

provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FICC. All submissions should refer to File No. SR-FICC-2003-04 and should be submitted by July 7, 2003.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> that the proposed rule change is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-15085 Filed 6-13-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48003; File No. SR-Phlx-2003-32]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Its Rule 452, Limitation on Members' Trading Because of Customers' Orders

June 9, 2003.

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 May 8, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to 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 Exchange. On May 29, 2003, the Phlx filed Amendment No. 1 to the proposal.<sup>3</sup> The proposed rule change, as amended, has been filed by Phlx under Rule 19b-4(f)(6) under the Act.<sup>4</sup> 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 Phlx Rule 452, Limitations on Members' Trading Because of Customers' Orders, to permit members and member organizations to trade along with some of their customers in limited circumstances so long as the order is not for the account of an individual investor and the customer has given express permission for the transaction. The proposed rule change, as amended, also adds additional language regarding the applicability of Phlx Rule 452's limitation on trading, and adds a number of additional exceptions to that rule.

The text of the proposed rule change, as amended, is below. Proposed additions are in italics and proposed deletions are in [brackets].

\* \* \* \* \*

#### Rule 452. Limitations on Members' Trading Because of Customers' Orders

(a) [No member shall (1) personally buy or initiate the purchase of any security on the Exchange for his own account or for any account in which he, or the firm of which he is a partner or any partner of such firm, is directly or indirectly interested, while such member personally holds or has knowledge that his firm or any partner thereof holds an unexecuted market order to buy such security in the unit of trading for a customer, or (2) personally sell or initiate the sale of any security on the Exchange for any such account, while he personally holds or has knowledge that his firm or any partner thereof holds an unexecuted market order to sell such security in the unit of trading for a customer.] Except as provided in this Rule, no member or member organization shall cause the entry of an order to buy (sell) on the Exchange any security listed or traded on the Exchange for any account in which such member or member organization or any associated person thereof is directly or indirectly interested (a "proprietary order"), if the person responsible for the entry of such order has knowledge of any particular unexecuted customer order to buy (sell) such security which could be executed at the same price.

summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers that period to commence on May 29, 2003, the date Phlx filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

(b) [No member shall (1) personally buy or initiate the purchase of any security on the Exchange for any such account, at or below the price at which he personally holds or has knowledge that his firm or any partner thereof holds an unexecuted limited price order to buy such security in the unit of trading for a customer, or (2) personally sell or initiate the sale of any security on the Exchange for any such account at or above the price at which he personally holds or has knowledge that his firm or any partner thereof holds an unexecuted limited price order to sell such security in the unit of trading for a customer.] A member or member organization may enter a proprietary order while representing a customer order which could be executed at the same price, provided the customer's order is not for the account of an individual investor, and the customer has given express permission, including an understanding of the relative price and size of allocated execution reports, under the following conditions:

(1) the member or member organization is liquidating a position held in a proprietary facilitation account, and the customer order is for 10,000 shares or more;

(2) the member or member organization is creating a bona fide hedge ("hedge") and (i) the creation of the hedge, whether through one or more transactions, occurs so close in time to the completion of the transaction precipitating such hedge that the hedge is clearly related; (ii) the size of the hedge is commensurate with the risk it offsets; (iii) the risk to be offset is the result of a position acquired in the course of facilitating a customer order; and (iv) the customer order is for 10,000 shares or more;

(3) the member or member organization is modifying an existing hedge and (i) the size of the hedge, as modified, remains commensurate with the risk it offsets; (ii) the hedge was created to offset a position acquired in the course of facilitating a customer order; and (iii) the customer order is for 10,000 shares or more; or

(4) the member or member organization is engaging in bona fide arbitrage or risk arbitrage transaction, and recording such transactions in an account used solely to record arbitrage transactions (an "arbitrage account").

[Exceptions]

(c) The provisions of this Rule 452 shall not apply to:

(1) [to] any purchase or sale of any security in an amount of less than the unit of trading made by an odd-lot

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</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 Carla Behnfeldt, Director, Legal Department New Product Development Group, Phlx to Tim Fox, Attorney, Division of Market Regulation ("Division"), Commission, dated May 28, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange submitted technical corrections to the rule text and clarified that the applicability of Phlx Rule 452(a)(1) is limited to orders on the Exchange for securities listed or traded on the Exchange.

