to govern actions by Floor Officials and Exchange staff to summarily remove a member from the floor for breaches of regulations that relate to the administration of order, decorum, health, safety and welfare on the Exchange ("order and decorum" regulations), increase fine amounts for order and decorum violations as specified in proposed Regulation 4, reorganize current Regulation 4 for clarity, and amend Article VIII, section 8-1 and Article X, section 10-11 of the Exchange's By-Laws to eliminate inconsistencies with Exchange rules.

*Rule 60.* Rule 60 addresses order and decorum on the Exchange floor. Currently, Rule 60 provides that a Floor Official or Exchange Official may impose assessments not to exceed \$1,000.00 per occurrence for breaches by members or their employees of regulations that relate to order and decorum. Two Floor Officials or an Exchange Official may refer a matter to the Exchange's BCC where higher fines or other sanctions may be imposed pursuant to Phlx Rules 960.1 through 960.12.<sup>4</sup> The Commentary to Rule 60 establishes the procedures to be followed when a pre-set fine of up to \$1,000.00 is summarily assessed. The

Commentary specifically addresses the notice of assessment, time and place of the hearing, records to be kept, procedures, findings, no right of appeal, and reports to be filed with the SEC.<sup>5</sup>

The proposed amendments to Rule 60 add language that explicitly states that Exchange staff, in addition to Floor Officials, may directly refer a matter to the BCC. The proposed language is added to clarify that Exchange staff has such authority. Additionally, the Exchange proposes to amend Commentary (a) to Rule 60 to increase the maximum amount of a pre-set fine for order and decorum violations. The Exchange believes that the proposed increase from a maximum of \$1,000.00 to a maximum of \$5,000.00 is appropriate and warranted considering the types of violations that may arise from violations of order and decorum.

The proposed amendments to Commentary (a) also make several clarifying changes to the procedures to be followed in cases where pre-set fines are assessed. For example, since Commentary (a) .02 currently fails to state that a hearing is held only when a written citation is contested, such clarifying language is added. Moreover, Commentary (a) .03 is expanded to propose that certain record keeping costs be borne equally by the cited party and the Exchange when a fine has been contested.

In addition to providing authority for the issuance of fines for order and decorum violations, Article VIII, section 8-1 of the By-Laws currently provides that Floor Officials may exclude members from the trading floor for breaches of order and decorum. However, because there are no specific procedures in the Exchange By-Laws or rules to govern such removal, the proposed amendments to Rule 60 add procedures to govern the summary removal of a member from the trading floor and/or premises immediately adjacent to the trading floor for a breach of Rule 60.<sup>6</sup> The Phlx believes this should improve the Exchange's disciplinary controls by adding specificity.<sup>7</sup>

<sup>5</sup> Reports to the SEC are made pursuant to Rule 19d-1(c) under the Act. 17 CFR 240.19d-1(c).

<sup>6</sup> For purposes of this proposed Rule, the premises immediately adjacent to the trading floor shall include the following: (1) All premises other than the trading floor that are under Exchange control; and (2) premises in the building where the Exchange maintains its principal office and place of business, namely 1900 Market Street, Philadelphia, Pennsylvania.

<sup>7</sup> The Exchange proposes to remove members pursuant to Rule 60(b) when the misconduct occurs on the trading floor or on the premises other than the trading floor immediately adjacent to the trading floor, as defined in footnote 6 above. The

<sup>95</sup> 15 U.S.C. 78s(b)(2).

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

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

<sup>3</sup> See May 6, 2002 letter from Linda S. Christie, Counsel, Phlx, to Katherine England, Assistant Director, Division of Market Regulation, SEC and attachments ("Amendment No. 1").

<sup>4</sup> These rules provide the jurisdiction, procedures and process by which an Exchange member, member organization, or any partner, officer, director or person employed by or associated with any member or member organization may be charged with a violation within the disciplinary jurisdiction of the Exchange.

