

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53188; File No. SR-Phlx-2005-70)

January 30, 2006

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."

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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.]

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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 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.³ 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.⁴

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

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

⁴ Id.

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.⁵

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁷ 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.

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 not necessary or appropriate in furtherance of the purposes of the Act.

⁵ 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 an exchange-traded option issued by the Options Clearing Corporation and is immediately reported to the Exchange.”

⁶ 15 U.S.C. 78f(b).

⁷ 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 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. Please include File Number SR-Phlx-2005-70 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 Number SR-Phlx-2005-70. 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 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-2005-70 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.⁸

Nancy M. Morris
Secretary

⁸ 17 CFR 200.30-3(a)(12).