<sup>4</sup> 17 CFR 240.19b-4(f)(6). For purposes of determining the effective date and calculating the sixty-day period within which the Commission may

dealer to offset odd-lot orders for customers[, or];

(2) any purchase or sale of any security [, delivery of which is to be upon a day other than the day of delivery provided] upon terms for delivery other than those specified in such unexecuted market or limited price order;

(3) transactions by a member or member organization acting in the capacity of a specialist or market maker in a security listed or traded on the Exchange otherwise than on the Exchange; and

(4) transactions made to correct bona fide errors.

#### *Supplementary Material:*

.01 [A member who issues a commitment to trade from the Exchange through ITS or any other Application of the System shall, as a consequence thereof, be deemed to be initiating a purchase or a sale of a security on the Exchange as referred to in this Rule.] A member or member organization or employee thereof responsible for entering proprietary orders shall be presumed to have knowledge of a particular customer order unless the member organization has implemented a reasonable system of internal policies and procedures to prevent the misuse of information about customer orders by those responsible for entering such proprietary orders.

.02 This Rule 452 shall apply to any agency or proprietary transaction effected on the Exchange if such transaction ("Exchange transaction") is part of a group of related transactions that together have the effects prohibited by this Rule, regardless whether (i) one or more of the other related transactions were effected on other market centers; or (ii) the Exchange transaction by itself had such effects.

.03 This Rule 452 shall also apply to a member organization's member on the Floor, who may not execute a proprietary order at the same price, or at a better price, as an unexecuted customer order that he or she is representing, except to the extent the member organization itself could do so under this Rule.

.04 For purposes of paragraph (b) above, the term "account of an individual investor" shall mean an account covered by section 11(a)(1)(E) of the Securities Exchange Act of 1934. For purposes of paragraph (b)(1) above, the term "proprietary facilitation account" shall mean an account in which a member organization has a direct interest and which is used to record transactions whereby the member organization acquires positions in the

course of facilitating customer orders. Only those positions which are recorded in a proprietary facilitation account may be liquidated as provided in paragraph (b)(1). For purposes of paragraph (b)(2) and (b)(4) above, the terms "bona fide hedge", "bona fide arbitrage" and "risk arbitrage" shall have the meaning ascribed to such terms in Securities Exchange Act Release No. 15533, January 29, 1979. All transactions effected pursuant to paragraph (b)(4) above must be recorded in an arbitrage account.

.05 For purposes of paragraph (b)(2) above, a hedge will be deemed to be "clearly related" if either the first or last transaction comprising the hedge is executed on the same trade date as the transaction that precipitates such hedge. A member shall mark all memoranda of orders to identify each transaction creating or modifying a hedge as permitted under this Rule 452.

.06 A member who issues a commitment or obligation to trade from the Exchange through ITS or any other Application of the System shall, as a consequence thereof, be deemed to be initiating a purchase or sale of a security on the Exchange as referred to in this Rule 452.

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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 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 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 purpose of the proposed rule change is to amend Phlx Rule 452, which provides limitations on members' trading because of customer orders. The proposed revision would bring the rule into conformity with New York Stock Exchange, Inc. ("NYSE") Rule 92, which was recently approved by the Commission.<sup>5</sup> The proposed revision to Phlx Rule 452 would clarify the

<sup>5</sup> See Securities Exchange Act Release No. 44139 (March 30, 2001), 66 FR 18339 (April 6, 2001) (SR-NYSE-94-34).

obligations of Exchange members regarding proprietary trading in instances where they or their member organization hold customer orders at the same or inferior prices.

In 1994, the NYSE proposed changes to NYSE Rule 92.<sup>6</sup> According to the Phlx, these changes were meant to address various issues regarding an NYSE-member organization's trading when it was in possession of customer orders, including a member organization's regional specialist operations, block trading, arbitrage activity and hedge activity. The Commission approved the changes to NYSE Rule 92 in 2001.<sup>7</sup> The revision would conform Phlx Rule 452 to NYSE Rule 92.<sup>8</sup>

Currently, sections (a) and (b) of Phlx Rule 452 contain the general prohibitions against trading ahead of customer market orders and customer limit orders, respectively. As revised, section (a) contains the general prohibitions against trading ahead of both customer market and limit orders.

The Exchange proposes to revise section (b) to create four exceptions to the general rule that may apply when the customer is not an individual investor and the customer knowingly consents: (1) Liquidation of a position held in a proprietary facilitation account so long as the customer's order is for 10,000 shares or more; (2) creation of a bona fide hedge under specified conditions; (3) modification of a bona fide hedge under certain conditions; and (4) engaging in bona fide arbitrage or risk arbitrage in an arbitrage account.

