

responsible.⁶ For the reasons set forth below, the Commission believes that OCC's proposed rule change is consistent with OCC's obligations under the Act.

OCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing. The Commission finds good cause for so approving the proposed rule change because accelerated approval will permit OCC to immediately give OCC the benefit of protection against such failures to settle. Accordingly, the Commission finds that the rule change is consistent with OCC's obligations to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible because it should provide OCC with strengthened protection against the risk of a suspended member's failure to settle by providing OCC with express recourse to the suspended member's deposits.

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. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR-OCC-00-09 and should be submitted by June 28, 2001.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-00-09) be and hereby is approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-14311 Filed 6-6-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 44372; File No. SR-Phlx-2001-59]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Dealing Directly With Specialist and Registered Options Traders in Foreign Currency Options

May 32, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 30, 2001, 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. 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 adopt new Phlx Rule 1089 entitled "Dealing Directly With Specialist and Registered Options Trader in Foreign Currency Options" on a one-year pilot basis. The pilot will expire on May 31, 2002.³ Proposed new language is in *italics*.

* * * * *

Dealing Directly With Specialist and Registered Option Trader in Foreign Currency Options

Rule 1089.(a) Applicability. The provisions in this Rule are applicable to options on

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Telephone conversation between Edith Hallahan, First Vice President & Deputy General Counsel, Phlx, and Florence Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission on May 31, 2001.

foreign currencies and supercede any Rules of general applicability to trading of options which are or may be construed as contrary to or inconsistent with these Rules.

(b) *Non-Customized Foreign Currency Options.* In the event that there is no floor broker present to accept and execute orders for non-customized foreign currency options on the trading floor for such options:

(1) *Market and Limit Orders.* Foreign currency options participants and foreign currency options participant organizations may transmit market and limit orders for such options directly to the specialist by telephone or other means. In addition, any person who is not a foreign currency options participant or participant organization may, pursuant to authorization of a foreign currency options participant organization and subject to the consent of the specialist, transmit limit orders, marketable limit orders and market orders for such options directly to the specialist by telephone or other means.

(2) *Complex Orders.* Foreign currency options participants and foreign currency options participant organizations may contact the specialist directly by telephone to negotiate the total debit or credit for transacting a complex order, provided that the specialist is responsible for complying with Rules 1033 and 1066 in setting the price of the individual option legs of the order. In addition, a person who is not a foreign currency options participant or participant organization may, (provided that such person's account is not with the specialist's firm) pursuant to authorization of a foreign currency options participant organization and subject to the consent of the specialist, contact the specialist directly by telephone to negotiate the total debit or credit for transacting a complex order, provided that the specialist is responsible for complying with Rules 1033 and 1066 in setting the price of the individual option legs of the order. Complex orders include orders consisting of two or more option series of non-customized foreign currency options such as spreads, straddles and combinations. In no event shall the specialist accept complex orders for representation or placement onto the specialist's book.

(c) *Customized Foreign Currency Options.* In the event that there is no floor broker present to accept and execute orders for customized foreign currency options on the trading floor for such options; foreign currency options participants and foreign currency options participant organizations may submit a request for quote ("RFQ") under Rule 1069 for a customized foreign currency option directly to an ROT on the floor by telephone or other means, and, if applicable, negotiate a transaction with an ROT. In addition, a person who is not a foreign currency options participant or participant organization may, pursuant to authorization of a foreign currency options participant organization and subject to the consent of the ROT, submit an RFQ under Rule 1069 for a customized foreign currency option directly to an ROT on the floor by telephone or other means, and if applicable, negotiate a transaction with an ROT.

* * * * *

⁶ 15 U.S.C. 78q-1(b)(3)(F).

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 Exchange 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 Exchange 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 is to establish special procedures for transmitting orders and requests for quotes for non-customized and customized foreign currency options to the floor, and for executing transactions in such options on the floor, when no floor broker is present. The Exchange is proposing the rules as an alternative mechanism for handling orders and executing transactions in foreign currency options in the event that there are no floor brokers present on the trading floor for such options.

