

the Exchange for many years has had the ability to “throttle” outgoing message traffic by preventing the dissemination to OPRA of certain quotes that have been generated by Auto-Quote. The current proposal takes a slightly different tack by restricting the generation of new quotes rather than “throttling” the transmission to OPRA of new quotes that have been generated. On the whole, the Commission believes that both are reasonable means by which to address the problem of the limited capacity of the OPRA system and, as such, are consistent with the Act.

The Commission believes, though, that the proposed rule change may offer a more effective tool to restrain message traffic than throttling and, thus, may have a more minimal effect on competition. Presently, the throttling function is applied indiscriminately to all quotes generated by Auto-Quote. The approach described in the proposed rule change, however, may be used selectively. Thus, Phlx could choose to continue updating quotes for certain options classes continuously while restraining the generation of new quotes in other options classes. As a result, Phlx would be able to determine—based on competitive factors—which options classes should have a greater share during peak usage periods of the bandwidth allocated to it by OPRA. Therefore, the Commission believes the proposal promotes just and equitable principles of trade, facilitates transactions in securities, and removes certain impediments to a free and open market, consistent with Section 6(b)(5) of the Act.<sup>18</sup>

#### IV. Conclusion

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-Phlx-00-62) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 43740; File No. SR-Phlx-00-48]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Telephone Use on the Options Floor

December 19, 2000.

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> notice is hereby given that on June 16, 2000, the Philadelphia Stock Exchange, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed Amendment No. 1 to the proposed rule change on December 1, 2000.<sup>3</sup> 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 Phlx proposes to amend Exchange Rule 606 and to create new Options Floor Procedure Advice (“OFPA”) F-31 to establish rules and procedures for telephone use on the Phlx’s options floor. The text of the proposed rule change is set forth below. All text is being added.

#### Wire and Other Connections

##### *Communications and Equipment*

#### Rule 606

(e)(1) *Registration.* Members and member organizations must register, prior to use, any new telephone to be used on the Options Floor. Each phone registered with the Exchange must be registered by category of user. If there is a change in the category of any user, the phone must be re-registered with the Exchange. At the time of registration, members and member firm representatives must sign a statement that they are aware of and understand the rules

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Exchange submitted a new Form 19b-4, which replaces and supersedes the original filing (“Amendment No. 1”). Amendment No. 1 amends the purpose section of the proposed rule change to provide a description of provisions governing floor brokers, registered options traders, general access phones, and exchange liability. Amendment No. 1 also clarifies that registration and maintenance of registration records is handled through the Exchange’s Membership Services Department. Finally Amendment No. 1 amends proposed Phlx Rule 606(e)(3) to include specialists.

and procedures governing the use of telephones on the Options Floor.

(2) *Capacity and Functionality.* No wireless telephone used on the Options Floor may have an output greater than one watt. No person on the Options Floor may use any device for the purpose of maintaining an open line of continuous communication whereby a person not located in the trading crowd may continuously monitor the activities in the trading crowd. This prohibition covers intercoms, walkie-talkies and any similar devices. Speed-dialing features are permitted on any member telephone.

(3) *Specialist and Registered Options Traders.*

(a) Specialists and Registered Options Traders (“ROT’s”) may use their own cellular and cordless phones to place calls to any person at any location (whether on or off the Options Floor).

(b) ROT’s located off the Options Floor may not place an order by calling a Floor Broker who is present in a trading crowd. ROT’s located off the Options Floor may not otherwise place an order by calling the specialist phone in the trading crowd. Any telephonic order entered from off the Options Floor must be placed with a person located in a member firm booth.

(4) *Floor Brokers.*

(a) Floor Brokers may use cellular and cordless telephones, but only to communicate with persons located on the Options Floor. These telephones may not include a call forwarding feature. Headsets are permitted for Floor Brokers, but if the Exchange determines that a Floor Broker is maintaining a continuous open line through the use of a headset, the Floor Broker will be prohibited from future use of any headset for a length of time to be determined by the Exchange.

