

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55552; File No. SR-Phlx-2006-87)

March 29, 2007

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change, and Amendment Nos. 1 and 2 thereto, Relating to Options Exchange Officials

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 December 14, 2006, the Philadelphia Stock Exchange, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change. On February 23, 2007, the Exchange filed Amendment No.1 to the proposed rule change. On March 15, 2007, the Exchange filed Amendment No. 2 to the proposed rule change. The proposed rule change is described in Items I, II, and III, below, which Items have been prepared substantially by the Phlx. 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 various rules related to dispute resolution, requests for relief from the requirements of certain rules, trading halts and order and decorum, by transferring the responsibilities from Exchange Floor Officials<sup>3</sup> to a new category of Exchange staff that would be known as an Options Exchange Official (“OEO”), as described more fully below. OEOs would replace, and assume all authority and responsibility currently handled by, Floor Officials. Thus, Floor Officials would cease to exist on the Exchange.

The text of the proposed rule change is available on the Exchange’s website at

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

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

<sup>3</sup> See Exchange By-Law Article VIII.

www.phlx.com, at the Phlx, and at the Commission's public reference room.

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 purpose of the proposed rule change is to establish a new category of Exchange staff, the OEO.<sup>4</sup> The purpose of Amendment No. 1, which replaces the previous filing in its entirety, is to clarify that OEOs would replace, and assume all authority and responsibility currently handled by, Floor Officials, and to make other technical amendments to the previously submitted rule text. Amendment No. 2 makes clarifying changes to the purpose section and technical corrections to the proposed rule text.

Pursuant to Exchange By-Law Article VIII, Floor Officials, as designees<sup>5</sup> of the

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<sup>4</sup> OEO jurisdiction would be limited to the Exchange's options trading floor and systems. While acting in a similar capacity to Equity Exchange Officials, OEOs would not share any responsibilities or authority with Equity Exchange Officials. See Securities Exchange Act Release No. 54538 (September 28, 2006), 71 FR 59184 (October 6, 2006) (SR-Phlx-2006-43)(Order approving the Exchange's new electronic equity trading system, XLE).

<sup>5</sup> The designees of the respective floor Committee chairpersons are generally members of the respective committees and subcommittees thereof.

Chairpersons of the Options Committee,<sup>6</sup> and Foreign Currency Options Committee,<sup>7</sup> respectively, are authorized to administer the provisions of Exchange By-Laws and Rules of the Exchange pertaining to the respective trading floors and the immediately adjacent premises of the Exchange. They may impose penalties, as applicable, for breaches of their rules or regulations relating to order, decorum, health, safety and welfare on the respective trading floors. Additionally, they may rule to nullify, or adjust the terms of, executed trades under specific and limited conditions contained in Exchange rules, and may grant relief from certain requirements of on-floor members and member organizations if authorized to do so by rule.

As described more fully below, in some instances an OEO would assume responsibilities of Exchange staff, particularly in the situation where certain current Floor Official decisions require concurrence of a Market Surveillance officer. In other instances, one single OEO would be authorized to rule on matters that currently require a decision from two Floor Officials. The current process for the review of, or appeal from, from Floor Official decisions<sup>8</sup> (which, under the proposal would become OEO decisions) and the role of the Exchange's Referee<sup>9</sup> would be unchanged.

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<sup>6</sup> The Options Committee has general supervision of the dealings of members on the options trading floor. See Exchange By-Law Article X, Section 10-20.

<sup>7</sup> The Foreign Currency Options Committee has general supervision of the dealings of members on the foreign currency options trading floor. See Exchange By-Law Article X, Section 10-17.

<sup>8</sup> See Exchange Rule 124(d).

<sup>9</sup> The Referee is an Exchange employee or independent contractor who is appointed by the Exchange's Board of Governors on the recommendation of the Audit Committee to review Floor Official rulings concerning the nullification and adjustment of transactions in accordance with Rule 124(d), and to act in the capacity of a Floor Official respecting initial rulings concerning requests for relief from the requirements of certain Exchange Rules. See Exchange Rule 124, Commentary .02.

## Definition of OEO

Currently, Floor Officials appointed by the respective floor committee chairs, are Exchange members. Under proposed Rule 1(pp), an OEO would be defined as an Exchange staff member or contract employee designated as such by the Exchange's Chief Regulatory Officer ("CRO"). A list of individual OEOs would be displayed on the Exchange website, and would be maintained and updated each time a name is added to, or deleted from, the list of OEOs. The Exchange's Referee would be responsible for maintaining and updating such list. In the event no OEO is available to rule on a particular matter, the CRO or his/her designee would be required to rule on such matter. OEOs would be located on the Exchange's options trading floor and report to the CRO.

OEOs would be members of the Exchange's regulatory staff, including the on-floor surveillance staff, who have sufficient expertise to act in the capacity of an OEO as determined by the CRO. This could include existing Exchange regulatory staff, new hires, or contract employees.

