

#### 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 Room. Copies of 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-2002-09 and should be submitted by June 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45899; File No. SR-Phlx-2002-33]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Eliminate Position and Exercise Limits for Certain Qualified Hedge Strategies

May 9, 2002.

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> notice is hereby given that on April 30, 2002, 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 Exchange. The Commission is publishing this

notice to solicit comments on the proposed rule change.

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

The Exchange is proposing to amend Commentary .07 to Phlx Rule 1001 to eliminate position and exercise limits for certain qualified hedge strategies relating to stock and Exchange-Traded Fund ("ETF") Share options and to establish a position and exercise limit of five times the standard limit for those strategies that include an OTC option contract. The current reporting procedures that serve to identify and document hedged positions will continue to apply. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

#### 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 Exchange is proposing to eliminate position and exercise limits when certain qualified strategies are employed to establish a hedged equity option position and to establish a position and exercise limit of five times the standard limit for those strategies that include an OTC option contract. Current Commentary .05 to Phlx Rule 1001 provides position and exercise limits for stock and ETF Share options of 13,500, 22,500, 31,500, 60,000 and 75,000 options contracts on the same side of the market depending on the level of underlying trading volume over a six-month period.<sup>3</sup> The existing hedge exemption found in Commentary .07 to Phlx Rule 1001 provides an exemption to position and exercise limits of up to three (3) times the standard limit for certain qualified hedge strategies as

follows: (i) long call and short stock; (ii) short call and long stock; (iii) long put and long stock; and (iv) short put and short stock.<sup>4</sup>

Since the inception of the equity hedge exemption in 1988,<sup>5</sup> the types of hedge strategies employed by market participants have become increasingly more diversified. The Exchange believes that, through its experience in administering and processing equity hedge exemption information, it has learned that market participants no longer rely strictly on a stock-option hedge. Additionally, while traditional hedge strategies such as a covered call or reverse conversion strategy continue to be utilized, the Phlx believes that listed options contracts are now employed to hedge a wider spectrum of securities.

In response to the Commission's liberalization in granting position limit relief for market neutral strategies, and to more fully accommodate the hedging needs of investors, the Exchange is proposing to eliminate position and exercise limits when certain qualified strategies are employed to establish a hedged equity options position. Accordingly, the Phlx proposes to expand the definition of a "qualified" hedged position found in Commentary .07 to Phlx Rule 1001. The proposed qualified hedged strategies are as follows:

1. Where each option contract is "hedged" by the number of shares underlying the option contract or securities convertible into the underlying security or, in the case of an adjusted option, the same number of shares represented by the adjusted contract: (a) long call and short stock; (b) short call and long stock; (c) long put and long stock; or (d) short put and short stock.

2. Reverse Conversions—A long call position accompanied by a short put position, where the long call expires with the short put and the strike price of the long call and short put is the same, and where each long call and short put contract is hedged with 100 shares (or other adjusted number of shares) of the underlying security or securities convertible into such underlying security.<sup>6</sup>

<sup>4</sup> See Securities Exchange Act Release No. 25738 (May 24, 1988), 53 FR 20201 (June 2, 1988).

<sup>5</sup> See *supra* note 8.

<sup>6</sup> For these strategies one of the option components can be an OTC option guaranteed or endorsed by the firm maintaining the proprietary position or carrying the customer account. Hedge transactions and positions established pursuant to these strategies are subject to a position limit equal to five times the standards limit established under Commentary .05 to Phlx Rule 1001. For purposes of this rule filing, an OTC option contract is defined

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 48075 (December 31, 1998), 64 FR 1842 (January 12, 1999).

3. Conversions—A short call position accompanied by a long put position, where the short call expires with the long put and the strike price of the short call and long put is the same, and where each short call and long put contract is hedged with 100 shares (or other adjusted number of shares) of the underlying security or securities convertible into such underlying security.<sup>7</sup>

4. Collars—A short call position accompanied by a long put position, where the short call expires at the same time as the long put and the strike price of the short call equals or exceeds the strike price of the long put position and where each short call and long put position, is hedged with 100 shares of the underlying security (or other adjusted number of shares).<sup>8</sup> Neither side of the short call/long put position can be in-the-money at the time the position is established.

5. Box Spreads—A long call position accompanied by a short put position, where both the long call and short put have the same strike price, and a short call position accompanied by a long put position, where the short call and long put have the same strike price as each other, but a different strike price than the long call/short put position.

6. Back-to-Back Options—A listed option position hedged on a one-for-one basis with an over-the-counter (“OTC”) option position on the same underlying security. The strike price of the listed option position and corresponding OTC option position must be within one strike price interval of each other and no more than one expiration month apart.

For reverse conversion, conversion and collar strategies, one of the option components can be an OTC option guaranteed or endorsed by the firm maintaining the proprietary position or carrying the customer account.

Within the list of proposed hedge strategies eligible for the Equity Hedge Exemption, the Exchange proposes that the option component of a reversal, a conversion or a collar position can be treated as one contract rather than as two (2) contracts. All three strategies serve to hedge a related stock portfolio. Because these strategies require the contemporaneous<sup>9</sup> purchase/sale of both a call and put component, against the appropriate number of shares underlying the option (generally 100 shares) the Exchange believes that the

position should be treated as one contract for hedging purposes.

With the exception of covered stock positions, the Phlx believes that all other proposed qualified strategies are market neutral,<sup>10</sup> that none of the proposed strategies lend themselves to market manipulation and, they therefore, should qualify for the Equity Hedge Exemption. In addition, the Exchange believes that the current reporting requirements under Phlx Rule 1003 and internal surveillance procedures for hedged positions will enable the Exchange to closely monitor sizeable option positions and corresponding hedges.