(b) All orders phoned to the Floor Brokers must be received initially at the Floor Broker’s booth. Floor Brokers may not receive telephonic orders while in the trading crowd except from their booth. Any telephonic order entered from off the Options Floor must be placed with a person located in a member firm booth.

(5) *Clerks.*

(a) Floor Broker clerks are subject to the same terms and conditions on telephone use as Floor Brokers.

(b) Stock Execution clerks are subject to the same terms and conditions on telephone use as Floor Brokers.

(c) The Options Committee reserves the right to prohibit clerks from using cellular or cordless phones on the floor at any time that it is necessary due to electronic interference problems or capacity problems resulting from the number of such phones then in use on the Options Floor. In such circumstances, the Committee will first consider restricting the use of such phones by Stock Execution Clerks, and then by Floor Broker Clerks.

(6) *General Access In-House Phones.* The general access in-house telephones located outside of the trading post areas may be used by any member, clerk or floor broker to communicate with persons located on the Options Floor or within the Exchange complex.

<sup>18</sup> 15 U.S.C. 78f(b)(5).

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</sup> 17 CFR 200.30-3(a)(12).

(7) *Telephone Records.* Members must maintain their cellular or cordless telephone records, including logs of calls placed, for a period of not less than one year. The Exchange reserves the right to inspect and/or examine such telephone records.

(8) *Exchange Liability.* The Exchange assumes no liability to members or member organizations due to conflicts between telephones in use on the Options Floor or due to electronic interference problems resulting from the use of telephones on the trading floor.

**Options Floor Procedure Advice F-31 Communications and Equipment**

(1) *Registration.* Members and member organizations must register, prior to use, any new telephone to be used on the Options Floor. Each phone registered with the Exchange must be registered by category of user. If there is a change in the category of any user, the phone must be re-registered with the Exchange. At the time of registration, members and member firm representatives must sign a statement that they are aware of and understand the rules and procedures governing the use of telephones on the Options Floor.

(2) *Capacity and Functionality.* No wireless telephone used on the Options Floor may have an output greater than one watt. No person on the Options Floor may use any device for the purpose of maintaining an open line of continuous communication whereby a person not located in the trading crowd may continuously monitor the activities in the trading crowd. This prohibition covers intercoms, walkie-talkies and any similar devices. Speed-dialing features are permitted on any member telephone.

*Specialists and Registered Options Traders.*

(a) Specialists and Registered Options Traders ("ROTs") may use their own cellular and cordless phones to place calls to any person at any location (whether on or off the Options Floor).

(b) ROTs located off the Options Floor may not place an order by calling a Floor Broker who is present in a trading crowd. ROTs located off the Options Floor may not otherwise place an order by calling the specialist phone in the trading crowd. Any telephonic order entered from off the Options Floor must be placed with a person located in a member firm booth.

*Floor Brokers.*

(a) Floor Brokers may use cellular and cordless telephones, but only to communicate with persons located on the Options Floor. These telephones may not include a call forwarding feature. Headsets are permitted for Floor Brokers, but if the Exchange determines that a Floor Broker is maintaining a continuous open line through the use of a headset, the Floor Broker will be prohibited from future use of any headset for a length of time to be determined by the Exchange.

(b) All orders phoned to Floor Brokers must be received initially at the Floor Broker's booth. Floor Brokers may not receive telephonic orders while in the trading crowd except from their booths. Any telephonic

order entered from off the Options Floor must be placed with a person located in a member firm booth.

*Clerks.*

(a) Floor Broker clerks are subject to the same terms and conditions on telephone use as Floor Brokers.

(b) Stock Execution clerks are subject to the same terms and conditions on telephone use as Floor Brokers.

(c) The Options Committee reserves the right to prohibit clerks from using cellular or cordless phones on the floor at any time that it is necessary due to electronic interference problems or capacity problems resulting from the number of such phones then in use on the Options Floor. In such circumstances, the Committee will first consider restricting the use of such phones by Stock Execution Clerks, and then by Floor Broker Clerks.

