

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52344; File No. SR-Phlx-2005-33)

August 26, 2005

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change, and Amendments No. 1 and 2 Thereto, Relating to Sending Principal Orders Via the Intermarket Options Linkage

I. Introduction

On May 6, 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 proposed rule change seeking to amend Phlx Rule 1087, Limitation on Principal Order³ Access, relating to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (“Linkage Plan”)⁴ and related rules. On May 11, 2005, the Phlx submitted Amendment No. 1 to the proposed rule change. On July 8, 2005, the Exchange submitted Amendment No. 2. The proposed rule change, as amended, was noticed for comment in the Federal Register on July 27,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A “Principal Order” is an order for the principal account of an eligible market maker that does not related to a customer order the market maker is holding. See Section 2(16)(b) of the Linkage Plan.

⁴ On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage (“Linkage”) proposed by the American Stock Exchange, LLC, Chicago Board Options Exchange, Inc., and the International Stock Exchange, Inc. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, the Phlx, the Pacific Exchange, Inc. and the Boston Stock Exchange, Inc. joined the Linkage Plan. See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

2005.⁵ The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as amended.

II. Description

The purpose of this proposed rule change, as amended, is to implement proposed Joint Amendment No. 17 to the Linkage Plan. Joint Amendment No. 17, together with this proposed rule change, would establish a de minimis exception to the “80/20 Test” set forth in Section 8(b)(iii) of the Linkage Plan and Phlx Rule 1087.

Section 8(b)(iii) of the Linkage Plan provides that Eligible Market Makers should send Principal Ordersthrough the Linkage on a limited basis and not as a primary aspect of their business. The 80/20 Test implements this policy in the Linkage Plan and Phlx Rule1087 by prohibiting a specialist or registered options trader (“ROT”) from sending Principal Orders in an eligible option class if, in the last calendar quarter, the specialist or ROT’s Principal Order contract volume is disproportionate to the specialist or ROT’s contract volume executed against customer orders in its own market.

The Exchange believes that applying the 80/20 Test has resulted in anomalies for ROTs with limited volume in an eligible option class. In particular, if a ROT has very little overall trading volume in an option, the execution of one or two Principal Orders during a calendar quarter could result in the ROT failing to meet the 80/20 Test. This would then prohibit the ROT from using the Linkage to send Principal Orders in that options class for the following calendar quarter. The Exchange believes that it is not the intent of the Linkage Plan and Exchange rules to prohibit ROTs with limited volume from sending Principal Orders through the Linkage in these circumstances since such trading clearly is not “a primary aspect of their business.”

⁵ See Securities Exchange Act Release No. 52072 (July 20, 2005), 70 FR 43495 (July 27, 2005).

Accordingly, the proposed rule change seeks to establish a de minimis exception from the 80/20 Test in Phlx Rule 1087 for specialists and ROTs that have total contract volume of less than 1,000 contracts in an option class for a calendar quarter.

III. Discussion

After careful review, 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.⁶ In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act⁷ which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The Commission believes that the proposed rule change will increase the availability of Linkage to members of the Participants by limiting the applicability of the 80/20 Test in situations where market makers have minimal trading volume in a particular options class.

The Commission recognizes that the Exchange does not believe that it is necessary to bar market makers with limited volume from sending Principal Orders through the Linkage, as such trading does not raise concerns that a member is sending such orders as "a primary aspect of their business." The Commission believes that the de minimis exemption from the 80/20 Test proposed by the Exchange for market makers that have a total contract volume of less than 1,000 contracts in an options class for a calendar quarter should ensure that specialists and ROTs with relatively low volume in a particular options class can send a reasonable number of Principal

⁶ 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).

⁷ 15 U.S.C. 78f(b)(5).

Orders without being barred from using the Linkage by application of the 80/20 Test in the following calendar quarter.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-Phlx-2005-33), as amended, is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland
Deputy Secretary

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).