

of the Act. Section 15A(b)(6) requires that the rules of a national securities association 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 NASD believes that the proposed short-sale rule for SCM securities is consistent with each of these requirements. First, the NASD's proposal is premised on the same anti-manipulation concerns that were relied upon by the SEC to promulgate a short-sale rule for exchange-listed securities, SEC Rule 10a-1. Second, the short-sale rule for SCM securities will promote just and equitable principles of trade by permitting long sellers access to market prices at any time, while requiring short sellers in a declining market to execute their short sales above the bid or wait for an up bid, similar to the constraints placed upon short sellers of exchange-listed securities. Third, the proposal removes impediments to a free and open market for long sellers and ensures liquidity at bid prices that might otherwise be usurped by short sellers. Finally, since the immediate beneficiaries of a short-sale rule for SCM securities are the shareholders who own stock, the NASD believes its proposal is consistent with the protection of investors and the public interest.

Section 15A(b)(9) of the Act requires that the NASD's rules not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The NASD acknowledges that a short-sale rule applicable to SCM securities does impose burdens and restrictions on members and their customers where there were none before, but believes that these burdens and restrictions are appropriate and necessary to ensure the standing of long sellers in the marketplace and the integrity of the Nasdaq market. This concern with market integrity for existing shareholders has always been paramount in exchange markets and the NASD believes it is now appropriate to extend the same protections to shareholders in SCM securities as well.

Section 11A(a)(1)(C)(i) sets out the economically efficient execution of securities transactions as an objective of a national market system for securities. The NASD's proposed short-sale rule for SCM securities would operate to level the playing field between investors and short sellers by enabling those investors with long positions in a security to liquidate their positions at any time, at

any price, while permitting short sellers access to bid prices when that access will not exacerbate downward pressure in the stock, thus promoting the efficiency of the Nasdaq market. Moreover, the NASD believes that the primary market maker qualifications are critical to ensuring that the proposed rule operates effectively and should have the additional benefit of providing incentives for improved market maker performance in SCM securities.

Section 11A(c)(1)(F) assures "equal regulation of all markets for qualified securities and all exchange members, brokers, and dealers effecting transactions in such securities."¹⁰ The NASD believes that approval of the proposed short-sale rule for SCM securities will result in equivalent short sale regulation for exchange-listed securities and SCM securities.

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

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act. The NASD believes the PMM standards that would be applicable to market makers in Nasdaq SmallCap securities are designed in a manner to permit market makers of all sizes to meet the standards. Moreover, it is important to note that market makers in Nasdaq SmallCap securities that do not meet the standards will still be permitted to remain registered market makers in these securities. Finally, the NASD is hopeful that the proposed criteria will raise overall the quality of market maker participation in Nasdaq SmallCap securities, thereby promoting competition in the market for these securities.

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

The NASD has neither solicited nor received 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 of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

(ii) as to which the NASD 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. 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 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 NASD. All submissions should refer to File Number SR-NASD-95-41 and should be submitted by November 13, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority,¹¹

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-36378; International Series Release No. 869; File No. SR-NYSE-95-29]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Specifications and Content Outline for the Canadian Module of the General Securities Registered Representative Examination (Series 37)

October 16, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on September 18, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule

¹¹ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1).

¹⁰ 15 U.S.C. § 78k-1(c)(1)(F).

change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 has filed with the Commission specifications and a content outline for a Canadian Module of the General Securities Registered Representative Examination (Series 37).

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 self-regulatory organization 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 self-regulatory organization 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

Presently, registered representatives who already are qualified to conduct business in Canada and who wish to sell securities in the United States must qualify as registered representatives in the U.S. by successfully completing the General Securities Registered Representative Examination (Series 7). Likewise, U.S. qualified registered representatives desiring to conduct securities business in Canada must satisfy Canadian requirements by passing the New Entrants Exam. The Canadian securities authorities and member organizations of the NYSE have expressed concern regarding the duplication of qualification examination requirements. To address this concern, the Canadian Securities Institute,² in conjunction with the Investment Dealers Association of Canada, has developed a shortened examination module for U.S. qualified registered representatives (e.g., Series 7) seeking to conduct business with Canadian citizens. The module

covers subject matter unique to the Canadian securities business. Correspondingly, the Exchange has developed the Canadian Module of the General Securities Registered Representative Examination (Series 37) as a subset of the General Securities Registered Representative Examination (Series 7) to test the Canadian registered representatives' knowledge of U.S. securities laws, markets, investment products, and sales practices.

To determine the applicable Series 7 content areas that should be covered in the qualification examinations for Canadian registered representatives, the Exchange's staff conducted a thorough review of *The Canadian Securities Course* textbook, the *Registered Representative Conduct and Practices Handbook*, and had discussions with the staff of the Canadian Securities Institute. Through this review, the Exchange's staff identified for inclusion in the Series 37 module those topics that are included in the Series 7 Examination but are not covered, or are not covered in sufficient detail, in the Canadian materials. As a result, the module consists of 90 questions covering subject matter that is unique to the U.S. The topics are weighted in the module to correspond to the relative emphasis given these topics in the Series 7 Examination. For Canadian registered representatives who hold the additional Canadian license to sell options, the U.S. module would not contain the 45 questions pertaining to options and thus, would consist of 45 questions.

Canadian qualified registered representatives in good standing applying to become registered with Exchange member organizations can satisfy the Exchange's examination requirements by obtaining a passing score on the Series 37 module. In addition, the Exchange represents that the National Association of Securities Dealers, Inc. ("NASD") will submit a proposal to the Commission that would amend the NASD's rules such that the Series 37 would satisfy the NASD's qualification requirements. Canadian representatives seeking to sell municipal securities, however, will be required to pass the standard Series 7 or the Series 37 plus the Series 52 (Municipal Securities Representative Examination).