(6) *General Access In-House Phones.* The general access in-house telephones located outside of the trading post areas may be used by any member, clerk or floor broker to communicate with persons located on the Options Floor or within the Exchange complex.

(7) *Telephone Records.* Members must maintain their cellular or cordless telephone records, including logs of calls placed, for a period of not less than one year. The Exchange reserves the right to inspect and/or examine such telephone records.

(8) *Exchange Liability.* The Exchange assumes no liability to members or member organizations due to conflicts between telephones in use on the Options Floor or due to electronic interference problems resulting from the use of telephones on the trading floor.

FINE SCHEDULE (implemented on a three year running calendar basis)

**F-31**

1st Occurrence .....	\$250.00.
2nd Occurrence .....	\$500.00.
3rd Occurrence .....	\$1,000.00.
4th and thereafter .....	Sanction is discretionary with Business Conduct Committee.

\* \* \* \* \*

**II. Self-Regulatory Organization's Statements Regarding 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 the Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

The purpose of the proposed rule change is to establish rules and procedures for telephone use on the options floor. Proposed Phlx Rule 606(e) and OFPA F-31 would set forth procedures and restrictions regarding telephone use on the options floor. The proposed rule contemplates that certain types of telephones (*i.e.*, cellular phones) may be used for personal purposes.<sup>4</sup> The proposed rule would limit the use of telephones on the options floor for business purposes, depending on the category of user (specialist, registered options trader ("ROT"), floor broker, or clerk).

The proposed rule change would require members and member organizations to register by category of user, any new telephone to be used on the options floor, prior to use. Registration and maintenance of registration records would be handled through the Exchange's Membership Services Department. If there is a change in the category of user, the telephone must be re-registered with the Exchange. At the time of registration, the user must sign a statement that the user is aware of and understands the rules governing the use of telephones on the options floor. The Exchange believes that this should facilitate record keeping and should also enhance the ability of the Exchange's Market Surveillance Department to investigate potential violations of the rule.

The proposed rule would also provide that no person on the options floor may use any device, including, but not limited to, intercoms, walkie-talkies, and similar devices, for the purpose of maintaining an open line of communication whereby a person located in a trading crowd may continuously monitor the activities of that crowd.

*Capacity and Functionality.* The proposed rule specifies the capacity and functionality permitted for use of telephones on the options floor. Specifically, proposed Phlx Rule 606(e)(2) provides that no wireless telephone on the options floor may have an output of more than one watt. The purpose of this provision is to minimize

<sup>4</sup> All categories of users are permitted to make and receive personal phone calls, subject to existing prohibitions when necessary because of electronic interference. Telephone call between Rick Rudolf, Counsel, Phlx, Deborah Flynn, Senior Special Counsel, Commission, and Sonia Patton, Staff Attorney, Commission (December 18, 2000).

the possibility of radio frequency or other interference with the systems of the Exchange or those of other members.<sup>5</sup> The proposed rule would also state that no person on the options floor may use any device for the purpose of maintaining an open line of continuous communication whereby a person not located in the trading crowd may continuously monitor the activities in the trading crowd. This prohibition covers intercoms, walkie-talkies, and any similar devices.

**Members and Member Firm Employees.** The proposed rule sets forth specific guidelines for each category of user on the options floor, as follows:

**Specialists and ROTs.** Proposed Phlx Rule 606(e)(3) would provide that specialists and ROTs may use their own cellular and cordless phones to place calls to any person at any location (whether on or off the options floor).<sup>6</sup> The proposal would also provide that specialists and ROTs located off the options floor may not place an order by calling a floor broker located in a trading crowd or directly to the specialist phone. Any telephonic order entered from off the options floor must be placed with a person located in a floor broker booth. The Exchange believes that this should facilitate adequate surveillance of telephonic orders and ensure that there is a record of the order in the event that a problem arises in connection with the order.

