

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52254; File No. SR-Phlx-2005-36)

August 15, 2005

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving a Proposed Rule Change Relating to Phlx Rule 1023

I. Introduction

On May 19, 2005, the Philadelphia Stock Exchange, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposal to amend Phlx Rule 1023, “Specialist’s Transactions with Listed Company.” The proposed rule change was published for comment in the Federal Register on July 7, 2005.³ The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Phlx Rule 1023(a) currently prohibits a specialist from effecting any business transaction with a company or any officer, director, or 10% shareholder of a company underlying an option in which the specialist is registered. The Phlx proposes to amend Phlx Rule 1023(a) to exclude from its restriction on an option specialist's business transactions with the issuer of the underlying stock and related persons business transactions in goods and services on terms generally available to the public. The Phlx believes that the proposed exception will not provide the option specialist with access to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 51928 (June 28, 2005), 70 FR 39351.

material non-public information concerning the issuer or give rise to a control relationship between the issuer and the specialist.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁴ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁵ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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.

The Commission believes that the proposal will ease the restriction in Phlx Rule 1023(a) on a specialist's business transactions with the issuer of the stock underlying an option in which the specialist is registered and related persons without providing the specialist with access to material non-public information regarding the issuer or giving rise to a control relationship between the issuer and the specialist. In addition, the Commission notes that Phlx Rule 1023(a), as amended, is substantially similar to Chicago Board Options Exchange Rule ("CBOE") 8.91(b).⁶

⁴ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(5).

⁶ CBOE Rule 8.9(b) provides, in part, that "Neither a DPM for an equity option, nor any member affiliated with the DPM, shall engage in any material business transaction with the issuer of the security that underlies the equity option or with any officer, director, or 10% shareholder of the issuer of the security...For purposes of this paragraph (b), a material business transaction shall be deemed to

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-Phlx-2005-36) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Jonathan G. Katz
Secretary

be a transaction which is material in value either to the issuer or the DPM, would provide access to material non-public information relating to the issuer, or would give rise to a control relationship between the issuer and the DPM. Notwithstanding the foregoing, the receipt of routine business services, goods, materials, or insurance, on terms that would be generally available shall not be deemed a material business transaction for the purposes of this paragraph (b)."

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).