

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55256; File No. SR-Phlx-2005-68)

February 8, 2007

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Deletion of Rule 702, Carrying Accounts

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4² thereunder, notice is hereby given that on November 9, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been substantially prepared by the Phlx. The Phlx filed Amendment No. 1 to the proposed rule change on January 18, 2007.³ 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 Rule 702, Carrying Accounts. The text of Rule 702, proposed to be deleted, is set forth below. Brackets indicate deletion.

[Rule 702. Carrying Accounts

No member, doing business as an individual, shall carry accounts for customers, except as provided in Rule 903.]

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaces and supersedes the original filing in its entirety.

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 to delete Rule 702, Carrying Accounts, is to eliminate an unnecessary and confusing Exchange rule. Currently, Rule 702 provides that “[n]o member, doing business as an individual, shall carry accounts for customers, except as provided in Rule 903.”⁴

The term “member” (as opposed to “member organization”) is defined in Exchange rules as a permit holder which has not been terminated in accordance with the by-laws and rules of the Exchange.⁵ Currently, the only issued and outstanding

⁴ The reference to Rule 903 is clearly an incorrect reference which should be to Rule 904, Use of a Partnership Name, which provides that “[n]o member shall conduct business under a partnership firm name unless he has at least one general partner, provided, however, that if by death or otherwise a member becomes the sole general partner in a member organization that is a partnership he may continue business under the partnership name for such period as may be allowed by the Committee.”

⁵ See Exchange By-Law Article I, Section 1(t) and Exchange Rule 1(n). Exchange By-Law Article XII, Section 1(b) provides in part that “[e]xcept as otherwise set forth in the rules of the Exchange or any resolution of the Board of Governors

Exchange permits are Series A-1 Permits, the terms and conditions of which are governed by Rule 908. Section (b) of Rule 908, Series A-1 Permits, provides in part that, with one narrow exception not relevant here, a Series A-1 permit shall only be issued to an individual.⁶

The Exchange believes that Rule 702 is unnecessary. Additionally, since virtually all members are individuals, Rule 702's proscription against the carrying of customer accounts by a member "doing business as an individual" is confusing. The Exchange has in the past interpreted the rule as prohibiting any individual member from carrying customer accounts. Rule 908 requires any Series A-1 Permit Holder to maintain a primary affiliation with an eligible member organization at all times that such holder holds a permit. Member organizations, which do not include individuals but which are defined as "a corporation, partnership (general or limited), limited liability partnership, limited liability company, business trust or similar organization" which meet certain criteria, are not covered by the Rule 702 prohibition.

authorizing a specific class or series of permits, a permit will confer upon and subject the holder thereof to all the privileges and obligations of a member pursuant to these By-Laws and the rules of the Exchange, . . . and to conduct business on the Exchange as provided in these By-Laws and such rules."

⁶ Rule 908(b) provides that a Series A-1 Permit may also be issued to "a corporation meeting the requirements of Section 12-4 of the By-Laws." Section 12-4 of the By-Laws, Admission of Corporation, provides that "[a] corporation may be issued a permit by the Exchange, provided such corporation is incorporated under the laws of the Commonwealth of Pennsylvania, and all of its capital stock is owned by the Exchange." This By-Law provision was intended to permit Exchange membership for the Exchange's subsidiary, Stock Clearing Corporation of Philadelphia.

The Exchange is proposing the deletion of Rule 702 not only because it is confusing, but also because a member's ability to carry customer accounts is in many ways dictated by the member's ability to comply with relevant securities laws and regulations including, but not limited to, Exchange Act Rules 15c3-1 and 15c3-3,⁷ and related rules, which do not make distinctions on the basis of a member's organizational and corporate structure.⁸ The Exchange believes that Rule 702 is therefore superfluous.

2. Statutory Basis

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

⁷ 17 CFR 240.15c3-1 and 240.15c3-3.

⁸ For example, the customer protection provisions of Rule 15c3-3 under the Act requires broker-dealers to maintain physical possession or control of customer fully-paid and excess margin securities. Further, Phlx member firms for which the Exchange is the DEA generally do not carry public customer accounts. If a Phlx member firm carries customer accounts it is required to become a member of a national securities association (e.g., the National Association of Securities Dealers ("NASD")). Under agreements that the Phlx has entered into with other self-regulatory organizations ("SROs") in accordance with Rule 17d-2 under the Act, any Phlx member that is also a member of another SRO (including the NASD) would be assigned to another DEA.

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 shall: (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-2005-68 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-2005-68. 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-2005-68 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.⁹

Florence E. Harmon
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).