

one business day—to NASD staff providing the necessary trade data and/or current float data to support the member's position limit calculation. Thus, in the example above, a conventional equity option on DEF would be subject to a position limit of 75,000 contracts rather than 13,500 contracts because the underlying securities' characteristics meet the volume and float thresholds established by the options exchanges necessary to raise the position limits from 13,500 contracts to 75,000 contracts, provided the member makes the necessary filing within the prescribed time.

Under the proposed rule change, NASD staff would review the member's notice filing, and, if the staff determined that a member incorrectly assigned a position limit, it would notify the firm and instruct the firm to reduce its position promptly to fall below the appropriate limits determined by the NASD staff.

NASD would announce the effective date of the proposed rule change in a *Notice to Members* to be published no later than 60 days following Commission approval, if the Commission approves this proposal. The effective date would be 30 days following publication of the *Notice to Members* announcing any Commission approval.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Exchange Act,<sup>16</sup> which requires, among other things, that NASD's rules must be 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. NASD believes that amending the definition of "underlying index" would ensure more complete reporting of options positions. NASD also believes that permitting members to calculate position limits for certain foreign securities would enable members to effect options transaction in such securities without unnecessary delay.

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

NASD does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

### *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 NASD 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 proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods.

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rules-comments@sec.gov](mailto:rules-comments@sec.gov). Please include File No. SR-NASD-2006-007 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-NASD-2006-007. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-NASD-2006-007 and should be submitted on or before February 27, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-1541 Filed 2-3-06; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53190; File No. SR-NFA-2005-02]

### Self-Regulatory Organization; National Futures Association; Notice of Filing and Immediate Effectiveness of a Proposed Amendment to NFA Compliance Rule 2-10 Regarding Recordkeeping

January 30, 2006.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-7 under the Act,<sup>2</sup> notice is hereby given that on December 6, 2005, National Futures Association ("NFA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in Items I, II, and III below, which Items have been prepared by NFA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. NFA also has filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC").

NFA, on December 6, 2005, submitted the proposed rule change to the CFTC for approval. The CFTC approved the proposed rule change on January 5, 2006.<sup>3</sup>

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

<sup>1</sup> 15 U.S.C. 78s(b)(7).

<sup>2</sup> 17 CFR 240.19b-7.

<sup>3</sup> See Letter from Thomas W. Sexton, Vice President and General Counsel, NFA, to Elizabeth King, Associate Director, Division of Market Regulation, Commission, dated January 26, 2006 (enclosing letter from Jean A. Webb, Secretary,

Continued

<sup>16</sup> 15 U.S.C. 78o-3(b)(6).

**I. Self-Regulatory Organization's Description of the Proposed Rule Change**

The proposed rule change amends NFA Compliance Rule 2-10 to ensure that NFA has effective access to books and records maintained by foreign firms or in a foreign language. Section 15A(k) of the Act<sup>4</sup> makes NFA a national securities association for the limited purpose of regulating the activities of Members who are registered as brokers or dealers in security futures products under section 15(b)(11) of the Act.<sup>5</sup> This rule change will apply to all NFA Members, including Members registered under section 15(b)(11).

The text of the proposed rule change is below. Proposed new language is italicized.

Text of Proposed Rule Changes

COMPLIANCE RULES

\* \* \* \* \*

RULE 2-10. RECORDKEEPING

(a) Each member shall maintain adequate books and records necessary and appropriate to conduct its business including, without limitation, the records required to be kept under CFTC Regulations 1.18 and 1.32 through 1.37 for the period required under CFTC Regulation 1.31.

(b) Each FCM Member must either:

(1) Maintain an office in the continental United States, Alaska, Hawaii, or Puerto Rico responsible for preparing and maintaining financial and other records and reports required by CFTC and/or NFA rules; or

(2) Maintain an office in a jurisdiction that the CFTC has found to have a comparable regulatory scheme for purposes of Part 30 of the CFTC's rules and be subject to that regulatory scheme. This foreign office must be responsible for preparing and maintaining financial and other records and reports required by CFTC and/or NFA rules, and the Member must agree to reimburse NFA for any travel, translation, telephone, and similar expenses incurred in connection with inquiries, examinations and investigations of the Member that exceed the normal expenses incurred by NFA in examining an FCM Member located at the closest point in the continental United States, Alaska, Hawaii, or Puerto Rico.

