

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56541; File No. SR-Phlx-2007-63)

September 26, 2007

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Short Interest Reporting

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4² thereunder, notice is hereby given that on August 16, 2007, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), and on September 20, 2007 amended, the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Phlx. 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, pursuant to Section 19(b)(1) of the Act³ and Rule 19b-4 thereunder,⁴ proposes to make a technical amendment to the text of Phlx Rule 786, Supplementary Material .01, changing the reference to Rule 200 of Regulation SHO to Rule 200(a) of Regulation SHO. In addition, Phlx proposes to add a new Supplementary Material section to Rule 786 to amend the exceptions to the short interest reporting requirement for certain transactions.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

The text of the amended Phlx Rule is set forth below. Underlining indicates additions; brackets indicate deletions.

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Rule 786.

Periodic Reports

Member organizations shall submit, as required by the Exchange, periodic reports with respect to short positions in securities.

Supplementary Material: ...

.01 Short Positions --Member organizations for which the Exchange is the designated examining authority ("DEA") are required to report short positions, including odd-lots, in each stock or warrant traded on the Exchange, and in each other stock or warrant not traded on the Exchange for which short positions are not otherwise reported to another United States securities exchange or association, using such automated format and methods as prescribed by the Exchange. Such reports must include customer and proprietary positions and must be made at such times and covering such time period as may be designated by the Exchange. Member organizations whose short positions have properly been reported to, and are carried by, a non-member clearing organization will be in compliance with this rule if adequate arrangements have been made providing for the clearing organization to properly report such positions to the Exchange or to another United States securities exchange or association.

"Short" positions to be reported are those resulting from "short" sales as defined in Securities and Exchange Commission Rule 200(a) of Regulation SHO, but excluding sales that meet an exception in .02 below[marked "sell short exempt" pursuant to Rule

200(g) of Regulation SHO]. Also, to be excluded are "short" positions carried for other members and member organizations reporting for themselves.

Only one report should be made for each stock or warrant for which there is a short position, if more than one "account" has a short position in the same stock or warrant, the combined aggregate should be reported.

Member organizations for which the Exchange is not the DEA must report short positions to its DEA if such DEA has a requirement for such reports. If the DEA does not have such a reporting requirement, then such member organization must comply with the provisions of this rule.

.02 Exceptions

(a) Any sale by any person, for an account in which he has an interest, if such person owns the security sold and intends to deliver such security as soon as is possible without undue inconvenience or expense.

(b) Any sale of a security covered by a short sale rule on a national securities exchange (except a sale to a stabilizing bid complying with Rule 104 of Regulation M) effected with the approval of such exchange which is necessary to equalize the price of such security thereon with the current price of such security on another national securities exchange which is the principal exchange market for such security.

(c) Any sale of a security for a special arbitrage account by a person who then owns another security by virtue of which he is, or presently will be, entitled to acquire an equivalent number of securities of the same class as the securities sold; provided such sale, or the purchase which such sale offsets, is effected for the bona fide purpose of profiting from a current difference between the price of security sold and the security

owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any such class of securities of the issuer.

(d) Any sale of a security registered on, or admitted to unlisted trading privileges on, a national securities exchange effected for a special international arbitrage account for the bona fide purpose of profiting from a current difference between the price of such security on a securities market not within or subject to the jurisdiction of the United States and on a securities market subject to the jurisdiction of the United States; provided the seller at the time of such sale knows or, by virtue of information currently received, has reasonable grounds to believe that an offer enabling him to cover such sale is then available to him such foreign securities market and intends to accept such offer immediately.

(e) Any sale by an underwriter, or any member of a syndicate or group participating in the distribution of a security, in connection with an over-allotment of securities, or any lay-off sale by such a person in connection with a distribution of securities through rights or a standby underwriting commitment.

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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 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to conform Phlx Rule 786 to other proposed rule changes that other self-regulatory organizations (“SROs”) have filed and will soon file that will implement uniform changes to the short interest reporting requirements across SROs. The purpose of this Amendment No. 1, which replaces the original proposed rule change in its entirety, is to make clarifying changes to the original proposed rule change.

First, Phlx proposes to make a technical change to the text of Phlx Rule 786, Supplementary Material .01. Phlx Rule 786, Supplementary Material .01 provides that, subject to certain limited exceptions, short positions required to be reported under the rule are those resulting from short sales as the term is defined in Rule 200 of Regulation SHO. The term “short sale” is actually defined in Rule 200(a) of Regulation SHO.⁵ Therefore, Phlx is proposing to amend the text of Phlx Rule 786, Supplementary Material .01 to reference Rule 200(a) of Regulation SHO, not Rule 200 of Regulation SHO to eliminate any confusion

Second, Phlx proposes to add Supplementary Material .02, and conforming language in Supplementary Material .01, which adopts exceptions to the short interest reporting requirement. Currently, any transaction that is marked “sell short exempt” is exempt from the reporting requirement. Beginning on July 6, 2007, the “short exempt”

⁵ 17 CFR 242.200(a).

marking requirement was eliminated by the Commission.⁶ Therefore, beginning on July 6, 2007, all transactions marked short will be covered by Phlx's reporting requirement. However, other SROs are modifying their short interest reporting rules to exclude five specific transactions, which were previously contained in the now eliminated Rule 10a-1 under the Act.⁷ The proposed change should conform Phlx's reporting requirement to those of other SROs and increase uniformity for broker-dealers as they comply with various rules across SROs, which should reduce costs and increase efficiency for those broker-dealers.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act⁹ in particular, in that it is designed 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.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁶ See Securities Exchange Act Release No. 55970 (June 28, 2007), 72 FR 36348 (July 3, 2007).

⁷ See, e.g., Securities Exchange Act Release No. 56300 (August 22, 2007) (NYSEArca-2007-63), 72 FR 49342 (August 28, 2007).

⁸ 15 U.S.C. 78f(b).

⁹ 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 Phlx consents, the Commission shall: (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 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2007-63 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2007-63. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. 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-Phlx-2007-63 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Florence E. Harmon
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).