**Floor Brokers.** Proposed Phlx Rule 606(e)(4) would allow floor brokers to use cellular and cordless phones, but only to communicate with persons located on the options floor. The proposed rule would prohibit floor brokers from receiving telephonic orders while in the trading crowd. Orders phoned to floor brokers must be received at the floor broker's booth.<sup>7</sup>

<sup>5</sup> Currently, Exchange Rule 606(b)(2) prohibits members, member organizations and any person associated with a member organization from establishing or maintaining any telephonic, electronic or wireless transmitting system or device, and from operating any other equipment on the Options Floor, that creates radio frequency or other interference with the systems of the Exchange or other members.

<sup>6</sup> Specialists are also permitted to receive incoming calls, but cannot receive orders from the trading crowd. The Phlx has also noted that there is nothing in their rules that would prohibit specialists from using their phones to solicit orders, as long as the solicitations are consistent with Phlx Rule 1064(c). Telephone call between Rick Rudolf, Counsel, Phlx, Deborah Flynn, Senior Special Counsel, Commission, and Sonia Patton, Staff Attorney, Commission (December 18, 2000).

<sup>7</sup> Someone from the floor broker's booth would be permitted to call a floor broker to request the broker come and pick up an order from the booth. Telephone call between Rick Rudolf, Counsel, Phlx, Deborah Flynn, Senior Special Counsel,

This should facilitate the adequate surveillance of telephonic orders and should ensure that there is a record of each telephonic order in the event of a trading problem or dispute relating to an order. Moreover, the Phlx believes the prohibition against floor brokers receiving telephonic orders in the trading crowd is consistent with Exchange procedures that require floor brokers to time stamp tickets for each order at the time of receipt of the order, prior to representing the order in the crowd for execution.<sup>8</sup>

**Clerks.** Proposed Phlx Rule 606(e)(5) would provide that floor broker clerks and stock execution clerks are subject to the same terms and conditions on telephone use as floor brokers. The proposal also states that the Options Committee reserves the right to prohibit clerks from using cellular or cordless phones on the floor at any time that it is necessary due to electronic interference problems.<sup>9</sup> In such circumstances, the Options Committee would first consider restricting the use of phones by ROT clerks, then by stock execution clerks, and then finally, by floor broker clerks.

**General Access In-House Phones, Telephone Records, and Exchange Liability.** Proposed Phlx Rule 606(e)(6) states that the general access in-house telephones located outside of the trading post areas may be used by any member, clerk or floor broker to communicate with persons located on the options floor or within the Exchange complex.

Proposed Phlx Rule 606(e)(7) would require members to maintain all cellular or cordless telephone records for at least one year, and provides the Exchange the right to inspect and/or examine these records. The Exchange believes that this requirement should facilitate the review by the Exchange's Examinations Department of the records of members for whom the Exchange is the Designated Examining Authority, and should allow for investigations and possible enforcement action by the Exchange's Market Surveillance Department in the event of allegations of violations of the proposed rules.

Finally, Proposed Phlx Rule 606(e)(8) states that the Exchange assumes no liability to members or member

Commission, and Sonia Patton, Staff Attorney, Commission (December 18, 2000).

<sup>8</sup> See OFPA C-2.

<sup>9</sup> The term "electronic interference" refers to radio frequency interference or to a situation where a user cannot get a good signal because of interference with monitors, static, or a bay station not working properly. See Securities Exchange Act Release No. 41450 (May 25, 1999), 64 FR 29727 (June 2, 1999) (SR-Phlx-99-14).

organizations due to conflicts between telephones in use on the options floor or due to electronic interference problems resulting from the use of telephones on the trading floor.