Since the late 1980s, the number of foreign currency options participants and firms clearing foreign currency options has steadily declined as the market has increasingly shifted to over-the-counter trading. Currently, the Exchange has one foreign currency options participant registered as the specialist unit in all non-customized foreign currency options listed on the Exchange. Similarly, there is also one foreign currency options participant organization acting as floor broker to accept and handle foreign currency options orders. The use of floor brokers is currently the only mechanism for customer trading interest to be communicated on the foreign currency options floor. In the event that, for whatever reason, there is no longer any qualified floor broker on the foreign currency options floor to handle and execute customers orders, it would effectively make it impossible for the foreign currency option floor to continue to operate. Therefore, the Exchange is adopting an alternative mechanism for communicating trading interest to the specialist or Registered Options Trader ("ROT") (for customized foreign currency options).

Proposed Phlx Rule 1089 would apply to trading of non-customized and customized foreign currency options and would supercede any contrary or inconsistent Exchange rules applicable to options trading. The Exchange represents that the distinction between non-customized and customized options is relevant because they are traded differently under Phlx rules. Whereas the Phlx trading rules for non-customized foreign currency options provide for a traditional specialist model, the rules for the customized options do not, principally because their highly tailored nature is not conducive to continuous quoting of markets. Instead, Phlx rules contemplate trading of customized options by floor brokers (on behalf of customers) and registered options traders ("ROTs") as market makers trading for their own account through Request-for-Quote ("RFQ") procedures.⁴

Proposed Phlx Rules 1089(b) and 1089(c) would set out the terms for submitting orders and RFQs to the floor and executing trades on the floor for non-customized options (including complex orders) and customized options, respectively. The proposal would permit foreign currency options participants and foreign currency options participant organizations, and, subject to certain conditions,⁵ persons who are not such participants or participant organizations to: (1) Place market and limit orders for non-customized foreign currency options directly with the registered specialist for such options by telephone or other means;⁶ (2) negotiate and execute complex orders consisting of combinations of two or more series of non-customized foreign currency options at a total debit or credit directly with the specialist over the telephone;⁷

⁴ Customized foreign currency options are traded pursuant to Rule 1069. Securities Exchange Act Release No. 34925 (November 1, 1994), 59 FR 55720 (November 8, 1994) (approving SR-Phlx-94-18).

⁵ Any person who is not a foreign currency options participant or participant organization must be authorized by a foreign currency options participant organization to engage in the enumerated activities because the foreign currency options participant organization is responsible for such person's activities on the Exchange. Similar to the Nasdaq market, the specialist or ROT, as applicable, is entitled to know with whom they are dealing on the telephone to assure themselves of proper authorization by a foreign currency options participant and appropriate financial responsibility by a clearing firm on any trade executed. Usually, such authorization includes written "give-up agreements" or other similar documentation, in addition to general validation of the individual on the telephone, whether at first dealing or routinely.

⁶ See Proposed Phlx Rule 1089(b). The Exchange notes that in addition to accepting market or limit orders, the specialist may negotiate and execute such orders as well. See *infra* note 11.

⁷ See Proposed Phlx Rule 1089(b).

and (3) submit RFQs under Phlx Rule 1069 directly with an ROT and, if applicable, to negotiate a transaction with an ROT.⁸

As explained above, the new rule will supercede any contrary or inconsistent Exchange rules that would otherwise apply, on the narrow terms proposed.⁹ Most notably, the Exchange intends for the proposal to:

- Provide a limited exemption from the provisions of Phlx Rule 104 to permit a specialist or ROT to negotiate and execute trades with non-members over the phone, including for complex orders and customized foreign currency options;
- Clarify that Phlx Options Floor Procedure Advice A-2 (as last amended September 26, 1994)¹⁰ does not prohibit a specialist negotiating the terms of complex orders in non-customized foreign currency options directly with order sending firms or customers;¹¹ and

⁸ See Proposed Phlx Rule 1089(c).

⁹ The provisions applicable to recordkeeping and timestamping of orders and trades continue to apply. See *e.g.*, Rule 17a-3 under the Act.

¹⁰ Securities Exchange Act Release No. 34721 (September 26, 1994), 59 FR 50310 (October 23, 1994) (approving SR-Phlx-92-03).

