

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, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-NYSE-96-04 and should be submitted by April 19, 1996.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-NYSE-96-04) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Jonathan G. Katz,

Secretary.

[FR Doc. 96-7703 Filed 3-28-96; 8:45 am]

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[Release No. 34-37005; File No. SR-Phlx-95-69]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Bid Test Exemption

March 21, 1996.

## I. Introduction

On January 2, 1996, 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 proposal to extend its market maker bid test exemption. The proposed rule change was published for comment in the Federal Register on February 7, 1996.<sup>3</sup> On March 20, 1996, the Phlx filed Amendment No. 1 to its proposal.<sup>4</sup> No comments were received

on the proposed rule change. This order approves the proposal.

## II. Description of the Proposal

The Phlx proposes to amend its Rule 1072, Reporting Requirements Applicable to Short Sales in NASD/NM Securities, which establishes specific criteria exempting Phlx specialists and Registered Option Traders ("ROTs") from the National Association of Securities Dealers, Inc. ("NASD") "bid test" applicable to Nasdaq National Market ("NM") securities.<sup>5</sup> Specifically, the Phlx proposes to extend its market maker exemption to: (1) permit a ROT to facilitate an off-floor options or combination order hedged contemporaneously with a short sale in a designated NM security, with prior Floor Official approval and the filing of a written report; and (2) allow the exemption to apply to a company that is involved in a publicly announced merger or acquisition ("M&A") with an NM security. The Exchange has represented that its proposed exemptions are similar to rule provisions of other options exchanges.<sup>6</sup>

In 1994, the NASD adopted a bid test rule applicable to NM securities traded through Nasdaq prohibiting short sales of NM securities at or below the current inside bid when that bid is below the previous inside bid.<sup>7</sup> An exemption from this rule exists for option market makers hedging positions with the underlying securities of that option; qualifying short sales are referred to as "exempt hedge transactions." Pursuant to this market maker exemption, the Phlx adopted Rule 1072 establishing specific criteria for a short sale to qualify as an "exempt hedge transaction" in "designated" NM issues.<sup>8</sup> Generally, option specialists may designate as exempt short sales in

<sup>5</sup> "Bid test" or "short sale" rule.

<sup>6</sup> Respecting facilitation orders, see Securities Exchange Act Release No. 35281 (January 26, 1995), 60 FR 6575 (Chicago Board Options Exchange ("CBOE")); and respecting M&A securities, see Securities Exchange Act Release Nos. 35211 (January 10, 1995), 60 FR 3887 (American Stock Exchange ("Amex")), CBOE, and Pacific Stock Exchange ("PSE") as well as 36019 (July 24, 1995), 60 FR 39035 (New York Stock Exchange ("NYSE")).

<sup>7</sup> Securities Exchange Act Release No. 34277 (June 6, 1994), 59 FR 34885 (granting temporary approval). NASD Rules of Fair Practice, Art. III, Section 48.

<sup>8</sup> Securities Exchange Act Release No. 34632 (September 2, 1994), 59 FR 46999. In general, an "exempt hedge transaction" is a short sale in an NM security that is effected to hedge, and in fact serves to hedge, an existing offsetting options position or an offsetting options position that was created in one or more transactions contemporaneous with the short sale. Phlx Rule 1072(c)(2)(i).

The other options exchanges adopted rules similar to Phlx Rule 1072. See CBOE Rule 15.10, NYSE Rule 759A, Amex Rule 957, and PSE Rule 4.19. Securities Exchange Act Release No. 34632.

NM securities underlying their specialist equity options, and index options if at least 10% of the value of the index is comprised of NM securities. A ROT only may designate as exempt short sales in NM securities underlying no more than 20 of the options or index options to which the ROT has been assigned.

## Facilitating Orders

Proposed Phlx Rule 1072(c)(2)(ii)(A) would permit a ROT to facilitate an off-floor options order and contemporaneously hedge the resulting option position with a short sale in applicable NM securities as if such securities were designated securities pursuant to the Rule.<sup>9</sup> To ensure that the transaction qualifies for the proposed provision, a ROT must file a written report with the Market Surveillance Department of the Exchange, indicating Floor Official approval. Such ROT also must retain a copy of the report to demonstrate that the transaction was bid test exempt.

## M&A Transactions

Proposed Phlx Rule 1072(c)(2)(ii)(B) would extend the bid test exemption to include a short sale in an M&A security effected by a qualified Exchange options market maker to hedge, and which in fact serves to hedge, an existing or prospective position in an Exchange-listed option overlying a designated NM security of another company that is a party to the M&A.<sup>10</sup> The M&A exemption only would be available to securities involved in an M&A that is publicly announced.

As applied to the Phlx specialist, the proposed exemption would apply to short sales of a company that is party to an M&A with a company whose NM security underlies a specialty stock option (or qualified index option). As applied to a Phlx ROT, the exemption would extend to a company that is party to an M&A with a company whose NM security underlies an option designated by such ROT.

## 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, and, in particular, the

<sup>9</sup> The exemption would apply to option-only orders. Thus, the exemption would not apply to combination orders that contain a stock component. Amendment No. 1, *supra* note 4.