Under the proposal, two Floor Officials and an officer of the Exchange<sup>8</sup> may remove a member for a breach of Rule 60, specifically, if the member poses an immediate threat to the safety of persons or property, is seriously disrupting Exchange operations, or possesses a firearm. When a member is removed under any of these circumstances, the member is removed for the remainder of the trading day. Because removal for the remainder of the trading day could result in significant loss of business for the member, the proposal requires the concurrence of two Floor Officials, as well as an officer of the Exchange, before a member is removed. Removal will be ordered only for the serious types of breaches specified in the proposed rule change.

Further, removal from the floor would not be the exclusive sanction for breaches of this proposed rule and the regulations thereunder. In addition to removal, a member could also be subject to a fine or the matter could also be referred to the BCC where it would proceed in accordance with Rules 960.1 through 960.12.

Proposed new Commentary (b) to Rule 60 establishes the following procedures to be used when a member is removed from the trading floor. First, once two Floor Officials and an officer of the Exchange determine a member shall be removed, a member of the Phlx security staff will escort the member off the trading floor. Second, Exchange staff shall memorialize the removal in the form of a written citation. This provision will permit the staff to keep records of the violations and have the requisite documentation available to address repeat violators. Third, the removed member shall have no right of appeal. The ruling of the Floor Officials and Exchange officer shall be final. Removal for the remainder of the day will not be ordered except under the most serious circumstances and an appeal process under such circumstances is impracticable. Finally, the proposed procedures specify that a report shall be filed with the Commission; however, no report shall be issued if a clerical employee is removed for a breach of order and decorum regulations.<sup>9</sup>

proposed rule change does not impose on the Exchange, nor does the Exchange assume, any new obligation to increase or expand its current surveillance activity to include the premises immediately adjacent to the trading floor.

<sup>8</sup> For purposes of this proposed Rule, an officer of the Exchange is an officer who is a vice president or higher.

<sup>9</sup> The exception for clerical employees conforms to Rule 19d-1(c) under the Act. 17 CFR 240.19d-1(c).

*Regulation 4.* The proposed amendments to Regulation 4 increase the applicable fine schedules for order and decorum violations. Certain fines, including those for repeat incidents involving threatening, abusive, harassing or intimidating speech or conduct or involving the possession of a firearm, are over \$1,000.00 and therefore are reportable to the SEC pursuant to Rule 19d-1(c) under the Act.<sup>10</sup> This requirement is explicitly noted in proposed section (d) of Regulation 4 so that members understand that the Exchange is required to report such citations to the Commission.

The proposed amendments also clarify and reorganize the Regulation. Since abuses of the paging system are uncommon, the separate fine for this type of misconduct is eliminated. Further, separate fines for inciting incidents of physical abuse, minor acts of physical abuse, and major acts of physical abuse are deleted, as the misconduct is adequately covered by the revised Regulation. Finally, the proposed revisions to Regulation 4 state in section (c) that firearms are prohibited on the trading floor and premises immediately adjacent to the trading floor, and members, participants and their associated persons who violate the regulation may not only be fined under the regulation, but they may also be removed from the trading floor, pursuant to Rule 60.

*Article X, section 10-11 and Article VIII, Section 8-1.* Currently, Article X, section 10-11 of the By-Laws states that the BCC shall not have jurisdiction over matters relating to order and decorum. However, Rule 60 currently states that two Floor Officials may refer an order and decorum violation to the BCC. To clarify this inconsistency, the proposed amendment adds language to Article X, section 10-11 stating that the BCC shall not have jurisdiction over matters related to order and decorum, except as consistent with Rule 60 and the regulations promulgated thereunder.

Currently, Article VIII, section 8-1 of the By-Laws outlines the authority of Floor Officials, but is silent as to Exchange staff's authority to impose fines for order and decorum violations. Under the proposal, language is added to the By-Law that expressly addresses the issue and states that Exchange staff shall have the authority to issue fines for order and decorum violations, and that Exchange officers as well as Floor Officials shall participate in the removal of members and associated persons.

<sup>10</sup> 17 CFR 240.19d-1(c).

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6 of the Act<sup>11</sup> in general, and in particular, with section 6(b)(5),<sup>12</sup> in that it is designed to promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest because the proposal should facilitate prompt, appropriate, and effective discipline for violations of Rule 60 and the regulations thereunder designed to maintain order on the Exchange. In addition, the Exchange believes that the proposed rule is consistent with section 6(b)(6) of the Act<sup>13</sup> which requires the rules of an exchange provide that its members be appropriately disciplined for violations of the Act as well as the rules and regulations thereunder, by imposing increased fine amounts for breaches of order and decorum to better reflect the severity of the violation and provide an appropriate form of deterrence for violation of Rule 60 and the regulations thereunder.

