flexibility when selling stock for cash to a substantial security holder.

Private sales. The Exchange requires approval of all issuances that result in a 20 percent dilution, except for public offerings for cash. However, market practices have blurred the differences between public and private sales. For example, public offerings can resemble private placements, such as sales pursuant to a shelf registration to a small group of purchasers. In contrast, a company can engage in broad-based unregistered sales of stock, or securities convertible into stock, through private placements or pursuant to Commission Rule 144A under the Securities Act of 1933, as amended.[4] Thus, certain types of private sales now are very similar to public offerings.

The Exchange proposes to make a private sale of 20 percent or more of a company's stock exempt from the policy if (i) the sale is at a price at least as high as each of the book and market value of the stock and (ii) the sale is a ''bona fide financing.'' A bona fide financing would be either a sale through a broker-dealer acting as an intermediary (such as pursuant to Rule 144A) or a sale to multiple parties in which no one person acquires more than five percent of the issuer's stock. The five percent limit ensures that control persons do not disproportionately increase their ownership in a listed company through privately-negotiated sales, even if the sale price is at the market.[5]

(b) Basis

The Exchange believes the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[6] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, 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.

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

The Exchange believes this proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the 1934 Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members of other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 the self-regulatory organization 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–97–14 and should be submitted by July 3, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–15402 Filed 6–11–97; 8:45 am]

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[4] 17 CFR 230.144A.

[5] The rule change also clarifies that shareholder approval is required if any one of the four requirements is triggered, notwithstanding the fact that the other requirements of the Policy have not been triggered. For example, a direct sale by a company of more than 20 percent of its stock in a bona fide financing still would require shareholder approval as a related-party transaction if the company sells more than one percent of the stock to an officer or director.

[6] 15 U.S.C. § 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38711; File No. SR–Phlx 97–14]

Self-Regulatory Organization; Notice of Filing and Order Granting Partial Accelerated Approval to a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Rule 722, Margin Accounts

June 2, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 8, 1997, 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 prepared by the self-regulatory organization. Phlx submitted amendment No. 1 on May 20, 1997.[1] Phlx submitted Amendment No. 2 on May 28, 1997.[2] Phlx submitted Amendment No. 3 on May 30, 1997.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and to grant accelerated approval to the portions of the proposal relating to customer cash accounts, over-the-counter (''OTC'') options, market-maker and specialist ''good faith'' margin requirements for permitted offset transactions, and

[1] *See* Letter from Michele R. Weisbaum, Vice President and Associate General Counsel, Phlx, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation (''Market Regulation''), Commission, dated May 19, 1997 (''Amendment No. 1''). Amendment No. 1 superseded the original rule filing in its entirety by addressing technical changes by making corrections to certain typographical errors appearing in the rule filing. Amendment No. 1 also makes a number of substantive changes.

[2] *See* Letter from Michele R. Weisbaum, Vice President and Associate General Counsel, Phlx, to Michael Walinskas, Senior Special Counsel, Market Regulation, Commission, dated May 28, 1997 (''Amendment No. 2). Amendment No. 2 supersedes Amendment No. 1 with regard to certain portions of the rule filing the Commission is approving today by accelerated approval.

[3] *See* Letter from Diane Anderson, Vice President, Examinations Department, Phlx, to Michael Walinskas, Senior Special Counsel, Market Regulation, Commission, dated May 30, 1997 (''Amendment No. 3''). Amendment No. 3 corrects an inadvertent omission to Amendment No. 2.

certain other portions of the proposal as discusses below.[4]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to revise its rules governing margin in order to (i) establish Phlx rules to govern areas of margin regulation that will no longer be addressed by Regulation T of the Board of Governors of the Federal Reserve System (''Federal Reserve Board,'' ''FRB,'' or ''Board''), (ii) conform certain Phlx margin rules to those of the New York Stock Exchange (''NYSE''), and (iii) rearrange existing provisions of the Phlx margin rules for ease of reading. The text of the proposed rule change is available at the Office of the Secretary, Phlx and at the Commission.