Section (c) currently contains two exceptions to the general rule; it does not apply: (i) To orders under 100 shares and (ii) when a customer order settles under different delivery terms than the proprietary order. As proposed, revised section (c) retains these two exceptions and adds the following two more: (1) It does not apply to transactions of a member organization's specialist unit on another exchange; and (2) it does not apply when transactions are made to correct bona fide errors.

Finally, the Supplementary Material currently contains a clarification that outbound Intermarket Trading System

<sup>6</sup> See Securities Exchange Act Release No. 35139 (December 22, 1994), 60 FR 156 (January 3, 1995) (SR-NYSE-94-34).

<sup>7</sup> See note 5 *supra*.

<sup>8</sup> The Phlx had previously filed a proposed rule change, including several amendments, to conform Phlx Rule 452 to NYSE Rule 92, which was withdrawn in March, 2002. See Securities Exchange Act Release No. 37628 (September 3, 1996), 61 FR 47537 (September 9, 1996) (SR-Phlx-96-37).

(“ITS”)<sup>9</sup> commitments are considered to be initiated from the Phlx floor. The Phlx retains the ITS clarification in Supplementary Material .06, and adds the following: (1) A Phlx member or member organization or employee thereof responsible for entering proprietary orders is presumed to have knowledge of any customer order held by the member organization unless the proper information barriers are in place; (2) this rule applies to series of transactions even if some of the transactions do not take place on the Phlx; (3) that a member on the Floor may only execute a proprietary order ahead in time of a customer order, to the extent that his member organization is permitted (*i.e.*, if the member organization is prohibited, then so is the member on the floor); (4) definitions of certain terms in the rule; and (5) procedures for utilizing the hedge exemption to the rule.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>11</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. The Phlx represents that the proposed rule change, as amended, balances fundamental investor protections with the requirements of evolving trading practices involving institutional investors and member firm proprietary trading operations. The limited types of transactions it would permit should promote just and equitable principles of trade. Many of these proprietary transactions should add liquidity to the market and help investors receive efficient execution of their orders.

## 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 inappropriate burden on competition.

<sup>9</sup> See Phlx Rule 2001, Intermarket Trading System. The ITS Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. See 15 U.S.C. 78k–1 and 17 CFR 240.11Aa3–2.

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

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

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

The foregoing rule change, as amended, has been filed by the Exchange pursuant to section 19(b)(3)(A) of the Act<sup>12</sup> and subparagraph (f)(6) of Rule 19b–4 thereunder.<sup>13</sup> Consequently, because Phlx believes the foregoing rule change, as amended: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b–4 thereunder.<sup>15</sup>

At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change, as amended, 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, as amended, 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

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b–4(f)(6).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b–4.

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–2003–32 and should be submitted by July 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–15087 Filed 6–13–03; 8:45 am]

BILLING CODE 8010–01–P

## SMALL BUSINESS ADMINISTRATION

### RIN 3245–AE96

## Small Business Technology Transfer Program Policy Directive

**AGENCY:** Small Business Administration.

**ACTION:** Notice of proposed policy directive.

**SUMMARY:** This document proposes revisions to the Small Business Technology Transfer (STTR) Program Policy Directive. The purpose of the Policy Directive is to provide guidance to participating Federal agencies for the general conduct of the STTR Program. This proposed Policy Directive reflects statutory amendments to the program. In addition, SBA proposes amendments to streamline and enhance the program.

**DATES:** Public comments on this proposed Policy Directive must be received on or before July 16, 2003.

**ADDRESSES:** Address all comments concerning this proposed Policy Directive to Maurice Swinton, Assistant Administrator for Technology, Office of Technology, Office of Government Contracting/Business Development, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416 or via email to [technology@sba.gov](mailto:technology@sba.gov).

### FOR FURTHER INFORMATION CONTACT:

Maurice Swinton, Assistant Administrator for the Office of Technology, at (202) 205–6450. You may also e-mail [technology@sba.gov](mailto:technology@sba.gov).

**SUPPLEMENTARY INFORMATION:** In 1992, Congress enacted the Small Business Technology Transfer Act of 1992 (STTR Act), Pub. L. 102–564 (codified at 15 U.S.C. 638). The STTR Act established the Small Business Technology Transfer Program (STTR Program) as a pilot

<sup>16</sup> 17 CFR 200.30–3(a)(12).