

OCC-2002-21) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

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

[FR Doc. 03-8734 Filed 4-9-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47630; File No. SR-Phlx-2003-14]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Net Capital Calculation for Broker-Dealer Accounts

April 3, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),<sup>1</sup> and rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on March 19, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to 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 Exchange proposes to amend Phlx rule 722(c)(5) ("Broker-Dealer Accounts") to clarify that the haircut requirements of Exchange Act rule 15c3-1<sup>3</sup> must be considered in computing the net capital of a broker-dealer that is extending margin to another broker-dealer and to harmonize it with other exchanges' rules.<sup>4</sup>

Below is the text of the proposed rule change. Proposed new language is

*italicized*. Proposed deletions are in [brackets].

#### Rule 722. Margin Accounts<sup>5</sup>

\* \* \* \* \*

5. Broker-Dealer Accounts. A member organization may carry the proprietary account of another broker-dealer, which is registered with the Securities and Exchange Commission, upon a margin basis which is satisfactory to both parties, provided the requirements of Regulation T of the Board of Governors of the Federal Reserve System are adhered to and the account is not carried in a deficit equity condition. The amount of any deficiency between the equity maintained in the account and the [margin required by the other provisions of this rule] *haircut requirements calculated pursuant to rule 15c3-1 of the Exchange Act*, shall be deducted in computing the Net Capital of the member organization under *rule 15c3-1 of the Exchange Act* and rule 703.

\* \* \* \* \*

#### 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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend Phlx rule 722(c)(5) ("Broker-Dealer Accounts"), to clarify that the haircut requirements of Exchange Act rule 15c3-1<sup>6</sup> must be considered in computing the net capital of a broker-dealer extending margin to another broker-dealer. As amended, Phlx rule 722(c)(5) would be substantially similar to CBOE rule 12.3(g).

Currently, Phlx rule 722 sets forth the rules governing the margin that must be

maintained in margin accounts of customers of Phlx members, whether such customers are members themselves, partners of members, member firms, member corporations or stockholders therein, or non-members. Phlx rule 722(c) sets forth certain exceptions to the general margin requirements. Phlx rule 722(c)(5) provides that an Exchange member may carry the proprietary account of another broker-dealer registered with the Commission, on a margin basis that is satisfactory to both parties ("broker-to-broker margin"); provided however, that the parties adhere to Regulation T of the Board of Governors of the Federal Reserve System,<sup>7</sup> and the account is not carried in a deficit condition.

Phlx rule 722(c)(5) further provides that the amount of any deficiency between the equity maintained in the account and the "margin required by the other provisions of" Phlx rule 722 shall be deducted in computing the net capital of the Phlx member carrying the account of another registered broker-dealer. The Phlx believes that this language does not accurately reflect that the haircut requirements specified in Exchange Act rule 15c3-1<sup>8</sup> must also be considered in computing such Phlx member's net capital.

Accordingly, the Phlx proposes to delete the phrase "margin required by the other provisions of," and clarify in its rule that the haircut requirements calculated pursuant to Exchange Act rule 15c3-1 will be used to calculate the net capital of a Phlx member carrying the margin account of a registered broker-dealer customer. The Phlx notes that the CBOE and NYSE each has adopted a similar change to its margin rules.

###### 2. Statutory Basis

The Phlx believes that the proposed rule change harmonizes the margin treatment between Phlx's rule and analogous CBOE and NYSE rules. As such, the Phlx believes that its proposal is consistent with section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>10</sup> in particular, in that it is designed to perfect the mechanism of a free and open market and to protect investors and the public interest.

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

This proposed rule change does not impose any burden on competition that

<sup>6</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> 17 CFR 240.15c3-1.

<sup>4</sup> See Securities Exchange Act Release No. 46716 (October 24, 2002), 67 FR 66434 (October 31, 2002) (SR-CBOE-2002-59) (relating to margin requirements for broker-dealer accounts). The Phlx notes that Chicago Board Options Exchange ("CBOE") rule 12.3(g) is substantially similar to New York Stock Exchange, Inc. ("NYSE") rule 431(e)(6)(A). See Securities Exchange Act Release No. 42453 (February 24, 2000), 65 FR 11620 (March 3, 2000) (SR-NYSE-1997-27) (order approving a proposed rule change affecting the margin calculation for broker-dealer accounts).

<sup>5</sup> The phrase, "Rule 722. Margin Accounts", reflects the correction of a typographical error from the rule text that Phlx submitted with the proposed rule change. Telephone conversation between Mark I. Salvacion, Director and Counsel, Phlx, and Tim Fox, Attorney, Division of Market Regulation, Commission on April 3, 2003.

<sup>6</sup> 17 CFR 240.15c3-1.

<sup>7</sup> 12 CFR 220.1 *et seq.*

<sup>8</sup> 17 CFR 240.15c3-1.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).