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

In its filing with the Commission, the self-regulatory organization 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 self-regulatory organization 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

The purpose of the proposed rule change is to make revisions to the Phlx rules governing margin that will (i) establish Phlx rules to govern areas of margin regulation that will no longer be addressed by Regulation T of the Board of Governors of the Federal Reserve System, (ii) conform certain Phlx margin rules to those of the NYSE, and (iii) rearrange existing provisions of the Phlx margin rules for ease of reading.

The Exchange is proposing changes at this time because of recent amendments to Regulation T, the regulation that covers extensions of credit by and to brokers and dealers by the Federal Reserve Board.[5] Among other things, the amendments to Regulation T will modify or delete certain Board rules regarding options transactions in favor of rules that must be adopted by the options exchanges and approved by the Commission. The new options provisions in Regulation T became effective June 1, 1997. In the course of amending the Exchange's rules to accommodate the changes necessary because of the Regulation T amendments, it became necessary for the sake of clarity to propose changes to the margin rules that would conform certain Phlx rules to the rules of the NYSE and to rearrange existing provisions of Rule 722 for the sake of organization.

Definition Section

Rule 722 has been rearranged to set forth the definitions applicable to the rule in section (a) now instead of at the end of the rule. Accordingly, all of the definitions that are currently in section (e) have been moved to new section (a) with three additions: (1) the definition of the term ''current market value'' will now also incorporate a definition relevant to options and spot market prices which is currently in section (c)(2)(A) (i) and (ii); (2) a definition of the term ''escrow agreement'' has been added in subsection (6); and (3) a definition of the term ''qualified stock basket'' is added in subsection (7).

Customer Margin Accounts

The Exchange is also proposing to rearrange Rule 722 so that all provisions concerning customer margin accounts are in the same section. Currently, customer margin provisions appear throughout the rule. Paragraph (b) will now set forth the general rules for margin requirements on long and short positions in customer margin accounts. Paragraph (c) will set forth the exceptions for specific types of securities and positions held in margin accounts. Specific provisions relevant to options and warrants will be covered in paragraph (d) entitled *Derivative Securities.* Paragraph (b) is merely renumbered paragraph (a) from the current rule with headings added for clarity and the term stock is being changed to security for broader application.

The first exception in paragraph (c), *Margin Accounts-Exceptions,* will be for offsetting ''long'' and ''short'' positions. The margin treatment which currently is in section (b)(1) will be moved to section (c)(1) but will not be changed. Specifically, long positions in a security exchangeable or convertible into the security held in a short position will require that 10% of the current market value of the ''long'' position be maintained and ''long'' and ''short'' positions on the same security will be margined at 5%. These provisions are consistent with NYSE Rule 431.

The margin treatment for exempted securities and marginable corporate debt is being moved from section (b)(2) in the current rule to new section (c)(2) but is not being changed in any substantive manner. Consistent with NYSE Rule 431, obligations of the United States are subject to a margin requirement of between 1% and 6% depending on the years to maturity for the obligation. Zero coupon bonds are subject to a margin requirement of 3% for bonds with five years or more to maturity. All other exempted securities are subject to an initial and maintenance margin requirement of 15% of the current market value or 7% of the principal amount, whichever is greater. The maintenance margin requirement for non-convertible debt securities will remain at 20% of the current market value or 7% of the principal amount, whichever amount is greater with the exception for mortgage related securities which have a 5% maintenance margin requirement.

The remainder of current paragraphs (b)(2) through (b)(6) is now renumbered as paragraphs (c)(2)(B) through (c)(5). All of the provisions applicable to *Special Provisions, Cash Transactions with Customers, Joint Accounts in which the Carrying Member Organization or a Partner Thereof or Shareholder Therein has an Interest, International Arbitrage Accounts and Broker Dealer Accounts* will remain in the rule as is except that Subpart (b)(5) is being removed from this section because the provisions for specialist and market maker accounts will now be covered under section (g). Subparagraph (b) which deals with joint accounts is being moved to section (g)(3) and since the Exchange no longer has odd-lot dealers, subparagraph (a) is being completely deleted.

New proposed section (d) of Rule 722 is entitled *Customer Margin Accounts—Derivative Securities,* and will contain all of the provisions applicable to options and warrants in customer margin accounts. The first paragraph states that active securities dealt in on a recognized exchange will be valued at current market prices but that other securities will be valued conservatively and that substantial additional margin will be required where the securities are unusually volatile or illiquid. This provision is being moved, unchanged, from section (c)(1).

