

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57155; File No. SR-Phlx-2008-02)

January 15, 2008

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change to Amend By-Law Article XIV, Section 14-5 and Phlx Rule 50

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 January 8, 2008, the Philadelphia Stock Exchange, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by 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 Exchange proposes to: (i) modify the timeframes within which monies owed to the Exchange would become reportable to the Board of Governors (“Board”) for further action; (ii) eliminate references to the monetary threshold of \$10,000; (iii) conform By-Law language to indicate that Members, Member Organizations, participants, and participant organizations would be subject to being terminated for failure to pay; and (iv) make other clarifying amendments.

The text of the proposed rule change is available at Phlx, the Commission’s Public Reference Room, and [www.phlx.com](http://www.phlx.com).

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

In its filing with the Commission, Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed

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

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

rule change. The text of these statements may be examined at the places specified in Item IV below. 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 amend the language in Phlx By-Law Article XIV, Section 14-5 and Exchange Rule 50 to bolster the Exchange's procedures regarding collection of monies owed to the Exchange.

The proposed rule change modifies the timeframes within which monies owed to the Exchange would become reportable to the Board, and by which Members, Member Organizations, participants, and participant organizations would be subject to a suspension or termination. The proposed rule change also defines the types of fees subject to each timeframe. Specifically, the previous time limitations of 50 days from the original invoice for certain monies and 20 days for other categories of monies would be removed from By-Law Article XIV, Section 14-5 and the time limitations in Exchange Rule 50 would be amended. The 50 day timeframe applied to dues, foreign currency options users' fees, fees, other charges and other monies due and owed to the Exchange. The 20 day timeframe applied to fines and other monetary sanctions.

Under this proposal, a Member, or Member Organization, participant, or participant organization or employee thereof shall be referred to the Board for failure to: (i) pay fines and/or other monetary sanctions within 30 days after notice thereof; or (ii) pay dues, foreign currency options users' fees, fees, other charges, and/or other monies due, including late charges, within 90 days from the date of the original invoice. These timeframes would be amended in Rule 50 and deleted from By-Law Article XIV, Section 14-5, rather than appear in both Rule 50 and By-

Law Article XIV, Section 14-5. The purpose of amending these timeframes is to conform to the Exchange's current accounting and billing cycles and to allow a reasonable time for payment of invoices prior to the necessity to report a past due amount to the Board for further action.

In addition, this proposed rule change would eliminate the references to the monetary threshold of \$10,000 from both By-Law Article XIV, Section 14-5 and Rule 50, so that all past due amounts are reportable to the Board within the specified proposed new timeframes. The requirement to report to the Finance Committee is proposed to be eliminated from Rule 50. Both of these changes are intended to direct collection matters to the Board directly and without regard to the amount, in order to enhance the immediacy of the Exchange's collection efforts.

The word "terminate" is proposed to be added to By-Law Article XIV, Section 14-5 to conform with the termination language in By-Law Article XIV, Section 14-1. By-Law Article XIV, Section 14-1 currently provides that the Board shall have the power to establish and assess penalties and late charges for failure to pay any fees, dues, or charges owed to the Exchange, including, without limitation, termination of a permit or participation (which permit or participation may be reissued) and forfeiture of all rights as a Member, Member Organization or participant organization, permit holder or (with respect to a foreign currency options participation) an owner, lessor or lessee. The proposed rule change to By-Law Article XIV, Section 14-5 clarifies that the Board has the power to terminate, not just suspend, any permit or rights and privileges of a foreign currency options participation of any Member, foreign currency options participant,<sup>3</sup> Member Organization or participant organization or employee thereof.

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<sup>3</sup> By-Law Article I, Section 1-1(j) defines a Foreign Currency Options Participation as "the foreign currency options participations issued from time to time by the Exchange."

