

general, to protect investors and the public interest.

#### *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.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and
- (iii) Become operative for 30 days from the date on which it was filed, or such shorter times as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>14</sup>

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-01-10 and should be submitted by March 20, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-4753 Filed 2-26-01; 8:45 am]

**BILLING CODE 8010-01-M**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-43972; File No. SR-Phlx-00-48]**

### **Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Telephone Use on the Options Floor**

February 15, 2001.

#### **I. Introduction**

On June 16, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), 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> a proposed rule change establishing rules on telephone use on the options floor. The Exchange filed Amendment No. 1 to the proposed rule change on December 1, 2000.<sup>3</sup> The **Federal Register** published the proposed rule change, as amended, for comment on December 28, 2000.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposal, as amended.

#### **II. Description of Proposal**

The Phlx proposes to amend Exchange Rule 606 to establish rules and procedures for telephone use on the

Phlx's options floor.<sup>5</sup> The proposed rule contemplates that certain types of telephones (*i.e.*, cellular phones) may be used for personal purposes.<sup>6</sup> The proposed rule would limit the use of telephones on the options floor for business purposes, depending on the category of user (specialist, registered options trader ("ROT"), floor broker, or clerk).

The proposed rule change would require members and member organizations to register by category of user any new telephone to be used on the options floor prior to use. Registration and maintenance of registration records would be handled through the Exchange's Membership Services Department. If there is a change in the category of user, the telephone must be re-registered with the Exchange. At the time of registration, the user must sign a statement that the user is aware of and understands the rules governing the use of telephones on the options floor. The Exchange believes that this should facilitate record keeping and also should enhance the ability of the Exchange's Market Surveillance Department to investigate potential violations of the rule.

The proposed rule also would provide that no person on the options floor may use any device, including, but not limited to, intercoms, walkie-talkies, and similar devices, for the purpose of maintaining an open line of communication whereby a person not located in a trading crowd may continuously monitor the activities of that crowd.

The proposed rule specifies the capacity and functionality permitted for use of telephones on the options floor. Specifically, proposed Phlx 606(e)(2) provides that no wireless telephone on the options floor may have an output of more than one watt.

The purpose of this provision is to minimize the possibility of radio frequency or other interference with the systems of the Exchange of those of other members.<sup>7</sup>

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>14</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> The Exchange submitted a new Form 19b-4, which replaced and superseded the original filing ("Amendment No. 1"). Amendment No. 1 amended the purpose section of the proposed rule change to provide a description of provisions governing floor brokers, registered options traders, general access phones, and exchange liability. Amendment No. 1 also clarified that registration and maintenance of registration records is handled through the Exchange's Membership Services Department. Finally, Amendment No. 1 amended proposed Phlx Rule 606(e)(3) to include specialists.

<sup>4</sup> Securities Exchange Act Release No. 43740 (December 19, 2000), 65 FR 82437.

<sup>5</sup> The proposal will also be set forth in new Options Floor Procedure Advice ("OFFPA") F-31.

<sup>6</sup> All categories of users are permitted to make and receive personal phone calls, subject to existing prohibitions when necessary because of electronic interference. Telephone calls between Rick Rudolf, Counsel, Phlx, and Sonia Patton, Staff Attorney, Commission (December 18, 2000).

<sup>7</sup> Currently, Exchange Rule 606(b)(2) prohibits members, member organizations and any person associated with a member organization from establishing or maintaining any telephonic, electronic or wireless transmitting system or device, and from operating any other equipment on the Options Floor, that creates radio frequency or other interference with the systems of the Exchange or other members.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> The Commission has approved similar interim linkage proposals submitted by the CBOE and the ISE. See *supra* note 8.

The proposed rule sets forth specific guidelines for each category of user on the options floor. Proposed Phlx Rule 606(e)(3) would provide that specialists and ROTs on the trading floor may use their own cellular and cordless phones to place calls to any person at any location (whether on or off the options floor).<sup>8</sup> Any telephonic order entered from off the options floor must be placed with a person located in a floor broker booth.

Proposed Phlx Rule 606(e)(4) would allow floor brokers to use cellular and cordless phones, but only to communicate with persons located on the options floor. The proposed rule would prohibit floor brokers from receiving telephonic orders while in the trading crowd. Orders phoned to floor brokers must be received at the floor broker's booth.<sup>9</sup>

Proposed Phlx Rule 606(e)(5) would provide that floor broker clerks and stock execution clerks are subject to the same terms and conditions on telephone use as floor brokers.