<sup>10</sup> M&A securities are securities of a company that is a party or prospective party to a publicly announced merger or acquisition with an issuer of an NM security that underlies an Exchange listed option.

<sup>9</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>10</sup> 17 CFR 200.30-3(a)(12) (1993).

<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. 36785 (January 29, 1996), 61 FR 4697.

<sup>4</sup> In Amendment No. 1, the Phlx clarifies that proposed Phlx Rule 1072(c)(ii)(2) applies only to option orders that do not have a stock component. Letter from Gerald D. O'Connell, First Vice President, Market Regulation and Trading Operations, Phlx, to Michael Walinskas, Branch Chief, Office of Market Supervision, Division of Market Regulation, Commission, dated March 20, 1996 ("Amendment No. 1").

requirements of Section 6(b)(5)<sup>11</sup> that the rules of an exchange be designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts, and, in general, protect investors and the public interest. The Commission approved the NASD's short sale rule proposal on June 29, 1994,<sup>12</sup> and in so doing stated that the short sale rule, together with the market maker exemption, is a reasonable approach to regulating short sales of Nasdaq/NM securities. The Commission believes that the Exchange's proposal is consistent with the NASD's bid test rule and addresses the limitations established by the NASD concerning the applicability of the market maker exemption.

Proposed Phlx Rule 1072(c)(2)(ii)(A) will allow a ROT, with prior Floor Official approval, to facilitate an off-floor options order, and contemporaneously hedge the resulting options position with a short sale in an applicable Nasdaq/NM security as if such security were a designated Nasdaq/NM security. The exemption would not apply to orders that contain a stock component.<sup>13</sup> The ROT must file a report describing the transaction with the Exchange's Market Surveillance Department and must retain a copy of the report to demonstrate the transaction was bid test exempt. The Commission believes that this provision is consistent with the NASD's interpretation regarding hedging activities associated with the facilitation of customer transactions in options and that the procedures for reporting a transaction under the provision will ensure adequate monitoring.<sup>14</sup>

Proposed Phlx Rule 1072(c)(2)(ii)(B) would extend the market maker exemption to the stock of a company that is involved in a publicly announced M&A with a company whose stock is a designated Nasdaq/NM security. The Commission believes that when a designated Nasdaq/NM security becomes involved in an M&A, options specialists and ROTs may need to hedge positions in options overlying the designated Nasdaq/NM security by buying or selling the securities of the other company involved in the M&A, whether or not the other company's stock has listed overlying options. Indeed, where there are no options on

the other company's stock, buying or selling that company's stock at times may be the only feasible way for an options specialist or ROT to hedge positions in options on the designated Nasdaq/NM security, given the risk arbitrage relationship that is likely to exist between the two stocks. Therefore, the Commission believes that by allowing options specialists and ROTs to sell short, for hedging purposes, shares of a company that is involved in an M&A with a company whose stock is a designated Nasdaq/NM security, and to designate such sales as bid test exempt, the Exchange's proposal will enhance the ability of its specialists and ROTs to perform their functions, thereby contributing to the liquidity of the market for options, as well as to the liquidity of the market for the stocks of both companies.

The Commission notes that the proposed extension of the market maker exemption from the short sale rule is limited to publicly announced M&As. Moreover, options specialists and ROTs may avail themselves of the M&A extension to the exemption only when the short sales are made to hedge existing or prospective positions in options on a security of another company involved in the M&A, the options positions are or will be in a class of options for which the options specialist or ROT is registered, and the short sales are or will be "exempt hedge transactions" as defined in the Exchange's rules.

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Amendment No. 1 clarifies that the Exchange's proposed exemption for facilitating off-floor options orders does not extend to orders with a stock component. The Commission believes that this change does not raise new or unique regulatory issues, as it is consistent with a similar provision previously approved by the Commission.<sup>15</sup> Therefore, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act<sup>16</sup> to approve Amendment No. 1 to the proposal on an accelerated basis.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-Phlx-95-69 and should be submitted by April 19, 1996.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change (SR-Phlx-95-69), as amended, is approved.

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

Jonathan G. Katz,  
Secretary.

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[Release No. 34-37004; File No. SR-Phlx-95-79]

#### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Bid Test Exemption

March 21, 1996.

#### I. Introduction

On January 2, 1996, 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 proposal to extend its market maker bid test exemption. The proposed rule change was published for comment in the Federal Register on February 7, 1996.<sup>3</sup> No comments were

<sup>11</sup> 15 U.S.C. 78f(b)(5) (1988).

<sup>12</sup> Securities Exchange Act Release No. 34277, *supra* note 7.

<sup>13</sup> Amendment No. 1, *supra* note 4.

<sup>14</sup> See letter from Richard G. Ketchum, Chief Operating Officer and Executive Vice President, NASD, to David A. Dami, First Vice President & Associate General Counsel, Global Derivatives, Paine Webber, Inc., dated September 13, 1994.

<sup>15</sup> See Securities Exchange Act Release No. 35281, *Supra* note 6.

<sup>16</sup> 15 U.S.C. § 78f(b)(5) and 78s(b)(2) (1988).

<sup>17</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>18</sup> 17 CFR 200.30-3(a)(12) (1993).

<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. 36784 (January 29, 1996), 61 FR 4694.