Proposed OFPA F-31 contains the same provisions as proposed Rule Phlx 606(e) in order to facilitate on-floor reference to the Exchange's regulations regarding on-floor communications devices. If a violation of OFPA F-31 is deemed to be minor pursuant to the Exchange's Minor Rule Plan,<sup>10</sup> a fine schedule, implemented on a three year running calendar basis, would be implemented as follows:

1st Occurrence .....	\$250.00.
2nd Occurrence .....	\$500.00.
3rd Occurrence .....	\$1,000.00.
4th and thereafter .....	Sanction is discretionary with Business Conduct Committee.

The three year running calendar would begin on the date of the first infraction.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act<sup>11</sup> in general, and furthers the objectives of section 6(b)(5)<sup>12</sup> in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, by regulating communications to and from the Exchange's options floor.

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

The Phlx does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition.

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

The Exchange did not solicit or receive written comments on the proposed rule change.

## 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 or such date if it finds such

<sup>10</sup> See Exchange Rule 970.

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

<sup>12</sup> 15 U.S.C. 78f(b)(5).

longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx 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 submission 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 the File No. SR-Phlx-00-48 and should be submitted by January 18, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43739; File No. SR-Phlx-00-94]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Prohibition of Harassment and Other Improper Behavior Because of Listing or Competitive Practices

December 19, 2000.

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>

notice is hereby given that on November 13, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 Phlx proposes to add new Commentary .01 ("Prohibition Against Harassment") to the Exchange's Rule 707 ("Just and Equitable Principles of Trade"), to prohibit members, member organizations, or persons associated with or employed by members or member organization from engaging in harassment and other improper behavior because of listing or competitive practices.

Specifically, proposed new Commentary .01 to Rule 707 would state that it is conduct inconsistent with just and equitable principles of trade for any member, member organization, or person associated with or employed by a member or member organization to directly or indirectly threaten, harass, intimidate, refuse to deal with, or retaliate against any member, member organization, person associated with or employed by a member or member organization, or other market participant because such member, member organization, person associated with or employed by a member or member organization, or other market participant has: (i) Made a proposal to any exchange or other market to list or trade any option class; (ii) advocated or proposed to list or trade an option class on any exchange or other market; (iii) commenced making a market in or trading any option class on any exchange or other market; (iv) sought to increase the capacity of any options exchange or the options industry to disseminate quote or trade data; (v) sought to introduce new option products; or (vi) acted, or sought to act, competitively.

#### 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 Exchange 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 Exchange 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 purpose of the proposed rule change is to codify the Exchange's existing policy prohibiting harassment and intimidation on its trading floors and certain other similar improper trading practices. While the Exchange has no rule that specifically prohibits conduct such as harassment or intimidation because of listing or competitive practices, the Phlx has long taken the position that harassing or intimidating behavior on its trading floors is inconsistent with just and equitable principles of trade, in violation of Exchange Rule 707 and is detrimental to the interest and welfare of the Exchange, in violation of Exchange Rule 708. Accordingly, members, member organizations or persons associated with or employed by members or member organizations engaging in such activities are subject to disciplinary action by the Phlx. In fact, the Exchange has successfully brought several disciplinary actions, in furtherance of its obligations as a self-regulatory organization, involving violations of Exchange Rules 707 and 708.

While harassing or intimidating behavior on the trading floors is already prohibited, and the Phlx will continue to bring disciplinary actions, as appropriate, against members pursuant to Exchange Rules 707 and 708, the Exchange has determined to codify, in Commentary .01 to Phlx Rule 707, the prohibition against harassment, intimidation, or retaliation because of listing or competitive practices in order to emphasize the importance to Phlx members and reinforce the Exchange's prohibition of any such anti-competitive conduct.<sup>3</sup>

New Commentary .01 to Phlx Rule 707 would thus prohibit a Registered Options Trader ("ROT") from refusing to deal with another ROT as a retaliatory measure against such ROT who sought to list an option according to Phlx

<sup>3</sup> The Exchange notes that the Commission has directed that the options markets adopt rules to specifically prohibit the type of conduct described herein. See Exchange Act Release No. 43268 (September 11, 2000).

<sup>13</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.