Under the proposal, the Referee may act in the capacity of an OEO respecting initial rulings concerning requests for relief from the requirements of certain enumerated Exchange rules,<sup>10</sup> since such rulings are final and not appealable. The Referee could not, however, rule in the capacity of an OEO concerning, for example, a nullified or adjusted trade resulting from trading dispute or an obvious error, because the Referee would have a conflict of interest in ruling on an appeal from his or her own decision to nullify or adjust such a trade.<sup>11</sup>

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<sup>10</sup> See proposed Exchange Rule 124, Commentary .02(a). Telephone conversation on March 19, 2007, between Richard Rudolph, Vice President and Counsel, Phlx and Jennifer Dodd, Special Counsel, Division of Market Regulation, Commission ("Telephone Conversation").

<sup>11</sup> See proposed Exchange Rule 124, Commentary .01. Telephone Conversation.

## Nullification and Adjustment of Transactions

Currently, Exchange Floor Officials are authorized to rule on trading disputes occurring on the options trading floor, which could result in the adjustment or nullification of executed transactions.<sup>12</sup> Floor Officials are also currently authorized to nullify or adjust executed transactions in the case of an obvious error as defined in the Exchange's rules.<sup>13</sup> Such rulings can be appealed to the Referee for review. The Referee may uphold, modify, or overturn the ruling. The decision of the Referee concerning these types of rulings is final and may not be appealed to the Exchange's Board of Governors.

OEOs would replace Floor Officials respecting initial rulings on adjustment or nullification of transactions. One OEO may adjust a transaction, and the Exchange proposes to require only one OEO to nullify a transaction as well.<sup>14</sup> The Exchange believes that this should expedite the decision making process for the nullification of transactions. As stated above, such rulings would continue to be appealable to the Referee.

## Initial Requests for Relief

Floor Officials and, in some instances the Referee, are currently authorized to rule on initial requests for relief from the requirements of certain rules, including, without limitation, quote spread parameters,<sup>15</sup> and disengagement of Exchange automatic execution systems under

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<sup>12</sup> See Exchange Rule 124. One Floor Official may adjust the terms of a transaction in a dispute; two Floor Officials must determine to nullify a transaction in such a situation.

<sup>13</sup> See Exchange Rule 1092. Two Floor Officials must determine that an obvious error (as defined in the rule) occurred in order to nullify a transaction.

<sup>14</sup> Currently, Exchange rules require two Floor Officials to nullify a transaction. See Exchange Rule 124(a). See also Exchange Rule 1092(e)(ii)(B). The instant proposal would require one OEO to nullify a transaction.

<sup>15</sup> Relief from the established bid/ask differentials may be granted upon the receipt of an approval of two Floor Officials. See OFPA F-6.

extraordinary circumstances.<sup>16</sup> Such rulings are final and may not be appealed to the Board.

Similarly, the proposal would authorize OEOs to replace Floor Officials and to make initial rulings concerning requests for relief from the requirements of other Exchange Rules. For example, the proposal would authorize OEOs to rule on requests for relief from Exchange rules relating to: (i) bid/ask differentials pursuant to Exchange Rule 1014(c) and Options Floor Procedure Advice (“OFPA”) F-6; (ii) disengagement of Exchange automatic execution systems pursuant to Exchange Rule 1080(e) and OFPA A-13; (iii) the determination that quotes in options on the Exchange or another market or markets are subject to relief from the firm quote requirement pursuant to Exchange Rule 1080(c)(i); and (iv) trading halts, openings and re-openings pursuant to Rules 1017, 1047 and 1047A and OFPAs A-12, A-14 and G-2.

Rule 1014(c) and OFPA F-6 set forth the maximum allowable bid/ask differentials, or quote widths, that may be disseminated by specialists and ROTs on the Exchange, depending on the price of the series to be quoted. The Exchange believes that these requirements can have the unintended consequence of requiring those making markets to quote at prices that are unnecessarily narrow, thereby exposing them to great risk if markets move quickly.<sup>17</sup> Two Floor Officials may currently grant relief from these differentials during times of peak market activity where options markets and/or the market for securities underlying the option move quickly. Under the proposal, one OEO would be authorized to make such a ruling. The Exchange believes that this should expedite the process for granting or denying such relief by reducing the number of persons required to participate in such a ruling.

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<sup>16</sup> See Exchange Rule 1080(e).

<sup>17</sup> See, e.g., Securities Exchange Act Release No. 50728 (November 23, 2004), 69 FR 69982 (December 1, 2004) (SR-Phlx-2004-74) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. Relating to \$ 5 Bid/Ask Differentials).

## Openings

Currently, the Exchange provides an automated opening system for options; however, two Floor Officials may direct the manual opening of the affected series where necessary to ensure a fair and orderly market.<sup>18</sup> For example, two Floor Officials may authorize the opening of a series at a price that falls outside of the Exchange's established parameters<sup>19</sup> where necessary to ensure a fair and orderly market.

