

specialist may only refuse to accept customer contingency orders with the prior approval of two Floor Officials. Specialists must accept all non-contingent limit orders tendered for placement on the limit order book.⁶

The purpose of the proposed rule change is to amend OFPA A-2 specifically to prohibit a specialist from accepting discretionary orders⁷ on the

or above the stop-limit price, after the offer is represented in the trading crowd. A stop-limit order to sell becomes a limit order executable at the limit price or better when the option contract trades or is offered at or below the stop-limit price, after the order is represented in the trading crowd.

(ii) Stop (stop-loss) Order. A stop order is a contingency order to buy or sell when the market for a particular option contract reaches a specified price. A stop order to buy becomes a market order when the option contract trades or is bid at or above the stop price, after the order is represented in the trading crowd. A stop order to sell becomes a market order when the option contract trades or is offered at or below the stop price, after the order is represented in the trading crowd.

(iii) Multi-Part Order. A multi-part order is an order to buy and/or sell a stated number of foreign currency option contracts and a stated number of foreign currency future contracts. A multi-part order may be executed in accordance with the procedures outlined in Phlx Rule 1068.

(iv) Delta Order. A "delta order" is a contingency order that is dependent upon the amount an option's price changes in relation to a corresponding change of price in the underlying security.

(v) All-or-None Order. An all-or-none order is a market or limit order which is to be executed in its entirety or not at all.

(vi) Opening-Only-Market Order. An opening-only-market order is a market order which is to be executed in whole or in part during the opening rotation of an options series or not at all.

(vii) Market-on-Close Order. A market-on-close order is a market limit order to be executed as close as possible to the closing bell, or during the closing rotation and should be near to or at the closing price for the particular series.

(viii) Cancel-Replacement Order. A cancel-replacement order is a contingency order consisting of two or more parts which require the immediate cancellation of a previously received order prior to the replacement of a new order with new terms and conditions. If the previously placed order is already filled partially or in its entirety the replacement order is automatically canceled or reduced by such member.

⁶ See Securities Exchange Act Release No. 34721 (September 26, 1994), 59 FR 50310 (October 23, 1994) (SR-Phlx-92-03) (Order approving amendments to OFPA A-2 permitting specialists to accept contingency orders and reflecting that Exchange specialists are not permitted to accept discretionary orders, including spread, straddle, and combination orders).

⁷ Section 3(a)(35) of the Act provides that a person exercises "investment discretion" with respect to an account if, directly or indirectly, such person (A) is authorized to determine what securities or other property shall be purchased or sold or for the account, (B) makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions, or (C) otherwise exercises such influence with respect to the purchase and

limit order book. The Exchange believes that this clarifying provision is consistent with the Act, in that a specialist is responsible to effect transactions on behalf of the accounts of the persons that have placed limit orders on the limit order book when such limit orders become marketable.⁸ The Exchange believes that this proposed provision should provide Exchange specialists with more specific guidance as to the types of orders that they may, and may not, accept onto the limit order book by codifying a prohibition contained in the Act into Phlx rules.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b)⁹ of the Act in general, and section 6(b)(5)¹⁰ in particular in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest by amending its rules to more closely track the provisions of the Act.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

sale of securities or other property by or for the account as the Commission, by rule, determines, in the public interest or for the protection of investors, should be subject to the operation of the provisions of this title and the rules and regulations thereunder. 15 U.S.C. 78c(35).

⁸ Section 11(a)(1) of the Act prohibits any member of a national securities exchange from effecting any transaction on such exchange for its own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion. 15 U.S.C. 78k(a)(1) (emphasis added). The Act provides an exception from this prohibition for any transaction by a dealer acting in the capacity of market maker. 15 U.S.C. 78k(a)(1)(A). Furthermore, Section 11(b) of the Act provides that it shall be unlawful for a specialist permitted to act as a broker and dealer to effect on the exchange as broker any transaction except upon a market or limited price order. 15 U.S.C. 78k(b). In this situation, once the limit order is placed on the limit order book, the specialist becomes a "broker" by definition, engaged in the business of effecting transactions in securities for the account of others, is not acting in the capacity of market maker, and therefore does not qualify for the market maker exception to the prohibition. 15 U.S.C. 78c(4)(A).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

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 Exchange 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, including whether the proposed rule change, as amended, 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 number SR-Phlx-2003-15 and should be submitted by August 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-18126 Filed 7-16-03; 8:45 am]

BILLING CODE 8010-01-P

¹¹ 17 CFR 200.30-3(a)(12).