CFTC, to Thomas W. Sexton, Vice President and General Counsel, NFA, dated January 5, 2006, confirming approval of the proposal) ("Confirmation of CFTC Approval").

<sup>4</sup> 15 U.S.C. 78o-3(k).

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

(c) Each Member subject to minimum capital requirements must:

(1) Prepare financial reports required to be filed with the CFTC and/or NFA in English, using U.S. dollars, and according to U.S. accounting standards; and

(2) Maintain a general ledger in English using U.S. dollars.

(d) Each Member must:

(1) File reports, requests for extensions, and other documents required to be filed with the CFTC and/or NFA in English;

(2) Maintain English translations of all foreign-language promotional material, including disclosure documents and Web sites, distributed to or intended for viewing by customers located in the United States, its territories, or possessions;

(3) Maintain written procedures required by CFTC or NFA rules in English (as well as in any other language if necessary for them to be understood by the Member's employees and agents);

(4) Provide English translations of other foreign-language documents and records and file financial information in U.S. dollars when requested by NFA; and

(5) Make available to NFA (during an examination or to respond to other inquiries) an individual who is authorized to act on the Member's behalf, is fluent in English, and is knowledgeable about the Member's business and about financial matters.

\* \* \* \* \*

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

In its filing with the Commission, NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. NFA 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**

NFA has seen a marked increase in the number of foreign firms applying for Futures Commission Merchant

("FCM")<sup>6</sup> registration and NFA membership. NFA Compliance Rule 2-10 requires all Members to maintain books and records necessary to conduct their business, but that requirement is useless if NFA staff cannot audit or understand those books and records.

NFA is concerned about its ability to audit and obtain information from foreign FCMs located in countries without regulatory systems comparable to that in the U.S. Furthermore, there have been instances where promotional materials and other documents prepared by U.S. Members were in a foreign language and it fell on NFA to get them translated. Amending NFA Compliance Rule 2-10 ensures that NFA has effective access to books and records maintained by foreign firms or in a foreign language.

Although NFA has had foreign firms as Members since its inception, they have been concentrated in the Commodity Pool Operator ("CPO")<sup>7</sup> and Commodity Trading Advisor ("CTA")<sup>8</sup> categories, with a few Introducing Brokers ("IBs")<sup>9</sup> sprinkled in. Applications from foreign FCMs were rare, and those firms all had a U.S. office by the time they became Members. This has changed recently, primarily due to membership applications from foreign firms that want to offer retail forex to U.S. customers.

As of October 3, 2005, NFA had six foreign FCM Members. Four of the foreign FCMs are located in London and the other two are located in Ontario, Canada, so they are all subject to established regulatory schemes in their home countries. As of that same date, there were three firms with pending applications for FCM registration and NFA membership and one firm with a pending application for registration only. The four pending firms are located in Columbia (two firms), Cyprus, and Israel. Within the past few years, NFA has also received applications from firms located in Argentina, Jordan, Pakistan, Romania, Russia, and Singapore, although those firms

<sup>6</sup> "Futures Commission Merchant" means a person who is required to register or is registered as a futures commission merchant under the Commodities Exchange Act ("CEA") and CFTC rules. NFA Compliance Rule 1-1(o).

<sup>7</sup> "Commodity Pool Operator" means a person who is required to register or is registered as a commodity pool operator under the CEA and CFTC rules. NFA Compliance Rule 1-1(g).

<sup>8</sup> "Commodity Trading Advisor" means a person who is required to register or is registered as a commodity trading advisor under the CEA and CFTC rules. NFA Compliance Rule 1-1(h).