The next provision sets forth the continuing rule that long positions in

[4] The Commission is not approving the following portions of the proposed rule filing: the proposed definition of ''qualified stock basket'' (Rule 722(a)(7)); *Customer Margin Accounts—Derivative Securities* (Rule 722(d)); and *Commentary .14.*

[5] 61 FR 20386 (May 6, 1996) (Federal Reserve Board's release adopting certain changes to Regulation T).

listed options and warrants will not have any loan value for purposes of computing margin in customer accounts. It is being moved from current paragraph (c)(2) and is renamed, *Long Positions—Listed Options and Currency, Currency Index or Stock Index Warrants.*

Paragraph (d)(3) restates the existing provisions of current paragraph (c)(2)(B)(i) regarding short listed options and warrants. The paragraph and accompanying chart sets forth the margin requirements for equity options, index options, foreign currency options, currency warrants, currency index warrants and stock index warrants listed or traded on a national securities exchange. It is not applicable to OTC options which are provided for in section (f) of the rule (current subsection (ii) to paragraph (c)(2)(B) which dealt with OTC options is also being deleted at this time). The one addition to the existing rule is the exception for short put options that would cap the margin requirement at no less than the option market value plus the minimum percentage applicable to that type of option in column III of the option's aggregate exercise price amount. The purpose of this cap is to assure that the margin requirement does not continue to increase as the risk of the put position decreases as it becomes farther out-of-the-money.

Existing paragraph (c)(2)(C) is being renumbered as (d)(4) and certain omitted words caused by typographical errors are being corrected.

The margin treatment for various related securities positions involving listed options and warrants carried in a customer margin account has been revised and rearranged from what is in the current rule. Current paragraph (c)(2)(D) is renumbered as (d)(5)(A)(i) and entitled *Straddles/Combinations.* The provision has not been changed and thus continues to state that where a call option contract (on a stock, index or foreign currency) is carried in a short position for the same customer for which a short put option is held, the margin on the put or call, whichever amount is greater, plus the current market value of the other option is required to be maintained. The first two paragraphs of current subpart (c)(2)(F)(i) applicable to warrant straddles has been moved into this section and numbered as (d)(5)(A) (ii) and (iii). Former subparagraph (E) is renumbered as (d)(5)(B) and entitled, *Short option offset by long option where long option expires with or after short option.* The substance of the section has not been changed but has been redrafted for the sake of clarity and brevity. The margin treatment for spread positions on stock index, currency and currency index warrants in the present rule (in section (c)(2)(F)(i)) is continued in section (d)(5)(C). The margin treatment for covered write convertibles which was formerly in subparagraph (F)(i) will now be in (d)(5)(D) but the language in that section applicable to short puts will be deleted because it is covered under a new subsection (E) which is being added for covered calls and covered puts. Finally, a new provision for short equity call options offset by a warrant to purchase the underlying security has been added in new subsection (d)(5)(F). The provision, which is consistent with Regulation T, requires no margin for this position if the warrant to purchase the underlying security does not expire on or before the expiration date of the short call, and if the amount (if any) by which the exercise price of the warrant exceeds the exercise price of the short call is deposited in the account.

Customer Cash Accounts

The Exchange is proposing to add a provision to Rule 722 detailing the circumstances under which a customer may carry short equity options in a cash account, *i.e.*, an account for which no loan value is extended. This provision is consistent with a provision in Regulation T and is being added so that the Phlx rule is more complete and thus, easier for members to rely on the rule for all aspects of margin regulation. The proposed new paragraph (e)(1) of Rule 722 would permit either a call option contract or a put option contract held in a short position to be carried in a cash account if the option contract was a covered position and the account contained one of the specified offsets. In the case of a short call option, permitted offsets include: (i) the underlying security, in an amount equal or greater than that specified by the option contract, provided it is held in the account until full cash payment for the underlying security is received; (ii) a security immediately convertible without the payment of money into an equal or greater quantity of the underlying security specified by the option contract, if held in, or purchased on the same day, provided that the option premium is held in the account until full cash payment for the convertible security is received and the ability to convert does not expire before the expiration of the short call option; or (iii) an escrow agreement issued by a bank and either held in the account at the time the call is written or received in the account promptly thereafter. In the case of a short put option, allowable offsets include: (i) a cash or cash equivalent as defined in Regulation T of not less than the aggregate put exercise amount; or (ii) an escrow agreement issued by a bank which is obligated to deliver the required cash in the event of assignment of the short put.