Proposed Phlx Rule 606(e)(6) states that the general access in-house telephones located outside of the trading post areas may be used by any member, clerk or floor broker to communicate with persons located on the options floor or within the Exchange complex.

Proposed Phlx Rule 606(e)(7) would require members to maintain all cellular or cordless telephone records for at least one year, and provides the Exchange the right to inspect and/or examine these records.

Finally, proposed Phlx Rule 606(e)(8) states that the Exchange assumes no liability to members or member organizations due to conflicts between telephones in use on the options floor or due to electronic interference problems resulting from the use of telephones on the trading floor.

Proposed OFPA F-31 contains the same provisions as proposed Rule Phlx 606(e) in order to facilitate on-floor reference to the Exchange's regulations regarding on-floor communications devices.

<sup>8</sup> Specialists are also permitted to receive incoming calls, but cannot receive orders from the trading crowd. The Phlx has also noted that there is nothing in their rules that would prohibit specialists from using their phones to solicit orders, as long as the solicitations are consistent with Phlx Rule 1064(c). Telephone call between Rick Rudolf, Counsel, Phlx, and Sonia Patton, Staff Attorney, Commission (December 18, 2000).

<sup>9</sup> Someone from the floor broker's booth would be permitted to call a floor broker to request the broker come and pick up an order from the booth. Telephone call between Rick Rudolf, Counsel, Phlx, and Sonia Patton, Staff Attorney, Commission (December 18, 2000).

### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>10</sup> In particular, the Commission finds that the proposed rule change meets the requirements of section 6(b)(5) of the Act,<sup>11</sup> which states that, among other things, the rules of an exchange must be designed to facilitate securities transactions and to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. Specifically, the Commission finds that the requirements of the proposed rule governing the use of telephones on the options floor and the proposed restrictions on each category of user are reasonable and consistent with the maintenance of fair and orderly markets.

Proposed Phlx Rule 606(e)(3) contains restrictions on telephone use by specialists and ROTs. The rule permits specialists and ROTs to use their own cellular or cordless phones to place calls to any person at any location. However, ROTs located off of the trading floor may not place an order by calling a floor broker, or a specialist, located in the trading crowd. Any telephonic order entered from off of the trading floor must be placed with the member firm booth. Because specialists and ROTs generally do not deal directly with public customers, the Commission does not believe that allowing specialists and ROTs to communicate with persons located off of the trading floor raises the same regulatory concerns discussed below regarding floor brokers. As a result, the Commission finds that it is consistent with the Act to allow specialists and ROTs to use cellular and cordless phones to call locations off of the trading floor. In addition, the Commission believes that it is reasonable and consistent with the Act to require orders entered off of the trading floor to be placed with a member firm booth.

Proposed Phlx Rule 606(e)(4) permits floor brokers to use cellular and cordless phones, but only to communicate with persons located on the options floor. The rule also requires all orders phoned to floor brokers to be received initially at the floor broker's booth and states that floor brokers may not receive telephonic orders while in the trading crowd, except from their booth. The

<sup>10</sup> In approving this rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

Commission believes that the Exchange's prohibition on the use of telephones by floor brokers to call locations off of the floor or to receive orders from off of the floor is justified by legitimate regulatory concerns. Specifically, the Phlx must ensure compliance with rules requiring that members who accept orders directly from public customers are qualified to do so. Accordingly, this prohibition helps to provide adequate surveillance over this activity by requiring all orders to be taken at the member firm booth and by restricting outside phone calls. In addition, preventing floor brokers from directly accessing market information that might only be available on the floor of the exchange trading the securities underlying the options trading on the Phlx, helps to alleviate concerns about frontrunning and other forms of market manipulation. The proposal also helps to prevent persons located off of the trading floor from having virtually direct access to the trading crowd and receiving certain time and place advantages over other customers. Moreover, the Commission believes that requiring orders to be initially received at the floor broker's booth, where it is recorded before being forwarded to a floor broker in the crowd, should help to ensure that there is a record of each telephonic order if a trading problem or dispute arises.

Proposed Phlx rule 606(e)(5) provides that floor broker clerks and stock execution clerks are subject to the same terms and conditions on telephone use as floor brokers. In addition, the Exchange's Options Committee reserves the right to prohibit clerks from using cellular or cordless phones on the floor if necessary due to electronic interference or capacity problems. For the reasons discussed above regarding telephone use by floor brokers, the Commission finds that the proposed restrictions on clerks are reasonable and consistent with the Act.

