

The proposed rule change, including Amendment No. 1 thereto, was published for comment in Securities Exchange Act Release No. 35449 (Mar. 7, 1995), 60 FR 13492 (Mar. 13, 1995). No comments were received on the proposal.

At present, Rule 3 of Article XII provides the Committee on Floor Procedure with the authority to summarily fine members and exclude them from the Exchange premises under certain circumstances. The Rule provides that the Committee on Floor Procedure or an appropriately designated subcommittee has the authority to summarily fine and exclude from the Exchange a member whose conduct is deemed to be improper and to recommend investigations pursuant to Rule 1 of Article XII<sup>4</sup> regarding any conduct on the floor of the Exchange. Specifically, any member of the Floor Committee or a member of its appropriately designated subcommittee may summarily fine any member for conduct classified as Class B<sup>5</sup> in an amount not to exceed \$100. For conduct classified as Class A offenses,<sup>6</sup> any member of the Floor Committee or a member of its appropriately designated subcommittee with the concurrence of two other floor officials (floor governors if immediately available) may summarily fine a member in an amount not to exceed \$2,500 and summarily exclude a member from the Exchange for no longer than the remainder of the trading day.

For either class of offenses, a member, who has been adversely affected by any action taken under Rule 3, except for a summary exclusion,<sup>7</sup> by any person or

amended. Amendment No. 1 altered the proposed rule change to reference Rule 3 of Article XII as the correct rule to be amended.

<sup>4</sup> Under Rule 1 of Article XII, any default, misconduct or other offense alleged to have been committed by a member, member organization or any other person or organization subject to the Exchange's jurisdiction that comes to the attention of the president shall be investigated by the staff and a written report of such investigation shall be made to the president. In addition, if the president decides from such a report that such member, member organization, or other person or organization has committed a default or other offense in violation of the Constitution or Rules of the Exchange, the president shall direct the staff to prefer written charges against the accused, a copy of which will be served upon the accused.

<sup>5</sup> Class B violations involve minor offenses such as dress code and smoking violations. See .01 of the Interpretations and Policies to Rule 3 of Article XII.

<sup>6</sup> Class A represents more serious violations than Class B and includes such conduct as fighting, threatening speech, and other conduct that is detrimental to the interest or welfare of the Exchange. See .01 of the Interpretations and Policies to Rule 3 of Article XII.

<sup>7</sup> A member summarily excluded has the right to petition for reinstatement after a sufficient "cooling-off" period has elapsed. See .02 of the Interpretations and Policies to Rule 3 of Article XII.

body, other than the full Floor Procedure Committee, may appeal to the full Floor Procedure Committee within five days of receiving notice of the action by making a written request. Upon appeal, the full Floor Procedure Committee may increase or decrease the amount of a summary fine or the length of an exclusion from the Exchange. The Floor Procedure Committee, however, may not fine a member in an amount in excess of \$2,500 or exclude a member from the Exchange in excess of five full business days. The decision of the Floor Procedure Committee is deemed final with respect to any action involving no more than a \$100 fine.

By written request, a member may appeal a determination of the full Floor Procedure Committee involving more than a \$100 fine to the Executive Committee. The Executive Committee will review the report of the action as certified by the Secretary unless it decides to open the record for additional evidence. Upon review, the Executive Committee may increase or decrease the amount of a summary fine or the length of an exclusion. The Executive Committee, however, may not fine a member in an amount in excess of \$2,500 or exclude a member from the Exchange in excess of five full business days.

The Exchange proposes to amend Rule 3 and interpretation .02 thereunder to extend the application of the rule to persons associated with a member.<sup>8</sup> Therefore, under the proposed rule change, the Committee on Floor Procedure would exercise the same authority over members and persons associated with a member.

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, and, in particular, with the requirements of Section 6(b).<sup>9</sup> The Commission believes the proposal is consistent with the Section 6(b)(6) requirements that the rules of an exchange provide for the appropriate discipline of its members and persons

<sup>8</sup> The Exchange does not specifically define the term "associated person" in its Rules. For purposes of Rule 3, Article XII, the Exchange refers to an associated person as defined in Section 3(a)(21) of the Securities Exchange Act of 1934. Telephone conversation with David Rusoff, Foley & Lardner, and Jennifer Choi, Attorney, SEC, dated February 27, 1995. Section 3(a)(21) defines an "associated person of a member" as any "partner, officer, director, or branch manager of such member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such member, or any employee of such member."

<sup>9</sup> 15 U.S.C. 78f(b) (1988 & Supp. v 1993).

associated with its members for violation of the Act, the rules promulgated thereunder, or the rules of the exchange because the rule change provides that members and persons associated with a member may be summarily fined or excluded from the Exchange premises for conduct that the Exchange deems improper. Moreover, the Commission believes the proposal is consistent with the Section 6(b)(1) requirements that an exchange have the capacity to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules promulgated thereunder, and the rules of the exchange because under the proposed rule change, the Exchange's Committee on Floor Procedure would have the authority to enforce compliance by members and persons associated with a member, with the rules that it deems important in the fair administration of the Exchange.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-CHX-95-05) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Release No. 34-35615; International Series Release No. 802 File No. SR-Phlx-95-05]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Response Period for Customized Foreign Currency Options**

April 17, 1995.