<sup>9</sup> "Introducing Broker" means a person who is required to register or is registered as an introducing broker under the CEA and CFTC rules. NFA Compliance Rule 1-1(q).

withdrew their applications before they completed the registration process.

Since December 1987, NFA has required foreign firms to certify that they can and will produce their books and records in the U.S. within 72 hours and that they are not subject to any blocking, privacy, or secrecy laws that would interfere with this inspection. NFA shortened the response time for FCMs to 24 hours in 2003, after more foreign firms started applying for FCM registration.

NFA audits most foreign firms by asking them to provide copies of their books and records, and this procedure has proven workable for auditing CPOs, CTAs, and IBs. For the foreign FCMs, NFA sent auditors to Canada, and each of the London firms either maintains a U.S. office to prepare and maintain the books relating to its U.S.-regulated business or provides those books and records through a U.S. agent. As the number of foreign FCM applicants grows, however, concerns about NFA's ability to conduct efficient and effective audits of these firms increase.

Finally, U.S. firms occasionally provide NFA with documents written in foreign languages without also providing a translation. NFA has taken at least two disciplinary actions involving foreign-language solicitations made to a targeted group within the U.S. In the most recent case, a Forex Dealer Member located in California solicited Chinese-speaking individuals to trade OTC forex. In the other case, a CTA Member located in New York solicited Chinese-speaking individuals to trade products on U.S. exchanges. In both cases, NFA bore the onus of translating the materials into English. We believe this onus should be on the Member rather than on NFA, although NFA would check the accuracy of the translations in appropriate circumstances.

The amendments to NFA Compliance Rule 2-10 add three new sections, with the current text becoming section (a).<sup>10</sup> Section (b) requires FCMs to maintain their books and records in an office located in the U.S. or a part 30 jurisdiction (e.g., Great Britain, Canada).<sup>11</sup> Section (b) also requires FCMs that do not maintain their books and records in the U.S. to reimburse NFA for travel and related expenses if

travel to a foreign jurisdiction is necessary.

Section (c) applies to all Members subject to minimum capital requirements (i.e., FCMs and independent IBs). It requires them to prepare financial and other required reports in English, using U.S. dollars and U.S. accounting standards, and to maintain a general ledger in English using U.S. dollars. Section (d) applies to all Members. That section requires them to:

- File documents with NFA in English;
- Maintain English translations of foreign-language promotional material;
- Maintain required procedures in English;
- Provide English translations of other documents when requested by NFA; and
- Ensure that an English-speaking individual who is knowledgeable about the firm's business is available to assist NFA during an audit.

## 2. Statutory Basis

The rule change is authorized by, and consistent with, section 15A(k) of the Act.<sup>12</sup>

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

The rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act and the CEA.<sup>13</sup>

### C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants, or Others

NFA did not publish the rule change to the membership for comment. NFA did not receive comment letters concerning the rule change.

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

The proposed rule change became effective on January 5, 2006, upon approval by the CFTC.<sup>14</sup> Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of section 19(b)(1) of the Act.<sup>15</sup>

## 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. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-NFA-2005-02 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-NFA-2005-02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 NFA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-NFA-2005-02 and should be submitted on or before February 27, 2006.

<sup>10</sup> Many of these requirements are taken from NASD Rule 1090 or CBOE Rule 3.4 regarding foreign members.

<sup>11</sup> See CFTC Rule 30.10 (17 CFR 30.10) and Appendix C to that rule. A list of the Part 30 jurisdictions can be found on the CFTC's Web site at <http://www.cftc.gov>.

<sup>12</sup> 15 U.S.C. 78o-3(k).

<sup>13</sup> 7 U.S.C. 1.

<sup>14</sup> See Confirmation of CFTC Approval, *supra* note 3.

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

<sup>16</sup> 17 CFR 200.30-3(a)(73).

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

Nancy M. Morris,  
Secretary.

[FR Doc. E6-1540 Filed 2-3-06; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53188; File No. SR-Phlx-2005-70]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to the Deletion of Phlx Rule 454, "Limitations on Members" Trading Because of Options, etc."