Moreover, the Commission finds that the registration requirements set forth in proposed Phlx Rule 606(e)(1) and the record retention requirements set forth in proposed Phlx Rule 606(e)(7) are reasonable, consistent with the Act, and should assist the Exchange in monitoring for compliance with the proposed rule change. The Commission also finds that the limits on capacity and functionality set forth in proposed Phlx Rule 606(e)(2) should help to ensure that phones used on the options floor do not cause interference with each other or with Exchange systems.

Finally, the Commission believes that the proposed amendments to the Exchange's minor rule violation plan are

reasonable and provide fair procedures for appropriately disciplining members and member organizations for minor rule violations that warrant some type of punitive measure, but for which a full disciplinary hearing would be an inappropriate waste of resources because of the minor nature of the violation. The Commission believes that the proposed change to the existing fine schedule is appropriate and should serve to discourage violations of the Exchange's telephone policy.

The Commission supports the Exchange's efforts to codify policies on telephone use to give its membership adequate notice of what conduct is prohibited, while supporting the Exchange's efforts to monitor and regulate communications on its options floor, the Commission expects the Phlx to ensure that Phlx Rule 606(e) is not used to limit access to services offered by the Exchange and is not applied in a manner that is inconsistent with the Act. Specifically, the Commission expects that Phlx Rule 606(e) will not be interpreted in a manner that permits unfair discrimination between customers, issuers, brokers, or dealers or imposes any unnecessary or inappropriate burden on competition, or is otherwise used to limit member access to Exchange services.

#### IV. Conclusion

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-PHLX-00-48), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-4751 Filed 2-26-01; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43989; File No. SR-Phlx-00-94]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Prohibition to Harassment and Other Improper Behavior Because of Listing or Competitive Practices

February 20, 2001.

#### I. Introduction

On November 13, 2000, the Philadelphia Stock Exchange, Inc.

("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to add new Commentary .01 ("Prohibition Against Harassment") to the Exchange's Rule 707 ("Just and Equitable Principles of Trade"), to prohibit members, member organizations, or persons associated with or employed by members or member organizations from engaging in harassment and other improper behavior because of listing or competitive practices.

The proposed rule change was published for comment in the **Federal Register** on December 28, 2000.<sup>3</sup> No comments were received on the proposal. This order approves the proposal.

#### II. Description of the Proposal

The Phlx proposes to add new Commentary .01 ("Prohibition Against Harassment"), to prohibit members, member organizations, or persons associated with or employed by members or member organizations from engaging in harassment and other improper behavior because of listing or competitive practices.

Specifically, proposed new Commentary .01 to Phlx Rule 707 would state that it is conduct inconsistent with just and equitable principles of trade for any member, member organization, or person associated with or employed by a member or member organization to directly or indirectly threaten, harass, intimidate, refuse to deal with, or retaliate against any member, member organization, person associated with or employed by a member or member organization, or other market participant because such member, member organization, person associated with or employed by a member or member organization, or other market participant has: (i) Made a proposal to any exchange or other market to list or trade any option class; (ii) advocated or proposed to list or trade an option class on any exchange or other market; (iii) commenced making a market in or trading new option class on any exchange or other market; (iv) sought to increase the capacity of any options exchange or the options industry to disseminate quote or trade data; (v) sought to introduce new option

products; or (vi) acted, or sought to act, competitively.

#### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,<sup>4</sup> and in particular, with the requirements of section 6 of the Act.<sup>5</sup> Specifically, the Commission finds that the proposal is consistent with sections 6(b)(5) of the Act<sup>6</sup> in that it is designed to codify the Exchange's prohibition against harassment and improper practices in a manner that promotes just and equitable principles of trade, prevents fraudulent and manipulative acts and practices, maintains fair and orderly markets, and protects investors and the public interest.

Phlx's new Commentary .01 to Phlx Rule 707 provides generally that it is conduct inconsistent with just and equitable principles of trade for market members, member organizations, their employees, and associated persons engage in harassing and certain improper retaliatory actions as a result of another market participant's listing or competitive behavior. The Commission believes that this codification of existing practice in Phlx's Rules is a reasonable means to comply with the Commission's directive,<sup>7</sup> and to prevent fraudulent and manipulative acts and practices, maintain fair and orderly markets, and protect investors and the public interest, as required by section 6(b)(5) of the Act.

#### IV. Conclusion

*It is Therefore Ordered*, pursuant to section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-Phlx-00-94) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-4752 Filed 2-26-01; 8:45 am]

BILLING CODE 8010-01-M

<sup>4</sup> In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> See note 4, *supra*.

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> Securities Exchange Act Release No. 43739 (December 19, 2000), 65 FR 82440.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).