New proposed paragraph (e)(2) of Rule 722 would add a provision that permits a customer to hold certain index options in a cash account such as short European-style index options offset by long European-style index options on the same underlying index. In order to qualify for the cash account, the long position would have to be held in the account, or purchased for the account on the same day. In addition, the option premium would have to be held in the account until full cash payment for the long option is received; the long option must expire with the short option and the account must hold cash or cash equivalents of not less than any amount by which the aggregate exercise price of a long call (short put) exceeds the aggregate exercise price of a short call (long put). This new treatment is justified because the Federal Reserve Board decided to defer to the options exchanges the authority to determine the specific options-related strategies allowed to be effected in the cash account, provided that the risk of the strategy is defined and the account contains the securities and/or cash required to fully cover the exposure.

Options positions covered by escrow receipts meeting the requirements of Options Clearing Corporation (''OCC'') Rule 610 or option guarantee letters have been moved from section (c)(2)(G) to paragraph (e)(3) of Rule 722 and entitled, *Certain Covered Options Transactions.* The provisions applicable to put and call option contracts on equity options, index options and foreign currency options have not been changed except to correct a typographical error.

Over-the-Counter Options

The Exchange is adopting margin requirements for OTC options which are the same as the OTC options margin rules in NYSE Rule 431. Within this section (proposed Rule 722(f)) is a chart showing the initial and/or maintenance margin required for options on various types of underlying instruments. The amount of margin required is the percentage of the current market value of the underlying component times the multiplier, if any (set forth on the chart) plus any ''in-the-money amount.'' The amount of the margin required to be maintained may be reduced for a short put or call by any ''out-of-the-money amount.'' The amount to which the

margin required may be reduced is set forth in a separate column.

The Exchange is proposing to add margin treatment for related securities positions involving OTC options held in a customer margin account. The Exchange is proposing to add special margin treatment provisions for covered write convertibles, covered calls and puts, and spreads and straddles involving OTC options which are the same as that found in NYSE Rule 431.

Specialist and Market Maker Accounts

Phlx rules as well as the rules of the other option exchanges have always distinguished the margin treatment for specialists and market makers from those of the customers because of the unique position of specialists and market makers in maintaining liquid markets. The rules recognize that options specialists and market makers must engage in various hedging transactions to manage the risk involved in fulfilling their role. Regulation T is deleting its provisions governing permitted offset treatment on specialists and market makers and is deferring this authority to the self-regulatory organizations (''SROs''). Consequently, the proposed rule (Rule 722(f)(2)) sets forth various permitted offset positions which may be cleared and carried by a member organization on behalf of one or more registered specialists or registered options traders (hereinafter collectively referred to as ''market makers'') upon a margin basis satisfactory to the concerned parties.

A permitted offset position will be defined to mean, in the case of an option in which a market maker makes a market, a position in the underlying instrument or other related instrument and in the case of other securities in which a market maker makes a market, a position in options overlying the securities in which the market maker makes a market, if the account holds the following positions: (i) a long position in the underlying instrument offset by a short position which is ''in-the-money''; (ii) a short position in the underlying instrument offset by a long option position which is ''in-the-money''; (iii) a stock position resulting from the assignment of a market maker short option position; (iv) a stock position resulting from the exercise of a market maker long position; (v) a net long position in a security (other than an option) in which a market maker makes a market; (vi) a net short position in a security (other than an option) in which the market maker makes a market; or (vii) an offset position as defined in SEC Rule 15c3–1. All permitted offset transactions must be effected for the purpose of hedging, reducing the risk of, rebalancing, liquidating open positions of market-makers, or accommodation of customer orders, or other similar market-making purpose.