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

The Phlx does not believe that the proposed rule change would 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*

No written comments were either solicited or received with respect to the proposed rule change.

## 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

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

<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78f(b)(6).

#### 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 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-2002-09 and should be submitted by June 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-12203 Filed 5-15-02; 8:45 am]

BILLING CODE 8010-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45899; File No. SR-Phlx-2002-33]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Eliminate Position and Exercise Limits for Certain Qualified Hedge Strategies

May 9, 2002.

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 April 30, 2002, 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. The Commission is publishing this

notice to solicit comments on the proposed rule change.

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

The Exchange is proposing to amend Commentary .07 to Phlx Rule 1001 to eliminate position and exercise limits for certain qualified hedge strategies relating to stock and Exchange-Traded Fund ("ETF") Share options and to establish a position and exercise limit of five times the standard limit for those strategies that include an OTC option contract. The current reporting procedures that serve to identify and document hedged positions will continue to apply. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

#### 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 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 IV 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

###### 1. Purpose

The Exchange is proposing to eliminate position and exercise limits when certain qualified strategies are employed to establish a hedged equity option position and to establish a position and exercise limit of five times the standard limit for those strategies that include an OTC option contract. Current Commentary .05 to Phlx Rule 1001 provides position and exercise limits for stock and ETF Share options of 13,500, 22,500, 31,500, 60,000 and 75,000 options contracts on the same side of the market depending on the level of underlying trading volume over a six-month period.<sup>3</sup> The existing hedge exemption found in Commentary .07 to Phlx Rule 1001 provides an exemption to position and exercise limits of up to three (3) times the standard limit for certain qualified hedge strategies as

follows: (i) long call and short stock; (ii) short call and long stock; (iii) long put and long stock; and (iv) short put and short stock.<sup>4</sup>

Since the inception of the equity hedge exemption in 1988,<sup>5</sup> the types of hedge strategies employed by market participants have become increasingly more diversified. The Exchange believes that, through its experience in administering and processing equity hedge exemption information, it has learned that market participants no longer rely strictly on a stock-option hedge. Additionally, while traditional hedge strategies such as a covered call or reverse conversion strategy continue to be utilized, the Phlx believes that listed options contracts are now employed to hedge a wider spectrum of securities.

In response to the Commission's liberalization in granting position limit relief for market neutral strategies, and to more fully accommodate the hedging needs of investors, the Exchange is proposing to eliminate position and exercise limits when certain qualified strategies are employed to establish a hedged equity options position. Accordingly, the Phlx proposes to expand the definition of a "qualified" hedged position found in Commentary .07 to Phlx Rule 1001. The proposed qualified hedged strategies are as follows:

1. Where each option contract is "hedged" by the number of shares underlying the option contract or securities convertible into the underlying security or, in the case of an adjusted option, the same number of shares represented by the adjusted contract: (a) long call and short stock; (b) short call and long stock; (c) long put and long stock; or (d) short put and short stock.

2. Reverse Conversions—A long call position accompanied by a short put position, where the long call expires with the short put and the strike price of the long call and short put is the same, and where each long call and short put contract is hedged with 100 shares (or other adjusted number of shares) of the underlying security or securities convertible into such underlying security.<sup>6</sup>

<sup>4</sup> See Securities Exchange Act Release No. 25738 (May 24, 1988), 53 FR 20201 (June 2, 1988).

<sup>5</sup> See *supra* note 8.

<sup>6</sup> For these strategies one of the option components can be an OTC option guaranteed or endorsed by the firm maintaining the proprietary position or carrying the customer account. Hedge transactions and positions established pursuant to these strategies are subject to a position limit equal to five times the standards limit established under Commentary .05 to Phlx Rule 1001. For purposes of this rule filing, an OTC option contract is defined

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 48075 (December 31, 1998), 64 FR 1842 (January 12, 1999).