

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51928; File No. SR-Phlx-2005-036)

June 28, 2005

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to an Amendment of Phlx Rule 1023

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 19, 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 amend Phlx Rule 1023, “Specialist’s Transactions with Listed Company.”

The text of the proposed rule change is below. Proposed new language is in italics.

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Rule 1023. Specialist's Transactions with Listed Company

(a) No specialist or his member organization, or any member, limited partner, officer, employee, approved person or party approved shall directly or indirectly, effect any business transaction with a company or any officer, director or 10% stockholder of a company in which options of such company the specialist is registered, except for business transactions in goods and services on terms generally available to the public.

(b) No Change.

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 1023(a) generally prohibits options specialists from effecting any business transaction with the issuer of the stock underlying the option or related persons. The Exchange proposes to add an exception for doing business in goods and services on terms generally available to the public on the theory that such transactions will not provide access to material non-public information relating to the issuer, nor would they give rise to any control relationship between the issuer and the specialist. The prohibition against such transactions is therefore proposed to be eliminated in that it serves no useful purpose and imposes unnecessary restrictions upon options specialists.³

2. Statutory Basis

³ The Exchange has previously stated that certain business transactions enumerated in Phlx Rule 511(b)(ii) are not the types of business transactions contemplated under Phlx Rule 1023. For purposes of Phlx Rule 511(b)(ii), Phlx Rule 1023 was deemed by the Exchange to prohibit only business transactions which are material in value either to the issuer or the specialist, would provide access to material nonpublic information relating to the issuer, or would give rise to a control relationship between the issuer and the specialist unit. The Exchange also stated that the receipt of routine business services, goods, materials, insurance, on terms that would be generally available would not be deemed a business transaction for the purposes of Phlx Rule 1023. See Securities Exchange Act Release No. 46214 (July 16, 2002), 67 FR 48693 (July 25, 2002) (order approving File No. SR-Phlx-2001-63), at footnote 6.

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act⁵ in particular, in that it removes an unnecessary restriction on specialists' activity which should result in increased liquidity in the market, to the benefit of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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:

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

- 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 No. SR-Phlx-2005-036 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-Phlx-2005-036. 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-2005-036 and should be submitted by [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland
Deputy Secretary

⁶ 17 CFR 200.30-3(a)(12).