For purposes of the rule, ''in- or at-the-money'' means that the current market price of the underlying security is not more than two standard exercise price intervals below (with respect to a call option) or above (with respect to a put option) the exercise price of the option. In determining the types of instruments which are entitled to be carried in a permitted offset position, reference can be made to the definition of ''related instrument'' which is set forth in the rule. ''Related instrument'' within an option class or product group is any related derivative product that meets the offset level requirements for product groups under Rule 15c3–1 (the net capital rule) of the Act, or any applicable SEC staff interpretations or no-action positions (hereinafter referred to collectively as ''Exchange Act Rule 15c3–1''). The term ''product group'' means two or more options classes, related instruments, and qualified stock baskets for which it has been determined that a percentage of offsetting profits may be applied to losses in the determination of net capital as set forth in Exchange Act Rule 15c3–1.

Commentary .14 will now address the manner in which the carrying firm may comply with its responsibility to extend credit properly to market maker permitted offset transactions effected on an exchange where the market maker is not registered. If a market maker fails to specify to which account such an order should be placed and the resulting transaction clears in a market maker account, and not a customer account, it will be presumed that the market maker elected market maker margin treatment for the position effected on an exchange of which he is not a member. Clearing firms are, however, responsible for implementing adequate procedures to ensure that such orders are recorded accurately and cleared into the appropriate accounts.

The Exchange is also proposing to add a provision regarding trading in an account in a deficit (see, section (g)(4)(C)(ii)). The addition generally states that nothing shall prohibit the carrying firm from effecting hedging transactions in a deficit account with the prior written approval of the carrying firm's SEC designated examining authority.

Finally, proposed paragraphs (h), *Foreign Currency Options-Letters of Credit* and (i) of Rule 722 entitled *Other Provisions,* will incorporate the remainder of existing Rule 722 which includes provisions for *When Issued and When Distributed Securities, Guaranteed Accounts, Consolidation of Accounts, Time within which Margin or Mark-to-Market must be Obtained, Practice of Meeting Regulation T Margin Calls by Liquidation Prohibited, Margin Required in Excess of Letters of Credit,* and *CIPs.*

The proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest.

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

The Phlx 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 the 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.

The Exchange has requested that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change on an accelerated basis prior to the thirtieth day after publication in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the proposed rule

change and Amendment Nos. 1, 2 and 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 all such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–97–14 and should be submitted by July 3, 1997.

V. Commission's Findings and Order Granting Partial Accelerated Approval of Proposed Rule Change

The Commission finds the following portions of the proposed rule change to be consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act:[6] moving the *Definition Section* of Rule 722 to the front of the rule, proposing to revise the definition of ''current market value'' and add the definition of ''escrow agreement'' (the proposed definition of ''qualified stock basket'' is not being approved at this time); proposed paragraphs (b) and (c) of Rule 722 relating to *Customer Margin Accounts* (but not proposed paragraph (d), which is not being approved at this time); that portion of the proposed rule concerning *Customer Cash Accounts*; that portion of the proposed rule concerning *OTC Options*; that portion of the proposed rule concerning *Specialists and Market-Maker Accounts,* incorporating certain permitted offset transactions from Regulation T and Exchange Act Rule 15c3–1 (proposed Rule 722 (g)); and proposed paragraphs (h) and (i) of Rule 722, relating to *Foreign Currency Options—Letters of Credit* and *Other Provisions.* Section 6(b)(5) requires, among other things, that the Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.[7]

The Exchange proposes to move the definition section of Rule 722 from the back of the rule to the front, revise one definition and add new definitions of the terms ''current market value'' and ''escrow agreement.''

The revised definition of the term ''current market value'' will now also incorporate a definition relevant to options and spot market prices which is currently in section (c)(2)(A) (i) and (ii) of Rule 722. Accordingly, the proposed definition does not raise new or unique issues.

The term ''escrow agreement'' being adopted by the Exchange is nearly identical to that of Regulation T except that it represents a more restrictive approach. The Commission concludes that it is reasonable for the Exchange to limit the allowed issuers of escrow receipts to entities such as banks.

Paragraph (b) of Rule 722 (*Customer Margin Accounts—General Rule*) will not set forth the general rules for margin requirements on long and short positions in customer margin accounts. Paragraph (c) of Rule 722 (*Customer Margin Accounts—Exceptions*) will set forth the exceptions for specific types of securities and positions held in margin accounts. Neither of these paragraphs has been substantively revised, and, accordingly, they raise no new regulatory issues. The Commission concludes that it is reasonable for the Exchange to move these paragraphs to their new location in Rule 722.