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 February 21, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Phlx proposes to amend Exchange Rule 1069(b) in order to

<sup>10</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>11</sup> 17 CFR 200.30-3(a)(12) (1994).

simplify customized foreign currency option ("Customized FCO") trading by conforming the procedure for obtaining quotes and executing trades with existing rules for regular Exchange-traded FCOs. Additionally, the Exchange proposes to adopt Floor Procedure Advice F-20 (Quoting and Trading Customized Foreign Currency Options) which will parallel the provisions of Exchange Rule 1069(b). The text of the proposed rule change is available at the Office of the Secretary, the Phlx, 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 Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

### (A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

On November 1, 1994, the Commission approved the Exchange's proposal to trade customized foreign currency options.<sup>1</sup> The Phlx proposes to amend Exchange Rule 1069(b) in order to eliminate the response period and the special parity rules for assigned Registered Options Traders ("ROTs") that apply during that response period. Presently, when a participant requests a quote for a Customized FCO ("RFQ"), if any participant requests a response time, the preset amount of time applicable to that type of Customized FCO is invoked and the assigned ROTs are given the ability to match any responsive quote that improves their previously voiced responsive quote. The response period was initially set by the Exchange's FCO Committee at two minutes for simple strike options, five minutes for simple spreads, inverses, and cross-rates, and eight minutes for options strategies involving more than three legs.<sup>2</sup> Once the response period has been invoked, a trade may only occur prior to the end of the response

period if at least two assigned ROTs respond to the RFQ. The Exchange has found that in almost every instance, participants have requested a response period, however, responsive quotes generally are not received until after the end of the response period.<sup>3</sup>

The Exchange represents that the intent of the response period was to give all participants and customers an equal amount of time to calculate a price in response to a RFQ because Customized FCOs are not continuously quoted FCOs for which participants have readily available trade sheets. Presently, when a RFQ is disseminated, a ROT who intends to respond may have to leave the crowd that he is in, go over to the Customized FCO post to listen to the RFQ, formulate a responsive quote, and then voice the responsive quote in the trading crowd.

The response period and attendant parity rules were intended, according to the Exchange, to assure that the floor traders who are crucial to providing liquidity to the market place were not placed at a competitive disadvantage to the off-floor traders due to their lack of prepared trading sheets. The Exchange has not been able to determine whether this concern is valid or not by reviewing the present level of activity in Customized FCOs. The Exchange has determined, however, that it is important at this time to promote more activity in Customized FCOs and, therefore, it is proposing to eliminate the response period. The Exchange represents that, pursuant to the proposed rule change, Customized FCOs will trade similar to regular Exchange-traded FCOs such that trades will be executable as soon as any responsive quote is made. Moreover, existing parity and priority principles in Exchange Rule 1014(h) will apply to trades in Customized FCOs. As more experience is gained, the Exchange feels that it will be in a better position to review trading activity to ensure that no competitive disparity is actually occurring.

The Phlx also proposes to adopt a new Floor Procedure Advice applicable to the FCO floor. Proposed Advice F-20 (Quoting and Trading Customized Foreign Currency Options), generally follows the text of Rule 1069(b). The Exchange represents that the purpose of Advice F-20 is to codify the trading procedure for Customized FCOs in the Floor Procedure Advice Handbook for ease of reference.

The Exchange believes that the foregoing rule change proposal is consistent with Section 6 of the Act, in general, and with Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade, 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, and, in general, to protect investors and the public interest by simplifying the trading process for Customized FCOs.

### (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 solicited or received with respect to the proposed rule change.

## 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 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

<sup>1</sup> See Securities Exchange Act Release No. 34925 (November 1, 1994), 59 FR 55720 (November 8, 1994).

<sup>2</sup> The FCO Committee shortened the response period to one minute for all types of RFQs for Customized FCOs on January 16, 1995, effective at the opening on January 17, 1995.

<sup>3</sup> Telephone conversation between Michele Weisbaum, Associate General Counsel, Phlx, and Brad Ritter, Senior Counsel, Office of Market Supervision, Division of Market Regulation, Commission, on February 22, 1995.

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, N.W., Washington, D.C. 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-95-05 and should be submitted by May 15, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Release No. 34-35616; File No. SR-Phlx-95-11]

**Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Listing of Long-Term Index Options Series ("LEAPS") With a Duration of up to Sixty Months Until Expiration**

April 17, 1995.

On February 8, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), 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> filed with the Securities and Exchange Commission ("Commission") a proposed rule change to permit the listing of long-term index options series ("LEAPS") with a duration of up to sixty months (five years) until expiration. Notice of the proposal appeared in the **Federal Register** on February 22, 1995.<sup>3</sup> No comment letters were received on the proposed rule change. The Exchange filed Amendment No. 1 to the proposal on February 23, 1995.<sup>4</sup> This order

approves the Phlx proposal, as amended.

