

the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2008-56 and should be submitted on or before August 12, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58174; File No. SR-NYSEArca-2008-54]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval to a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend Rules 6.62 and 6.91 Describing Complex Orders, Complex Order Priority, and Complex Order Execution

July 16, 2008.

#### I. Introduction

On May 23, 2008, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend NYSE Arca Rules 6.62 and 6.91 describing complex orders, complex order priority, and complex order execution. On June 5, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The proposal, as modified by Amendment No. 1, was published for comment in the **Federal Register** on June 11, 2008.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

#### II. Description of the Proposal

The Exchange proposes to amend NYSE Arca Rules 6.62 and 6.91 describing complex orders, complex order priority, and complex order execution. Proposed NYSE Arca Rule 6.62 eliminates specific definitions for a number of complex order types and adopts a generic definition for Complex Orders that is consistent with the definition for Complex Orders approved for use for exemption from Trade Through Liability by the Options Linkage Authority as described in the *Plan For The Purpose Of Creating And Operating An Intermarket Option Linkage* ("Linkage Plan").

Proposed NYSE Arca Rule 6.91 describes the entry of Complex Orders in the Consolidated Book and the operation of the mechanism, called the Complex Order Matching Engine, in which Complex Orders will be executed against each other or against individual quotes and orders in the Consolidated Book. Complex Orders will be ranked in the Consolidated Book in price-time priority based on the strategy and the total or net debit or credit. OTP Holders and OTP Firms will have the ability to view Complex Orders in the Consolidated Book via an electronic interface and to submit orders to the Complex Matching Engine to trade against such orders.

Complex Orders eligible for execution in the Complex Matching Engine are defined to be consistent with the Linkage Plan Trade Through exemption. Therefore execution prices for the individual legs of a Complex Order that are outside of the National Best Bid or Offer may be reported. The Complex Matching Engine will never, however, execute any of the legs of a Complex Order at a price outside of the NYSE Arca best bid or offer ("NYSE Arca BBO") for that leg.

Under proposed NYSE Arca Rule 6.91, Complex Orders submitted to NYSE Arca will attempt to execute against other Complex Orders in the Consolidated Book before attempting to execute against the individual leg markets in the Consolidated Book, provided that if individual orders or quotes residing in the Consolidated Book can execute against the incoming Complex Order in full (or in a permissible ratio) at the same total or net debit or credit as a Complex Order in the Consolidated Book, the individual orders or quotes will have priority. Complex Orders that are not executable when submitted to NYSE Arca will be entered into the Consolidated Book. The Complex Matching Engine then will monitor

individual quotes and orders in the leg markets. If a new order(s) or quote(s) enters the Consolidated Book so that the Complex Order becomes executable in full (or in a permissible ratio), the Complex Order will be executed against the individual quotes and orders.

The Exchange also proposes that Lead Market Makers not be afforded any guaranteed allocation either (a) in the execution of a complex strategy or (b) if present at the NYSE Arca BBO, when a Complex Order executes against the individual leg markets since.

#### III. Discussion and Commission Findings

After careful review of the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>4</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>5</sup> which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.

The Commission believes that adopting a generic definition for Complex Orders that is consistent with the definition for Complex Orders approved for use for exemption from the Linkage Plan's Trade-Through Liability is consistent with the Act. The Commission notes that a generic definition for Complex Orders would provide increased flexibility in the use of orders that represent investment strategies designed to limit risk or unwind an already established position in a portfolio.

The Commission also believes that the Complex Matching Engine should increase the transparency of Complex Orders and could facilitate the execution of Complex Orders. The Commission notes that the priority of the individual leg markets will continue to be maintained. In this regard, if individual orders or quotes residing in the Consolidated Book can execute against the incoming Complex Order in full (or in a permissible ratio) at the same or better total or net debit or credit as a Complex Order in the Consolidated

<sup>4</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>10</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. 57927 (June 5, 2008), 73 FR 33131.