¹¹ The Exchange believes that the proposal is not inconsistent with Advice A-2 because the foreign currency options specialist is not accepting a complex order for representation or placement on the book. The proposal allows an order-sending firm or customer who telephones a specialist to directly negotiate with the specialist as contra-side the total debit or credit for transacting a complex order; but the order sending firm or customer is not giving the order to the specialist for representation or for placement on the book. Rather, at the conclusion of the negotiation there will be a completed transaction based upon that total debit or credit. As such, the Exchange does not believe that the proposal would allow the specialist to accept discretionary orders, which could theoretically raise a question under Section 11(a) of the Act. Section 11(a)(1), among other things, prohibits a member of an exchange from effecting on the exchange any transaction for an account over which the member exercises "investment discretion." The legislative history of Section 11(a) indicates that the discretionary account prohibition in that Section was intended in large part to address potential abuses arising out of the combination of brokerage and money management. See Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978). "Investment discretion" is defined in Section 3(a)(35) of the Act to include a relationship where a person "directly or indirectly (A) is authorized to determine what securities * * * shall be purchased or sold by or for the account, (B) makes decisions as to what securities * * * shall be purchased or sold by or for the account * * * or (C) otherwise exercises such influence with respect to the purchase and sale of securities * * * by or for the account as the Commission, by rule, determines * * * should be subject to the operation of the [Act] * * * ." The Commission has not adopted any rules under Subsection C. Given the fact that the specialist has no discretion in executing the legs of a complex order to affect either the price, timing or individual options purchased or sold, the Exchange does not believe that the specialist has the type of investment discretion that was intended to be

- Expand the scope of Phlx Circular No. 86-09 to permit persons who are not foreign currency options participants and participant organizations to have direct telephone access to foreign currency options specialists and ROTs as well as floor brokers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act,¹² in general, and with section 6(b)(5)¹³ of the Act in particular, in that it is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and 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 inappropriate or unnecessary burden on competition.

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

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing including whether the proposal 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 at the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All

covered by Section 11(a). Similarly the Exchange believes that the proposal is consistent with Section 11(b) of the Act because the specialist is only effecting on the Exchange as broker transactions upon "market or limited price" orders.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

submissions should refer to File No. SR-Phlx-2001-59 and should be submitted by June 28, 2001.

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

After careful review, the Commission finds that the proposed rule change on a one-year pilot basis is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange.¹⁴ In approving the proposed rule change, the Commission has considered the implications of the proposed rules under sections 11(a) and 11(b) of the Act.¹⁵ The Commission finds that the proposed rule change is consistent with section 11(a)¹⁶ because the foreign currency options specialist is not accepting a complex order for representation or placement on the specialist book. The specialist will have no discretion in executing the legs of a complex order to affect either the price, timing or individual options purchased or sold. Therefore, the Commission believes that under the proposed rules the specialist will not have the type of investment discretion prohibited by section 11(a). The Commission also finds that the proposed rule change is consistent with section 11(b)¹⁷ because the specialist will not accept complex orders from customers of the firm with which it is associated.¹⁸ The Commission notes that Phlx's rules, including the proposed rule change, permit the specialist to deal directly with customers. In this regard, the Commission notes that section 15(b)(8) of the Act¹⁹ states that it is unlawful for "any registered broker or dealer to effect any transaction in, or induce or attempt to induce the purchase or sale of any security * * * unless such broker or

¹⁴ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁵ 15 U.S.C. 78k(a) and (b).

¹⁶ Section 11(a) of the Act states that it is "unlawful for any member of a national securities exchange to effect any transaction on such exchange for its own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion[.]"

¹⁷ Section 11(b) of the Act states that it is "unlawful for a specialist permitted to act as a broker and dealer to effect on the exchange as broker any transaction except upon a market or limited price order."

¹⁸ The Commission notes that the Exchange has represented that, currently, the specialist firm in foreign currency options does not carry customer accounts. Telephone conversation between Edith Hallahan, Vice President & Deputy General Counsel, Phlx, and Florence Harmon, Senior Special Counsel, Division, Commission on May 30, 2001.

¹⁹ 15 U.S.C. 78o(b)(8).

dealer is a member of a securities association registered pursuant to section 15A of this title or effects transactions in securities solely on a national securities exchange of which it is a member."

Finally, the Commission believes that the proposed rule change is consistent with section 6(b) of the Act²⁰ in general, and furthers the objectives of section 6(b)(5) of the Act²¹ in particular in that it is designated to promote just and equitable principles of trade, to facilitate transactions in securities, 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 believes that the proposed rule change will ensure that in the event there is no longer a qualified floor broker on the foreign currency options floor, there are provisions in place that will allow the floor to continue to operate, thus facilitating transactions in securities. Moreover, the Commission believes that the proposed rule change will protect investors from potential conflicts of interest on the part of the specialist in that the specialist will not have the type of investment discretion prohibited by section 11(a)²² and will not act as a broker in violation of section 11(b).²³