The Exchange proposes to replace the two Floor Officials with a single OEO, who would have the same authority described above concerning openings. The purpose of this provision is to expedite the approval process for manual openings on the Exchange, thereby enabling the Exchange to open the particular series as quickly as possible.

## Trading Halts, Rotations, and Re-Openings Following a Trading Halt

Currently, two Floor Officials, with the concurrence of a Market Surveillance officer, are currently authorized to rule on trading halts, rotations and re-openings following a trading halt.<sup>20</sup> The Exchange proposes to amend the rules so that one OEO could make such a ruling. Further, the Exchange proposes to delete the provisions from the rules requiring the concurrence of a Market Surveillance officer in rulings concerning trading halts and re-openings following a trading halt. The purpose of this deletion is to avoid unnecessary delays in locating and informing a Market Surveillance officer of a situation requiring a halt (such as a halt in trading in the underlying security) while volatile market activity continues. The Exchange believes that the timeliness of such a ruling is critical in such situations, because customers and other market participants could be subject to immeasurable risk during the time period between the occurrence

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<sup>18</sup> See Exchange Rule 1017(f).

<sup>19</sup> See Exchange Rule 1017(e)(ii).

<sup>20</sup> See Exchange Rules 1047 and 1047A. See also, OFPA G-2.

of an event requiring a halt or re-opening and the time the decision is made and trading is actually halted. Thus, one OEO could make a prompt ruling without unnecessary delay.

### Order and Decorum

Currently, a Floor Official may impose on members, member organizations, participants, participant organizations and their associated persons, fines for breaches of regulations that relate to administration of order, decorum, health, safety and welfare on the Exchange.<sup>21</sup> Under the proposal, OEOs would have this authority. Currently, two Floor Officials may refer such a matter to the Exchange's Business Conduct Committee ("BCC").<sup>22</sup> Under the proposal, OEOs would have this authority, and one OEO could refer such a matter to the BCC.

Currently, two Floor Officials and an officer of the Exchange may exclude a member, participant, and any associated person of member organizations and participant organizations from the trading floor for breaches of regulations that relate to administration of order, decorum, health, safety and welfare on the Exchange that occurred on the trading floor or on the premises immediately adjacent to the trading floor if they pose an immediate threat to the safety of persons or property, are seriously disrupting Exchange operations, or are in possession of a firearm.<sup>23</sup> The Exchange proposes to authorize one OEO and an officer of the Exchange to do so.

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<sup>21</sup> See Exchange Rule 60.

<sup>22</sup> The Business Conduct Committee has exclusive jurisdiction to (i) monitor compliance with the Exchange Act, the rules and regulations thereunder, the By-Laws and rules of the Exchange or any interpretation thereof, and the rules, regulations, resolutions and stated policies of the Board of Governors or any committee of the Exchange, by Members, participants, Member Organizations and participant organizations and persons associated with any such persons or organizations; (ii) examine into the business conduct and financial condition of Members, participants, Member Organizations and participant organizations and persons associated with any such persons or organizations; and (iii) authorize the initiation of any disciplinary actions or proceedings brought by the Exchange. See Exchange By-Law Article X, Section 10-11.

<sup>23</sup> See Exchange Rule 60(b)(i).

Finally, the Exchange proposes a housekeeping amendment to OFPA F-27, to delete the term “Floor Procedure Committee,” because that committee no longer exists on the Exchange.<sup>24</sup>

The Exchange believes that replacing Floor Officials with OEOs should result in a more neutral, efficient and streamlined process for the resolution of disputes on the Exchange, together with an expedited process through which the Exchange may rule on matters currently handled by Floor Officials, including the determination to nullify and adjust transactions; to halt and re-open options series for trading; to conduct manual openings where necessary in the interest of a fair and orderly market; to process requests for relief from the requirements of certain rules; and to more efficiently maintain order and decorum on the Exchange’s options trading floor and surrounding areas.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>25</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>26</sup> in particular, in that it 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 establishing and authorizing neutral OEOs to rule on matters such as trading disputes, requests for relief, openings, trading halts and reopenings, and to efficiently maintain order and decorum on the options trading floor. The Exchange further believes that the proposal is consistent with Section 6(b)(1)<sup>27</sup> of the Act in that the proposal is designed to enable the Exchange to continue to comply, and to enforce compliance by its

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<sup>24</sup> See Securities Exchange Act Release No. 54538 (September 28, 2006), 71 FR 59184 (October 6, 2006) (SR-Phlx-2006-43).

<sup>25</sup> 15 U.S.C. 78f(b).

<sup>26</sup> 15 U.S.C. 78f(b)(5).

<sup>27</sup> 15 U.S.C. 78f(b)(1).

members and persons associated with its members, with provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

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 that is 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

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 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 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 Number SR-Phlx-2006-87 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-Phlx-2006-87. 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 the filing also will be available for inspection and copying at the principal office of the Phlx. 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 Number SR-Phlx-2006-87 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>28</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>28</sup> 17 CFR 200.30-3(a)(12).