Book, the individual orders or quotes in the leg markets will have priority. Finally, the Commission believes that the Exchange's proposal not to provide a guaranteed allocation to LMMs with respect to Complex Orders executed in the Complex Matching Engine is reasonable and consistent with the Act, because LMMs do not have any quoting obligations for complex strategies.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> that the proposed rule change (SR-NYSEArca-2008-54), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**  
*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58168; File No. SR-Phlx-2008-53]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to an Exchange Member's Conduct of Doing Business With the Public

July 16, 2008.

Pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 11, 2008, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which items have been substantially 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 Exchange proposes to amend Phlx Rules 1024 (Conduct of Accounts for Options Trading), 1025 (Supervision of Accounts), 1027 (Discretionary Accounts), and 1049 (Communications to Customers) that govern an Exchange

member's conduct of doing business with the public. Specifically, the proposed rule change would require that member organizations integrate the responsibility for supervision of a member organizations' public customer options business into their overall supervisory and compliance programs. In addition, the proposed rule change would strengthen member organizations' supervisory procedures and internal controls as they relate to a members' public customer options business.

The text of the proposed rule change is available at the Phlx, the Commission's Public Reference Room and [http://www.phlx.com/regulatory/reg\\_rulefilings.aspx](http://www.phlx.com/regulatory/reg_rulefilings.aspx).

#### 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

a. Integration of Options Supervision  
The purpose of the proposed rule change is to create a supervisory structure for options that is similar to that required by New York Stock Exchange ("NYSE") Rule 342 and National Association of Securities Dealers ("NASD") Rule 3010.<sup>3</sup> The proposed rule change would eliminate the requirement that member organizations qualified to do a public customer business in options must designate a single person to act as Senior Registered Options Principal ("SROP") for the member organization and that each such member organization

designate a specific individual as a Compliance Registered Options Principal ("CROP"). Instead member organizations would be required to integrate the SROP and CROP functions into their overall supervisory and compliance programs. The proposed rule change is substantively similar to recent amendments to the rules of the Chicago Board Options Exchange, Inc. ("CBOE") which were approved by the Commission.<sup>4</sup>

The SROP concept was first introduced by Phlx and other options exchanges during the early years of the development of the listed options market. Initially, member organizations were required to designate one or more persons qualified as Registered Options Principals ("ROPs") having supervisory responsibilities in respect of the member organization's options business. As the number of ROPs at larger member organizations began to increase, Phlx imposed an additional requirement that member organizations designate one of their ROPs as the SROP. This was intended to eliminate confusion as to where the compliance and supervisory responsibilities lay by centralizing in a single supervisory officer overall responsibility for the supervision of a member organization's options activities.<sup>5</sup> Subsequently, following the recommendation of the Commission's Options Study, Phlx and other options exchanges required member organizations to designate a CROP to be responsible for the member organization's overall compliance program in respect of its options activities.<sup>6</sup> The CROP may be the same person who is designated as SROP.

Since the SROP and CROP requirements were first imposed, the supervisory function in respect of the options activities of most securities firms has been integrated into the matrix of supervisory and compliance functions in respect of the firms' other securities activities. This not only reflects the maturity of the options market, but also recognizes the ways in which the uses of options themselves have become more integrated with other securities in the implementation of particular strategies. Thus, the current requirement for a separately designated senior supervisor in respect of all aspects of a member organization's options activities, rather than clarifying the allocation of supervisory

<sup>3</sup> On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (August 1, 2007). The FINRA rule book currently consists of both NASD rules and certain NYSE Rules that FINRA has incorporated.

<sup>4</sup> See Securities Exchange Act Release No. 56971 (December 14, 2007), 72 FR 72804 (December 21, 2007) (SR-CBOE-2007-106).

<sup>5</sup> See Securities and Exchange Commission, 96th Cong., 1st Sess., Report of the Special Study of the Options Markets (Comm. Print 1978) 316 fn. 11.

<sup>6</sup> *Id.* at P. 335

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</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.