January 30, 2006.

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 November 9, 2005, 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 Phlx. 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 delete Phlx Rule 454, "Limitations on Members" Trading Because of Options, etc." The text of Phlx Rule 454 is set forth below, with [brackets] indicating its proposed deletion.

[Rule 454. Limitations on Members' Trading Because of Options, etc.

No member, while on the floor, shall initiate the purchase or sale on the Exchange for his own account or for any account in which he, or the organization of which he is a partner or officer, or any partner or officer of such organization, is directly or indirectly interested, of any security in which he holds or has granted any put, call, straddle or option, or in which he has knowledge that the organization of which he is a partner or officer, or any partner or officer of such organization holds or has granted any put, call, straddle or option, unless such put, call, straddle or option position is in an

exchange-traded option issued by the Options Clearing Corporation and is immediately reported to the Exchange.

\* \* \* 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.]

\* \* \* \* \*

#### 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

Phlx Rule 454 prohibits a member on the floor from initiating the purchase or sale of stock on the Exchange for his own or a related account if he or a related account holds or has granted an option on it. According to a 1976 Commission approval order, Phlx Rule 454 was originally adopted at the urging of the Commission in 1935 for the purpose of deterring options-related manipulation of underlying stocks by specialists, odd-lot dealers, and floor traders.<sup>3</sup> The rule change approved by this 1976 approval order carved out Options Clearing Corporation ("OCC")-issued options from the coverage of the rule. The approval order stated that because the Phlx's share of the total market volume in securities for which options trading would be permitted by the proposed rule change averaged less than 1.7 percent, the manipulative potential inherent in changing the restrictions appeared insignificant.<sup>4</sup>

The Exchange is now proposing to delete Phlx Rule 454 in its entirety because the Phlx believes that the likelihood that any options-related manipulation of an underlying stock

could occur through an equities trade initiated on the Phlx floor is extremely remote. The Exchange believes that the costs of manipulating the price of a security to produce a gain in a pre-established options position would outweigh the benefits due to the capital that would be required to manipulate the price of a security in the National Market System today. The Exchange notes that it is required to take into account the consolidated national best bid and offer quotations of the National Market System. As such, any attempt to manipulate the price of a security would involve moving the price not only on the Phlx but on other exchanges as well. The Phlx believes that even in less liquid securities this seems unlikely, and there are other rules and mechanisms to capture such activity. As with the 1976 proposed rule change, the Phlx believes that the manipulative potential inherent in eliminating Phlx Rule 454's restrictions appears insignificant. The Exchange notes that it has found no comparable rule for Nasdaq market makers, who can have over-the-counter or "OTC" (non-OCC-issued, non-exchange traded) options on either Nasdaq or listed stocks. Furthermore, Phlx Rule 454 does not in any event prohibit the Phlx member from buying stock first, prior to obtaining an OTC option on it. Thus, the Exchange believes that the rule is of little real usefulness and therefore unnecessarily restricts its floor members from engaging in productive business on the floor of the Exchange.<sup>5</sup>

###### 2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>7</sup> in particular, in that it eliminates an outdated prohibition which imposes an unnecessary burden on floor members and serves no real useful purpose. The Phlx believes that lifting the prohibition should result in enhanced market depth and liquidity, which should benefit investors.

<sup>5</sup>Note that Phlx Rule 213, "Puts and Calls," will continue to apply to Phlx specialists. Phlx Rule 213 provides that "[n]o specialist, no organization of which he is a partner or officer and no partner or officer of such organization shall acquire, hold or grant, directly or indirectly, any interest in any put, call, straddle, or option in any security in which such specialist is registered by the Exchange, unless such put, call, straddle or option position is in any exchange-traded option issued by the Options Clearing Corporation and is immediately reported to the Exchange."

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>3</sup> See Securities Exchange Act Release No. 13016 (November 29, 1976), 41 FR 53383 (December 6, 1976) (order approving File No. SR-Phlx-76-15).

<sup>4</sup> *Id.*

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

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