Since 1991, the Exchange has provided a similar, 90-question qualification vehicle for United Kingdom approved registered representatives wishing to sell securities in the United States, the Limited Registered Representative Examination

(Series 17).³ The Canadian module has been developed following procedures similar to those used for the Series 17 Examination.

2. Statutory Basis

The statutory basis for the Series 37 Examination is Section 6(c)(3)(B)⁴ of the Act. Under this section, it is the Exchange's responsibility to prescribe standards of training, experience, and competence for persons associated with Exchange members and member organizations. Pursuant to this statutory obligation, the Exchange has developed examinations that are administered to establish that persons associated with Exchange members and member organizations have attained specified levels of competence and knowledge.

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

The Exchange believes the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has neither solicited nor received written comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such other 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 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

²The Canadian Securities Institute is responsible for developing course materials, test materials, and qualification examinations for prospective Canadian registered representatives.

³Securities Exchange Act Release No. 27967 (May 1, 1990), 55 FR 19131 (approving File No. SR-NYSE-89-22).

⁴15 U.S.C. 78f(c)(3)(B).

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 also will be available for inspection and copying at the principal office of the New York Stock Exchange. All submissions should refer to File No. SR-NYSE-95-29 and should be submitted by November 13, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-36380; File No. SR-PHLX-95-45]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Industry Index Option Hedge Exemption

October 17, 1995.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 18, 1995, 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, II, and III below, which Items have been prepared by the self-regulatory organization. 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 PHLX Rule 1001A, "Position Limits," to establish a hedge exemption from industry (narrow-based) index option position limits.¹ Specifically, the PHLX

⁵ 17 CFR 200.30-3(a)(12).

¹ 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).

proposes to exempt from position limits any position in an industry index option that is hedged by share positions in at least 75% of the number of component stocks of that index or securities convertible into such stock. Under the proposal, no position in an industry index option may exceed three times the narrow-based index option position specified in PHLX Rule 1001A(b)(i)² and the value of the index option position may not exceed the value of the underlying hedging portfolio. Exercise limits³ will continue to correspond to position limits, so that investors may exercise the number of contracts set forth as the position limit, as well as those contracts exempted by the proposal, during five consecutive business days. The proposed exemption will be available to firm and proprietary traders, as well as public customers.

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

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 self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

² PHLX Rule 1001A(b)(i) provides the following position limits for industry index options: 6,000 contracts if any single stock accounted, on average, for 30% or more of the index value during the 30-day period preceding the review; 9,000 contracts if any single stock accounted, on average, for 20% or more of the index value or any five stocks together accounted, on average, for more than 50% of the index value, but no single stock in the group accounted on average, for 30% or more of the index value during the 30-day period preceding the review; or 12,000 contracts if none of the above conditions apply. See Securities Exchange Act Release No. 36194 (September 6, 1995), 60 FR 47637 (order approving File No. SR-PHLX-95-16) (increasing position limits for industry index options to 6,000, 9,000, or 12,000 contracts).

³ 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.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed industry index option hedge exemption is to establish a provision parallel to the hedge exemptions for equity options and certain broad-based index options to permit certain hedged positions to exceed established position limit levels.⁴ In 1989, the Commission approved a hedge exemption for Utility Index options ("UTY") on a pilot basis.⁵ At this time, the PHLX proposes to adopt an industry index hedge exemption applicable to all of the Exchange's industry index options.

Specifically, the PHLX proposes to adopt Commentary .02 to PHLX Rule 1001A to establish a narrow-based index option hedge exemption under which industry index option positions hedged in accordance with the proposal would be entitled to exceed existing narrow-based index option position limits by up to three times the limit.

In order to qualify for the exemption, the industry index option position must be "hedged" by share positions in at least 75% of the number of component stocks of the index, or securities convertible into such stock.⁶ Under the proposed exemption, position limits for any hedged industry index option may not exceed three times the limits established under PHLX Rule 1001A(b)(i). In addition, the value of the index option position may not exceed the value of the underlying portfolio employed as the hedge. The value of the underlying portfolio is determined as follows: (1) The total market value of the net stock position, less (2) the value of: (a) the notional value⁷ of any offsetting

⁴ See PHLX Rule 1001, Commentary .07. See Securities Exchange Act Release No. 35738 (May 18, 1995), 60 FR 27573 (May 24, 1995) (File Nos. SR-AMEX-95-13, SR-CBOE-95-13, SR-NYSE-95-04, SR-PSE-95-05, and SR-PHLX-95-10) (permanently approving hedge exemption pilot programs).

⁵ See Securities Exchange Act Release No. 27486 (November 30, 1989), 54 FR 50675 (December 8, 1989) (order approving File No. SR-PHLX-89-27). The UTY hedge exemption was approved for a one-year pilot period, which ended on November 30, 1990.

⁶ The PHLX permits the use of convertible securities in its equity option hedge exemption. See Securities Exchange Act Release No. 32174 (April 20, 1993), 58 FR 25687 (April 27, 1993) (order approving File No. SR-PHLX-92-22). Similarly, other options exchange permit the use of convertible securities in broad-based index hedge exemptions. See Securities Exchange Act Release No. 35738, *supra* note 4.

⁷ Notional values are determined by adding the number of contracts and multiplying the total by the multiplier, expressing that number in dollar terms.