The Exchange is proposing to add a provision to Rule 722 detailing the circumstances under which a customer may carry short equity options in a cash account, *i.e.,* an account for which no loan value is extended (Rule 722(e)(1)). This provision is consistent with a provision in Regulation T and accordingly does not raise new issues. The Exchange is also proposing to add a new paragraph (e)(2) permitting a customer to hold debit put spreads involving European-style broad-based stock index options to be carried in a cash account. This provision is substantially similar to an existing provision in the rules of the Chicago Board Options Exchange (''CBOE'').[8] Accordingly, the Commission finds this provision to be a reasonable one for the Phlx to adopt at this time, while noting that although in its *Statement of the Terms of Substance of the Proposed Rule Change* the Phlx appears to be interpreting the provision broadly, the wording of the rule permits only the debit put spreads discussed above to be carried in a cash account.

The Exchange is proposing to move the section of its rule addressing Option positions covered by escrow receipts meeting the requirements of OCC Rule 610 or option guarantee letters from section (c)(2)(G) to paragraph (3) of the cash account section and rename it, *Certain Covered Options Transactions.* The provisions applicable to put and call option contracts on equity options, index options and foreign currency options have not been changed except to correct a typographical error, and, accordingly, do not raise any new regulatory issues. The Commission finds that this provision is a reasonable one at this time.

The Exchange is proposing to adopt margin requirements for over-the-counter options which are the same as the OTC option margin rules in NYSE Rule 431, and, accordingly, do not raise new regulatory issues.[9] The Commission also believes that the Exchange's decision to model its margin treatment for OTC options and related securities positions based on the NYSE positions should help foster coordination between markets by achieving parity between the margin requirements of the various SROs. The Commission also believes that this approach will promote coordination in regulating, clearing, settling, and facilitating transactions in securities by providing for uniformity in this area of the SROs' margin schemes and reducing confusion among customers.

The Exchange has proposed to adopt specific provisions governing permitted offset treatment for market-makers and specialists that were deleted from Regulation T as of June 1, 1997. The proposed rule sets forth various permitted offset positions which may be cleared and carried by a member organization on behalf of one or more market-makers upon a margin basis satisfactory to the concerned parties ''good faith'' margin). In addition, it requires that the amount of any deficiency between the equity maintained by the market-maker and the haircuts specified in Exchange Act Rule 15c3–1 shall be considered as a deduction from net worth in the net capital computation of the carrying broker.

The six proposed offsets described in proposed Rule 722 (g)(4)(i) to (vi) codify the existing permitted offsets that were provided under Regulation T until June

[6] 15 U.S.C. 78f(b)(5).

[7] In approving these rules, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

[8] *See* CBOE Rule 24.11A.

[9] *See* NYSE Rule 431(f)(2).

1, 1997. These offsets reflect well-recognized market-making hedging transactions involving certain options offset strategies involving the related underlying stock. The addition of Rule 722(g)(4)(vii), allowing any offset position defined under Exchange Act Rule 15c3–1 constitutes a significant expansion of permitted offset positions. The inclusion of item (vii) recognizes that options market-makers and specialists must engage in various hedging transactions to manage the risk involved in fulfilling their role, and, therefore, allows a member organization to clear and carry market-maker's offset positions as defined in Exchange Act Rule 15c3–1 upon a good faith margin basis. The Exchange has clarified its proposal to reflect that market-makers are permitted to receive good faith margin for all permitted offset positions only if they are effected for market-making purposes such as hedging, reducing the risk of rebalancing, liquidating open positions of the market-maker, accommodating customer orders, or another similar market-making purpose. The Exchange is also proposing to add a provision regarding trading in an account in a deficit (section (g)(4)(C)(ii)). The addition generally states that nothing shall prohibit the carrying firm from effecting hedging transactions in a deficit account with the prior written approval of the carrying firm's SEC designated examining authority.