The purpose of the proposed rule change is to permit the Exchange to list index LEAPS with a duration of up to sixty months (five years).<sup>5</sup> Presently, the Exchange has authority pursuant to Phlx Rule 1101A(b)(iii) to list index LEAPS that expire from twelve to thirty-six months from the time they are listed. The Exchange represents that there has been increasing member firm and customer interest in longer term instruments. The Exchange, therefore, is proposing to amend Exchange Rule 1101A to permit the listing of index options with up to sixty months until expiration. In addition, the Exchange proposes to amend Rule 1101A(b)(iii) to allow for up to ten expiration months for index LEAPS, as opposed to the six months currently allowed.<sup>6</sup> The proposal does not change any other rule regarding the listing and trading of index LEAPS.<sup>7</sup>

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, and, in particular, the requirements of Section 6(b)(5).<sup>8</sup> Specifically, the Commission believes the proposal is designed to provide investors with additional means of hedging equity portfolios from long-term market risk with an exchange-traded security (*i.e.*, a standardized option), thereby facilitating transactions in options and contributing to the protection of investors and the maintenance of fair and orderly markets.<sup>9</sup>

Currently, institutional customers use index options to hedge the risks associated with holding diversified equity portfolios. The Commission continues to believe, as originally stated in its approval of the listing of index LEAPS by the Exchange, that allowing investors to lock in their hedges with longer-term index LEAPS will permit institutions to protect better their portfolios from adverse market moves.<sup>10</sup>

Further, the Commission believes that index LEAPS with up to five years until expiration will allow this protection at a known and limited cost.<sup>11</sup> Moreover, the proposal will provide institutions with an additional securities product with which to hedge their portfolios as an alternative to hedging with futures positions or off-exchange customized index options.<sup>12</sup> Accordingly, the Commission believes that the proposed rule change will better serve the long-term hedging needs of institutional investors.<sup>13</sup>

Finally, although as with index LEAPS presently trading on the Exchange, specific strike price interval, bid/ask differential, and price continuity rules will not apply until the proposed longer-term index LEAPS have less than 12 months until expiration,<sup>14</sup> the Commission notes that Phlx's general rule obligating market makers to maintain fair and orderly markets will continue to apply to the proposed longer-term index LEAPS.<sup>15</sup> The Commission believes that the requirements of Phlx Rules 1014 and 1020 are broad enough, even in the absence of strike price interval, bid/ask differential, and continuity requirements, to provide the Exchange with the authority to make a finding of inadequate market maker performance should market makers enter into transactions or make bids or offers (or fail to do so) in the proposed longer-term index LEAPS that are inconsistent with the maintenance of a fair and orderly market.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 1 provides that the Exchange may list up to ten additional expiration months when listing the proposed longer-term index LEAPS. The Commission believes this is consistent with the original approval of index LEAPS which allowed for up to six additional expiration months for LEAPS expiring 36 months from the date of

<sup>4</sup> 17 CFR 200.30-3(a)(12) (1994).

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4 (1994).

<sup>3</sup> See Securities Exchange Act Release No. 35376 (February 14, 1995), 60 FR 9880.

<sup>4</sup> In Amendment No. 1, the Phlx proposed to: (1) Amend Rule 1101A to specify that ten additional expiration months may be added for the proposed longer-term index LEAPS, as opposed to the six additional months currently allowed for LEAPS; and (2) provide that the proposal will apply to all indexes, both broad-based and narrow-based, previously approved for the trading of standardized index options on the Exchange. See Letter from Edith Hallahan, Special Counsel, Phlx, to Michael Walinskas, Branch Chief, Office of Market Supervision, Division of Market Regulation, Commission, dated February 23, 1995.

<sup>5</sup> The proposal would permit five-year LEAPS on both broad-based and narrow-based indexes on which LEAPS have been approved for trading on the CBOE. *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> See Phlx Rule 1101A(b)(iii) and Securities Exchange Act Release No. 28910 (February 22, 1991), 56 FR 9032 (March 4, 1991) ("Exchange Act Release No. 28910").

<sup>8</sup> 15 U.S.C. 78f(b)(5) (1988 & Supp. V 1993).

<sup>9</sup> The Commission also finds that extending the maximum term for Index LEAPS from three to five years does not alter the Commission's designation of index LEAPS as standardized options pursuant to Rule 9b-1(a)(4) of the Act.

<sup>10</sup> See Exchange Act Release No. 28910, *supra* note 7.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> The Commission's findings are predicated on the somewhat limited length of five-year index LEAPS. Any subsequent proposal to list index LEAPS with expirations beyond five years could alter the nature of the product and would raise new regulatory concerns, including, among other things, the appropriate margin treatment, disclosure, and trading rules for the product.

<sup>14</sup> See Exchange Act Release No. 28910, *supra* note 7.

<sup>15</sup> See Phlx Rules 1014, 1020, and 1000A(a).