Under the proposed rule change, the standard position and exercise limits will remain in place for unhedged equity option positions. Once an account nears or reaches the standard limit, positions identified as a qualified hedge strategy will be exempted from position limit calculations. The exemption will be automatic (*i.e.*, does not require pre-approval from the Exchange) to the extent that the member identifies that a pre-existing qualified hedge strategy is in place or is employed from the point that an account's position reaches the standard limit and provides the required supporting documentation to the Exchange.

The exemption will remain in effect to the extent that the exempt positions remain intact and the Exchange is provided with any required supporting documentation. Procedures to demonstrate that the option position remains qualified are similar to those currently in place. Exchange procedures currently require a qualified account to report hedge information each time the option position changes. Hedge information for member firm and customer accounts are electronically reported via the Large Options Positions Report. The existing requirement imposed on a member firm to report hedge information for proprietary and customer accounts that maintain an options position in excess of 10,000 contracts will continue to apply.

The Phlx believes that, with the exception of covered stock positions, all of the proposed qualified hedge strategies are market neutral. Therefore, none of the proposed strategies lend themselves to market manipulation and should be exempt from position limits.

<sup>10</sup> Where covered stock transactions are not market neutral (*i.e.*, long stock/short call; short stock/short put); the market exposure on such activity resides with the stock position where no limit is imposed. The Phlx believes that, as the short option premium serves to mitigate the stock exposure, no limit should be imposed on this strategy.

In addition, the Exchange believes that the current reporting requirements under Phlx Rule 1003 and the surveillance procedures for hedged positions will enable the Exchange to closely monitor sizeable option positions and corresponding hedges.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>11</sup> in general and furthers the objectives of Section 6(b)(5)<sup>12</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

### *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*

The Exchange has neither solicited nor received comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6)<sup>14</sup> thereunder because the proposal:

(i) Does not significantly affect the protection of investors or the public interest;

(ii) does not impose any significant burden on competition; and

(iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five

as an option that is not listed on a National Securities Exchange or cleared at the Options Clearing Corporation.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> At or about the same time.

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

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

business days prior to the date of filing of the proposed rule change, or such short time as designated by the Commission.

At any time within 60 days of the filing of such 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.

The Commission believes that the proposed rule change is consistent with the protection of investors and the public interest and therefore finds good cause to waive the five-day pre-filing notice requirement and to designate the proposal as immediately operative upon filing. The Commission notes that the proposal is substantially identical to proposed rule changes submitted by three other options exchanges, which the Commission has approved.<sup>15</sup> The Commission also notes that these proposals were noticed for public comment and no comment was received. The Commission does not believe that the proposed rule change raises novel regulatory issues that were not already addressed in the approval orders to these proposed rule changes.<sup>16</sup> For these reasons, the Commission finds good cause to waive the five-day pre-filing notice requirement and to designate that the proposal become operative immediately upon filing.<sup>17</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 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 filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Phlx-2002-33 and should be submitted by June 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-12204 Filed 5-15-02; 8:45 am]

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#### SMALL BUSINESS ADMINISTRATION

##### [Declaration of Disaster #3416]

##### State of Michigan

Gogebic County and the contiguous counties of Iron and Ontonagon in the State of Michigan; and Iron and Vilas Counties in the State of Wisconsin constitute a disaster area due to damages caused by flooding that occurred on April 15-21, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 9, 2002 and for economic injury until the close of business on February 11, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere .....	6.625
Homeowners without credit available elsewhere .....	3.312
Businesses with credit available elsewhere .....	7.000
Businesses and non-profit organizations without credit available elsewhere .....	3.500
Others (including non-profit organizations) with credit available elsewhere .....	6.375
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere .....	3.500

The number assigned to this disaster for physical damage is 341606 for Michigan and 341706 for Wisconsin.

<sup>18</sup> 17 CFR 200.30-3(a)(12).

The number assigned to this disaster for economic injury is 9P6100 for Michigan and 9P6200 for Wisconsin.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 10, 2002.

**Hector V. Barreto,**

*Administrator.*

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#### SMALL BUSINESS ADMINISTRATION

##### [Declaration of Disaster #3413]

##### State of Missouri; Disaster Loan Area

As a result of the President's major disaster declaration for Public Assistance on May 6, 2002, and Amendment 1 adding Individual Assistance on May 8, 2002, I find that Bollinger, Butler, Cape Girardeau, Carter, Douglas, Dunklin, Howell, Iron, Madison, Oregon, Ozark, Perry, Reynolds, Ripley, Shannon, St. Francois, Stoddard, Texas and Wayne Counties in the State of Missouri constitute a disaster area due to damages caused by severe storms and tornadoes occurring on April 24-28, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 7, 2002 and for economic injury until the close of business on February 10, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Christian, Crawford, Dent, Jefferson, Laclede, New Madrid, Pemiscot, Phelps, Pulaski, Scott, Ste. Genevieve, Taney, Washington, Webster and Wright in the State of Missouri; Baxter, Clay, Craighead, Fulton, Greene, Marion, Mississippi, Randolph and Sharp Counties in the State of Arkansas; and Alexander, Jackson, Randolph and Union Counties in the State of Illinois.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere .....	6.750
Homeowners without credit available elsewhere .....	3.375
Businesses with credit available elsewhere .....	7.000

<sup>15</sup> See Securities Exchange Act Release No. 45737 (April 11, 2002), 67 FR 18975 (April 17, 2002) (SR-PCX-00-45); Securities Exchange Act Release No. 45650 (March 26, 2002), 67 FR 15638 (April 2, 2002) (SR-Amex-2001-72); Securities Exchange Act Release No. 44503 (March 20, 2002), 67 FR 14751 (March 27, 2002) (SR-CBOE-00-12).

<sup>16</sup> *Id.*

<sup>17</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).