

its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. 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-PHLX-95-32 and should be submitted by October 19, 1995.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95-24030 Filed 9-27-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-36257; File No. SR-PHLX-95-31]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Compliance with Position and Exercise Limits for Non-PHLX Listed Options

September 20, 1995.

On March 22, 1995, 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 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend PHLX Rules 1001, "Position Limits,"³ and 1002, "Exercise Limits,"⁴ to require PHLX members who trade non-PHLX listed options and who are not members of the exchange where the options transactions are effected to comply with the applicable option position and exercise limits of the exchange where the options transactions are effected.

Notice of the proposed rule change appeared in the Federal Register on June 26, 1995.⁵ No comments were received on the proposed rule change.⁶

The PHLX states that the purpose of the proposal is to eliminate a loophole in position and exercise limit jurisdiction among the options exchanges. According to the Exchange, a PHLX member entering into an opening transaction on another exchange in an option not listed on the PHLX and who is not a member of the exchange where the transaction is effected escapes the jurisdiction of both the PHLX and the other exchange for purposes of position limit compliance. The loophole occurs because Exchange Rule 1001 applies only to options dealt in on the PHLX. At the same time, the exchange where the options transaction is effected cannot enforce its position limit rule against a non-member.

The PHLX believes that the proposed amendments to PHLX Rule 1001 should enable the PHLX to exercise jurisdiction over a PHLX member violating the position or exercise limits in non-PHLX listed equity and index options. In pursuing such position and exercise limit violations, the PHLX will apply the position and exercise limits of the other exchange, together with any

applicable exemption, interpretation or policy, to transactions in non-PHLX options by a PHLX member.⁷ When a PHLX member enters into an opening transaction on another exchange in a PHLX-listed option, the PHLX will continue to apply the position and exercise limits and exemptions set forth in the PHLX's rules.

The Exchange believes that the proposal is consistent with Section 6 of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to remove impediments to and perfect the mechanism of a free and open market as well as to protect investors and the public interest by expanding option exchange position and exercise limit jurisdiction to uniformly cover excessive transactions.

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, and, in particular, the requirements of Section 6(b)(5)⁸ in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. Specifically, the PHLX has noted that Exchange rules do not currently prohibit PHLX members from exceeding the position and exercise limits set by another exchange for non-PHLX listed option contracts. Thus, if the PHLX member is not a member of the exchange which lists the options, then neither the PHLX or the exchange that lists the options is able to enforce its position and exercise limits against the PHLX member. The proposal eliminates this loophole and strengthens the Exchange's rules by requiring a PHLX member who trades non-PHLX listed option contracts on another exchange, and who is not a member of that exchange, to comply with the option position and exercise limits set by the exchange where the transactions are effected.⁹

As the Commission has noted in the past,¹⁰ options position and exercise limits are intended to prevent the establishment of large options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1994).

³ Position limits impose a ceiling on the number of option contracts which an investor or group of investors acting in concert may hold or write in each class of options on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls).

⁴ Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

⁵ See Securities Exchange Act Release No. 35864 (June 19, 1995), 60 FR 33025.

⁶ On July 6, 1995, the PHLX clarified the text of its proposal by (1) deleting a reference to "stock" in PHLX Rule 1001; and (2) adding a reference in PHLX Rule 1002 to options not dealt in on the Exchange and noting that index option position and exercise limits are governed by PHLX Rules 1001A and 1002A. Letter from Gerald D. O'Connell, First Vice President, Market Regulation and Trading Operations, PHLX, to Michael Walinskas, Branch Chief, Office of Market Supervision, Division of Market Regulation, Commission, dated July 6, 1995 ("Amendment No. 1").

⁷ The Commission notes that the position and exercise limits in equity options are uniform among all options markets.

⁸ 15 U.S.C. 78f(b)(5) (1988 & Supp. V 1993).

⁹ As noted above, the PHLX will also apply the exemptions, interpretations, and policies of the exchange where the options transactions are effected.

¹⁰ See, *e.g.*, Securities Exchange Act Release No. 33283 (December 3, 1993), 58 FR 65204 (December 13, 1993) (order approving File No. SR-CBOE-93-43).

options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations¹¹ and for corners or squeezes of the underlying market. They also impose a ceiling on the maximum position an investor with inside corporate or market information can establish through the use of options. In addition, they serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes. The proposal extends the benefits of the position and exercise limit rules to include all exchange-traded options transactions entered into by PHLX members. The Commission also notes that violations of the PHLX's position and exercise limits rules for transactions that do not comply with the position and exercise limits of another exchange will be subject to the same fines or disciplinary action for position and exercise limit violations as those applicable to PHLX options.¹²

The Commission finds good cause for approving Amendment No. 1 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Specifically, Amendment No. 1 clarifies and strengthens the PHLX's proposal and therefore raises no new regulatory issues. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 19, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the amended proposed rule change (File No. SR-PHLX-95-31) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-24027 Filed 9-27-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-36255; International Series Release No. 858 File Nos. SR-Phlx-95-20 and SR-Phlx-95-21]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Each of the Proposed Rule Changes by the Philadelphia Stock Exchange, Inc. Relating to the Listing of Customized Foreign Currency Options on the Italian Lira and Spanish Peseta

September 20, 1995.