By-Law Article I, Section 1-1(k) defines a Foreign Currency Options Participant or Participant as "a Member of the Exchange who has purchased a foreign currency options

Currently, By-Law Article XIV, Section 14-5 only covers suspension. The Exchange believes it is helpful to add “terminate” to By-Law Article XIV, Section 14-5 so that the consequences of a failure to pay appear together, even though By-Law Article XIV, Section 14-1 already gives the Board the power to terminate. In other words, the Board’s power to terminate is merely being repeated in another by-law and is not being created by this proposed rule change.

A Member, Member Organization or employee thereof is required to maintain a permit in order to qualify as a member of the Exchange. That permit has certain rights and privileges<sup>4</sup> that allow the Member or Member Organization, and its employees, to access the trading floor and trade, among other things. In order to trade foreign currency options at the Exchange, either a permit or a foreign currency participation is required.<sup>5</sup>

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participation and a non-member who has been admitted to the Exchange as a foreign currency options participant by the Admissions Committee.”

By-Law Article I, Section 1-1(l) defines a Foreign Currency Options Participant Organization as:

“...corporation, partnership (general or limited), limited liability partnership, limited liability company, business trust or similar organization, transacting business as a broker or a dealer in securities and which has the status of a foreign currency options participant organization by virtue of (i) permission given to it by the Admissions Committee pursuant to the provisions of Section 10-6 of these By-Laws or (ii) the transitional rules adopted by the Exchange pursuant to Section 12-12 of these By-Laws. References herein to officer or partner, when used in the context of a foreign currency options participant organization, shall include any person holding a similar position in any organization other than a corporation or partnership that has the status of a foreign currency options participant organization.”

<sup>4</sup> See Exchange Rule 908 (Rights and Privileges of A-1 Permits.)

<sup>5</sup> See Exchange By-Law Article XXVII, Section 27-1 (Foreign Currency Options Participants) and Exchange By-Law Article XIII, Section 13-1 (Qualification.) See also Securities Exchange Act Release No. 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (SR-Phlx-2003-73) at n. 8 which states, “The Exchange, however, plans to retain its existing Foreign Currency Option (“FCO”) participations (as defined in section 1-1(i) of the amended By-laws). After the demutualization, the ability to trade FCOs on the Phlx will also be available through a Series A-1 Permit, as set forth in proposed Rule 908(b).”

For non-payment of monies owed, the Board may, using its powers in By-Law Article XIV, Sections 14-1 and 14-5, determine to, in the case of a permit: (1) suspend trading privileges that flow from the permit for a period of time, until payment is made; or (2) terminate the permit; or, in the case of a foreign currency options participation, (3) suspend the rights and privileges for a period of time; (4) terminate the participation; or (5) if eligible, pursuant to the last paragraph of By-Law Article XIV, Section 14-5, dispose of the participation.

In the event that a permit is terminated by the Board, the affected party would be required to reapply for admission with the Exchange for a new permit once payment in full was made of any outstanding balance owed to the Exchange. In the event of disposal,<sup>6</sup> as referenced in the last paragraph of By-Law Article XIV, Section 14-5, the Exchange would purchase the participation at the current bid<sup>7</sup> and allocate proceeds to the holder less the amount that was owed the Exchange.<sup>8</sup> This provision is only being changed to delete the \$10,000 threshold, such that any amounts owed and not paid after one year may subject a foreign currency options participation to disposal.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that it is

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<sup>6</sup> See By-Law Article XXVII, Section 27-3 (Privileges and Obligations of Foreign Currency Options Participants.)

<sup>7</sup> The current bid for a Foreign Currency Options Participation is posted weekly in the Exchange bulletin.

<sup>8</sup> See By-Law Article XV, Section 15-3 (Disposition of Proceeds of Sale of Foreign Currency Options Participation) and By-Law Article XV, Section 15-11 (Foreign Currency Options Participations Purchased by the Exchange.)

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

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 providing notice and clarity of its reporting procedures for non-payment to 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-2008-02 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 Number SR-Phlx-2008-02. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of 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-2008-02 and should be submitted on or before [insert date 21 days after publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).