The Commission believes that the permitted offset proposal is a reasonable effort by the Phlx to accommodate the needs of Phlx market-makers in undertaking their market-making responsibilities as it recognizes the occasional need for market-makers to effect transactions in their course of dealing in options classes for which the marker-maker is not registered. The Commission believes that this approach will not adversely affect the depth and liquidity necessary to maintain fair and orderly markets. The Commission expects Phlx clearing firms and other Phlx members that extend margin to market-makers to implement adequate procedures to ensure that offsets elected by market-makers are recorded accurately and cleared into appropriate accounts. In addition, such members should have a reasonable basis for determining that the offset transactions satisfy the market-making purpose requirements set forth in Phlx Rule 722(g). The Commission believes that these requirements will ensure that transactions effected by market-makers and specialists receiving the offset treatment are in fact directly related to their market-making function and are not effected for speculative purposes on a margin basis which should be available only for bona fide market-making activity.

The Exchange's proposed definition of ''in- or at-the-money,'' for purposes of permitted offset transactions, represents a codification of a long standing practice among the options markets of permitting the financing of options specialists and market-makers underlying stock positions on a good faith basis when offset on a share-for-share basis by options which are ''in-or at-the-money,'' *i.e.*, where the current market price of the underlying security is not more than two standard exercise price intervals below (with respect to a call option) or above (with respect to a put option) the exercise price of the option. The Commission believes it is appropriate for the Phlx to codify this longstanding practice. This practice is also being codified today by the CBOE.[10]

Proposed paragraphs (h), *Foreign Currency Options-Letters of Credit* and (i) of Rule 722 entitled *Other Provisions*, will incorporate the remainder of existing Rule 722 which includes provisions for *When Issued and When Distributed Securities, Guaranteed Accounts, Consolidation of Accounts, Time within which Margin or Mark-to Market must be Obtained, Practice of Meeting Regulation T Margin Calls by Liquidation Prohibited, Margin Required in Excess of Letters of Credit,* and *CIPs.* The Exchange is making no changes to either of these proposed paragraphs, and, accordingly, their relocation within Rule 722 raises no new regulatory issues. The Commission finds this to be a reasonable change.

The Commission finds good cause for approving the portions of the proposed rule change discussed above prior to the thirtieth day after the date of publication thereof in the **Federal Register.** The Commission believes that accelerated approval of those portions of the proposal is appropriate in part because it will enable the Exchange's members to continue the use of permitted offset transactions allowed until June 1, 1997 under Regulation T, and as defined in Exchange Act Rule 15c3–1. The Exchange has clarified its proposal to reflect that specialists and market-makers are permitted to receive good faith margin for all permitted offset positions only if they are effected for market-making purposes such as hedging, reducing the risk of rebalancing, liquidating open positions of the market-maker or specialist, accommodating customer orders, or another similar market-making purpose.

Accelerated Approval of Amendments Nos. 1, 2 and 3

The Commission finds good cause for partially approving the proposed rule change including Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof. The Commission also finds good cause for approving Amendment Nos. 2 and 3 prior to the thirtieth day after the date of publication of notice of filing thereof. Amendment No. 1 supersedes the original rule filing in its entirety by addressing technical changes by making corrections to certain typographical errors appearing in the rule filing. Amendment No. 1 also makes a number of substantive changes to the rule filing. Amendment No. 2 supersedes Amendment No. 1 with regard to certain portions of the rule filing the Commission is approving today by accelerated approval order. Amendment No. 2 addresses technical changes by making corrections to certain typographical errors appearing in the rule filing and in Amendment No. 1. Amendment No. 3 also addresses technical changes by making corrections to certain inadvertent omissions in the rule filing and in Amendment No. 2. All of the amended changes strengthen and clarify the proposal. Based on the above, the Commission finds that there exists good cause consistent with Section 6(b)(5) of the Act, to partially accelerate approval of the amendments as discussed above.

It is therefore ordered pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change and amendments (SR–Phlx–97–14) are approved as discussed above, except for the proposed definition of ''qualified stock basket'' (Rule 722 (a)(7)); *Cutomer Margin Accounts—Derivative Securities* (Rule 722(d)); and *Commentary .14.*

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

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[10] The Commission notes that the CBOE asserts that it has received oral no-action relief from the Federal Reserve Board permitting the two standard exercise price interval interpretation. *See* Securities Exchange Act Release No. 38709 (June 2, 1997).

[11] 15 U.S.C. § 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).