

regarding how it must process incoming Linkage orders, and establish a general standard that members should avoid trade-throughs.<sup>5</sup> The proposed rules establish potential regulatory liability for members who engage in a pattern or practice of trading through other exchanges, whether or not the exchanges traded through participate in the Linkage, provide procedures to unlock and uncross markets, and codify the "80/20 Test" contained in section 8(b)(iii) of the Plan,<sup>6</sup> which provides that a market maker on an Exchange would be restricted from sending principal orders (other than P/A orders, which reflect unexecuted customer orders) through the Linkage if the market maker effects less than 80 percent of specified order flow on the Exchange. The proposed rule change also establishes the fees that will apply to Linkage transactions except for Satisfaction Orders (which result after a trade-through).

### III. Discussion

The Commission has reviewed the CBOE's proposed rule change and finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,<sup>7</sup> and with the requirements of section 6(b).<sup>8</sup> In particular the Commission finds that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, 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 for a free and open market and a national market system, and, in general, to protect investors and the public interest in accordance with section 6(b)(5) of the Act.<sup>9</sup> The Commission also finds that the proposed fee change is consistent with section 6(b)(4) of the Act<sup>10</sup> in that it represents an equitable allocation of

reasonable dues, fees and other charges among its members and other persons using its facilities.

The Commission believes that the rules proposed by the CBOE will adequately govern the operation of the Linkage as envisioned in the Plan. The Commission believes that these rules will help to ensure that the Linkage is operated fairly and effectively, in accordance with the principles of the Act and the Plan.

The Commission also finds good cause for approving proposed 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 proposes several changes to the Exchange's original proposal that are designed to conform the Exchange's rules governing linkage more closely to the Plan. The provisions of the Plan have already been subject to notice and comment, and have been approved by the Commission. The changes proposed in Amendment No. 1 do not raise any novel regulatory issues, and therefore, it is appropriate for the Commission to accelerate approval of Amendment No. 1.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change, including whether Amendment No. 1 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 Amendment No. 1 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 Exchange. All submissions should refer to File No. SR-CBOE-2002-61 and should be submitted by February 28, 2003.

### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-CBOE-2002-61), be, and hereby is, approved, and that Amendment No. 1 to the proposed

rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

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

[FR Doc. 03-3098 Filed 2-6-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47296; File No. SR-Phlx-2002-67]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change by Philadelphia Stock Exchange, Inc., Relating to Rules Governing the Intermarket Linkage, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto

January 31, 2003.

#### I. Introduction

On October 29, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt new rules governing the operation of the intermarket linkage (the "Linkage"). The proposed rule change was published for comment in the **Federal Register** on December 27, 2002.<sup>3</sup> The Commission received no comments on the proposed rule change. On January 31, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> This order approves the

<sup>12</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> See Securities Exchange Act Release No. 47062 (December 20, 2002), 67 FR 79222.

<sup>4</sup> See letter from Richard Rudolph, Director and Counsel, Phlx, to Deborah Flynn, Assistant Director, Division of Market Regulation, Commission, dated January 30, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange proposes to: (1) Amend the definition of "Reference Price" contained in proposed Phlx Rule 1083 to conform to the definition of such term in the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage ("Plan"); (2) amend the definition of "Linkage Order" contained in proposed Phlx Rule 1083 to state that such orders are "Immediate or Cancel Orders"; (3) amend proposed Phlx Rule 1083 to define an "Immediate or Cancel Order" as a limited price order that is to be executed in whole or in part as soon as such order is received, and the portion not executed, if any, is immediately cancelled; (4) amend proposed Phlx Rule 1084 to clarify when members may send linkage orders when markets are non-firm; (5) amend proposed Phlx Rule 1084 to include a provision regarding mitigation of damages; (6) amend proposed Phlx

<sup>5</sup> Trade-throughs occur when broker-dealers execute customer orders on one exchange at prices inferior to another exchange's disseminated quote.

<sup>6</sup> Approved by the Commission in Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000), as subsequently amended. See Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001); 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002); 47274 (January 29, 2003); and 47298 (January 31, 2003).

<sup>7</sup> In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78s(b)(2).