On April 5, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² filed with the Securities Exchange Commission ("Commission") two proposed rule changes—one to permit the listing of customized foreign currency options ("Customized FCOs") on the Italian lira ("Lira") and the other to list Customized FCOs on the Spanish peseta ("Peseta").³ Notices of the proposals appeared in the Federal

Register on May 10, 1995.⁴ No comment letters were received on either proposed rule change. The Exchange subsequently filed Amendment No. 1 to each of the proposals on August 21, 1995.⁵ This order approves both of the Phlx proposals, as amended.

Currently the Phlx offers listed FCOs on the British pound, French franc, Swiss franc, Japanese yen, Canadian dollar, Australian dollar, German mark and European Currency Unit. Since November 1994, the Exchange has offered the ability to trade Customized FCOs on all of these currencies.⁶ The Exchange now proposes to add the Lira and Peseta to the list of approved currencies on which Customized FCOs may be listed and traded pursuant to Exchange Rule 1069. Thus, there will be no continuously quoted series of Customized FCO contracts on either the Lira or Peseta.

Phlx Rule 1069(a)(1) provides that Customized FCOs may be traded on any approved underlying foreign currency pursuant to Exchange Rule 1009. Accordingly, the Exchange proposes to amend Rule 1009 to: (1) Add the Lira and Peseta to the list of approved underlying foreign currencies; and (2) specify that the Lira and Peseta are being added to the list of approved currencies solely for purposes of trading Customized FCOs pursuant to Exchange Rule 1069.⁷ Additionally, Rules 1014 and 1069 are being amended to provide that there will be no quote spread parameters for Customized FCOs involving either the Lira or the Peseta.⁸

⁴ See Securities Exchange Act Release Nos. 35678 (May 4, 1995), 60 FR 24945 (notice of File No. SR-Phlx-95-20), and 35677 (May 4, 1995), 60 FR 24941 (notice of File No. SR-Phlx-95-21).

⁵ In Amendment No. 1 to each proposal, as discussed more fully herein, the Phlx: (1) increased the proposed margin levels for Customized FCOs on the proposed currencies; (2) proposed that cross-rate Customized FCOs involving the Lira or Peseta be subject to these increased margin requirements; (3) amended Phlx Rule 1009 to state in the rule that Exchange-traded FCOs on the Lira and Peseta are limited to Customized FCOs; and (4) made certain clarifying non-substantive amendments (e.g., renumbering rule sections) that were necessary in order to incorporate the addition of both proposed currencies into the Exchange's rules. See Letter from Michele Weisbaum, Associate General Counsel and Assistant Vice President, Phlx, to Michael Walinskis, Branch Chief, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated August 21, 1995 ("Amendment No. 1").

⁶ See Exchange Act Release No. 34925, *supra* note 3.

⁷ See Amendment No. 1, *supra* note 5. The definitions of "foreign currency" and "unit of underlying foreign currency" in Rule 1000(a) are also being amended to add references to the Lira and the Peseta.

⁸ Pursuant to Exchange Rule 1069(j)(1), quote spread parameters for customized strike FCOs on currently approved foreign currencies are twice

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¹³ 15 U.S.C. 78s(b)(2) (1982).

¹⁴ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1994).

³ Customized FCOs provide investors with the ability, within specified limits, to trade FCOs with customized strike prices, cross-rate FCOs on any two approved currencies, and FCOs where the U.S. dollar is the underlying currency. In addition, FCO participants may express quotes for customized FCOs as a percentage of the underlying currency, in addition to quoting in terms of the base currency per unit of the underlying currency. See Securities Exchange Act Release No. 34925 (November 1, 1994), 59 FR 55720 (November 8, 1995) ("Exchange Act Release No. 34925").

¹¹ Mini-manipulation is an attempt to influence, over a relatively small range, the price movement in a stock to benefit a previously established derivatives position.

¹² Minor violations of the PHLX's position and exercise limit rules for equity and index options are subject to Options Floor Procedure Advice F-15, "Minor Infractions of Position/Exercise Limits and Hedge Exemptions." Other violations of the PHLX's position and exercise limits are subject to review by the Exchange's Business Conduct Committee in accordance with the PHLX's Disciplinary Rules (PHLX Rules 960.1 through 960.12).