The Exchange requests accelerated approval pursuant to Rule 19(b)(2)(B).²⁴ The Exchange has requested accelerated approval because in the event there is no longer a qualified floor broker on the foreign currency options floor, rules will be in place to allow the floor to continue to operate, thus facilitating transactions in securities. The Commission believes that it is appropriate to approve the proposed rules on an accelerated basis, to ensure that persons wishing to trade on the Exchange's foreign currency options floor can communicate directly with the specialist to communicate trading interest in the event there are no floor brokers, but only a specialist, on the floor. Therefore, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

It is therefore ordered, pursuant to section 19(b)(2)²⁵ of the Act that the proposed rule change (SR-Phlx-2001-59) be, and hereby is, approved.

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

²² 15 U.S.C. 78k(a).

²³ 15 U.S.C. 78k(b).

²⁴ 15 U.S.C. 78s(b)(2)(B).

²⁵ 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-14312 Filed 6-6-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44373; File No. SR-Phlx-2001-19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Institute an Antitrust Compliance Policy

May 31, 2001.

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 March 5, 2001, 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 Exchange. 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

Phlx has proposed to adopt an Antitrust Compliance Policy ("Compliance Policy"). The Compliance Policy, which applies to Exchange governors, committee members, employees, members, and member organizations ("Covered Persons"), is designed to highlight certain activities known to raise antitrust and competition-related concerns, provide general guidance in these areas, and suggest when Covered Persons may want to consult with the Phlx Antitrust Compliance Officer or his designated staff.

The Compliance Policy states that it is the policy of the Exchange to comply with the antitrust laws and the settlements that Phlx and the other options exchanges entered into on September 11, 2000, with the Department of Justice ("DOJ") and the Commission.³ The Compliance Policy

also discusses the consequences of non-compliance with the antitrust laws, the settlements, and certain Exchange rules.

The Compliance Policy discusses certain types of conduct that may raise behavioral issues. For example, the Compliance Policy states that certain agreements with other exchanges are prohibited by the settlements, various exchange rules, and/or codes of conduct: those indicating that any option class will be traded on only one exchange; those indicating that trading of option classes will be allocated among exchanges; and those requiring, preventing, or limiting the listing, delisting, or trading of any options class. The Compliance Policy states that engaging in harassment or other improper behavior connected with listing decisions or competitive-related practices is prohibited. It states also that listing and delisting decisions must be made in accordance with Exchange rules, policies, and procedures.

In addition, the Compliance Policy states that harassment, retaliation, or intimidation relating to listing decisions, prices, spreads, or trade allocation should be reported to the Antitrust Compliance Officer or his designated staff.

The text of the proposed rule change is available at the principal office of the Exchange and at the Commission's Public Reference Room.

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 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 Exchange has long insisted that Covered Persons observe the highest standards of business ethics and fair dealing and has therefore filed with the Commission its Employee Code of Conduct and Code of Conduct of Board

Members and Committed Members.⁴ In an effort to reinforce such standards, in particular with regard to antitrust and competition-related behavior, the Exchange is now proposing to file the Compliance Policy with the Commission.

The purpose of the Compliance Policy is to provide general guidance regarding antitrust and compliance-related issues, highlights activities known to raise concerns, and provide suggestions when to consult the Antitrust Compliance Officers or his designated staff. In addition, the compliance policy specifically deals with issues raised in the DOJ and Commission settlement orders.

The Exchange believes that, by filing the Compliance Policy with the Commission, it would be uniformly applicable to, and violations enforceable against, all Covered Persons: Exchange governors, committee members, employees, members, and member organizations.

2. Statutory Basis

Phlx believes the proposed rule change is consistent with section 6 of the Act⁵ in general, and furthers the objectives of section 6(b)(5)⁶ in particular, in that it is designed to prevent unsuitable actions by Exchange governors, committee members, employees, members, and member organizations regarding antitrust law and competition-related behavior.

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

Phlx does not believe that the proposed rule change would impose any burden on competition.

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

Written comments were neither solicited nor 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

⁴ See Securities Exchange Act Release No. 44057 (March 9, 2001), 66 FR 15312 (March 16, 2001) (notice and accelerated partial approval of SR-Phlx-01-03).

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

²⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See *United States v. American Stock Exchange LLC*, Civil Action No. 00-CV-02174 (EGS) (D.C.

Cir., December 6, 2000); *In re Certain Activities of Options Exchanges*, Securities Exchange Act Release No. 43268 (September 11, 2000).