

provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of FICC. All submissions should refer to File No. SR-FICC-2003-04 and should be submitted by July 7, 2003.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁶ that the proposed rule change is hereby approved on an accelerated basis.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48003; File No. SR-Phlx-2003-32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Its Rule 452, Limitation on Members' Trading Because of Customers' Orders

June 9, 2003.

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 8, 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 Exchange. On May 29, 2003, the Phlx filed Amendment No. 1 to the proposal.³ The proposed rule change, as amended, has been filed by Phlx under Rule 19b-4(f)(6) under the Act.⁴ The Commission

is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Phlx proposes to amend Phlx Rule 452, Limitations on Members' Trading Because of Customers' Orders, to permit members and member organizations to trade along with some of their customers in limited circumstances so long as the order is not for the account of an individual investor and the customer has given express permission for the transaction. The proposed rule change, as amended, also adds additional language regarding the applicability of Phlx Rule 452's limitation on trading, and adds a number of additional exceptions to that rule.

The text of the proposed rule change, as amended, is below. Proposed additions are in italics and proposed deletions are in [brackets].

* * * * *

Rule 452. Limitations on Members' Trading Because of Customers' Orders

(a) [No member shall (1) personally buy or initiate the purchase of any security on the Exchange for his own account or for any account in which he, or the firm of which he is a partner or any partner of such firm, is directly or indirectly interested, while such member personally holds or has knowledge that his firm or any partner thereof holds an unexecuted market order to buy such security in the unit of trading for a customer, or (2) personally sell or initiate the sale of any security on the Exchange for any such account, while he personally holds or has knowledge that his firm or any partner thereof holds an unexecuted market order to sell such security in the unit of trading for a customer.] *Except as provided in this Rule, no member or member organization shall cause the entry of an order to buy (sell) on the Exchange any security listed or traded on the Exchange for any account in which such member or member organization or any associated person thereof is directly or indirectly interested (a "proprietary order"), if the person responsible for the entry of such order has knowledge of any particular unexecuted customer order to buy (sell) such security which could be executed at the same price.*

summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers that period to commence on May 29, 2003, the date Phlx filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

(b) [No member shall (1) personally buy or initiate the purchase of any security on the Exchange for any such account, at or below the price at which he personally holds or has knowledge that his firm or any partner thereof holds an unexecuted limited price order to buy such security in the unit of trading for a customer, or (2) personally sell or initiate the sale of any security on the Exchange for any such account at or above the price at which he personally holds or has knowledge that his firm or any partner thereof holds an unexecuted limited price order to sell such security in the unit of trading for a customer.] *A member or member organization may enter a proprietary order while representing a customer order which could be executed at the same price, provided the customer's order is not for the account of an individual investor, and the customer has given express permission, including an understanding of the relative price and size of allocated execution reports, under the following conditions:*

(1) the member or member organization is liquidating a position held in a proprietary facilitation account, and the customer order is for 10,000 shares or more;

(2) the member or member organization is creating a bona fide hedge ("hedge") and (i) the creation of the hedge, whether through one or more transactions, occurs so close in time to the completion of the transaction precipitating such hedge that the hedge is clearly related; (ii) the size of the hedge is commensurate with the risk it offsets; (iii) the risk to be offset is the result of a position acquired in the course of facilitating a customer order; and (iv) the customer order is for 10,000 shares or more;

(3) the member or member organization is modifying an existing hedge and (i) the size of the hedge, as modified, remains commensurate with the risk it offsets; (ii) the hedge was created to offset a position acquired in the course of facilitating a customer order; and (iii) the customer order is for 10,000 shares or more; or

(4) the member or member organization is engaging in bona fide arbitrage or risk arbitrage transaction, and recording such transactions in an account used solely to record arbitrage transactions (an "arbitrage account").

[Exceptions]

(c) The provisions of this Rule 452 shall not apply to:

(1) [to] any purchase or sale of any security in an amount of less than the unit of trading made by an odd-lot

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Carla Behnfeldt, Director, Legal Department New Product Development Group, Phlx to Tim Fox, Attorney, Division of Market Regulation ("Division"), Commission, dated May 28, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange submitted technical corrections to the rule text and clarified that the applicability of Phlx Rule 452(a)(1) is limited to orders on the Exchange for securities listed or traded on the Exchange.

⁴ 17 CFR 240.19b-4(f)(6). For purposes of determining the effective date and calculating the sixty-day period within which the Commission may