United States Information Agency

Special Assistant to the Director, Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs. Effective November 1, 1995.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 96–199 Filed 1–5–96; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36647; File No. SR–CBOE–95–36]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendments No. 1 and 2 to a Proposed Rule Change Relating to the Transfer of Positions on the Floor of the Exchange in Cases of Dissolution and other Situations

December 28, 1995.

I. Introduction

On July 13, 1995, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposal to adopt new CBOE Rule 6.49A, which would: (i) Identify certain transfers of options positions not subject to the requirements contained in CBOE Rule 6.49 that generally requires transactions of option contracts listed on the Exchange for a premium in excess of $1.00 to be effected on the floor of the Exchange or on another exchange; (ii) provide for the Exchange President to grant exemptions from the general Rule 6.49 on-floor requirement; and (iii) establish an optional procedure for transferring positions on the floor of the Exchange in cases of dissolution and other situations. The proposed rule change was published for comment and appeared in the Federal Register on September 25, 1995.[3] On December 20, 1995, the CBOE filed Amendment No. 1 to its proposal,[4] and on December 21, 1995, the CBOE filed Amendment No. 2 to its proposal.[5] No comments were received regarding the CBOE's proposal. This order approves the proposal.

II. Description of the Proposal

The Exchange has a long-standing policy of prohibiting off-floor transfers of option positions between accounts, individuals, or entities where a change in beneficial ownership would result. The Exchange, however, previously has made exceptions to this general policy under certain limited circumstances, allowing otherwise prohibited transactions to be completed off the floor of the Exchange.

The CBOE's proposal seeks to formalize the Exchange's policies in this area by adopting Rule 6.49A, which provides for the off-floor transfer of positions based on certain specified exemptions, or as approved by the Exchange's President when in the President's judgement the market value of the Transferor's business will be comprised by having to comply with this requirement or when market conditions make transfer on the floor impractical. Situations in which members will be permitted to effect off-floor transfers under the proposed rule include: (i) The dissolution of a joint account in which the remaining member assumes the positions of the joint account, (ii) the dissolution of a corporation or partnership in which a former nominee of the corporation or partnership (*i.e.*, a shareholder or partner, respectively) assumes the positions, (iii) the transfer of positions as part of a member's capital contribution to a new joint account, partnership, or corporation, (iv) the donation of positions to a not-for-profit corporation, (v) the transfer of positions to a minor under the ''Uniform Gifts to Minor'' law, and (vi) a merger or acquisition where continuity of ownership or management results.

Because the Exchange recognizes that there may be other circumstances where an off-floor transfer may be justified, such as emergency transfers of a firm's positions in bulk during a market crisis, it also is proposing to allow the Exchange's President to grant an exemption from CBOE Rule 6.49(a) on his own motion or upon application of the Transferor. Such exemptions may be granted when in the President's judgement the market value of the Transferor's business will be compromised by having to comply with this requirement or market conditions make transfer on the floor impractical.

In addition, proposed CBOE Rule 6.49A establishes a special procedure to permit options positions to be offered on the floor of the Exchange in the event that the positions are being transferred as part of a sale or disposition of all or substantially all of the assets or options positions of the transferring Exchange member or member organization (''Transferor''). The purpose of this portion of the proposal is to establish a special on-floor procedure that ensures that the transferring member gets the best possible price for that member's positions and that other members of the Exchange have an adequate opportunity to make bids and offers on positions that are being transferred.

The special on-floor procedure established by the proposed rule also may be used by market makers who, for reasons other than a forced liquidation, such as an extended vacation, wish to liquidate their entire, or nearly their entire, open positions in a single set of transactions. As the procedure established by the proposed rule is not meant to replace the normal Exchange auction market, however, repeated and frequent use of the proposed rule by the same member will not be permitted.

Pursuant to the proposal, the special on-floor procedure provides that a Transferor may offer a set of options or other financial instruments as a package (''Transfer Package''), to be bid upon at a net debit or credit for the entire Transfer Package. A single Transfer Package may include no more than one class of option listed on the Exchange, but also may include stock or other securities. A Transferor may offer

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] See Securities Exchange Act Release No. 36241 (September 15, 1995), 60 FR 49430.

[4] In Amendment No. 1, the CBOE modifies proposed CBOE Rule 6.49A(a) to make clear the general proposition that all transactions in CBOE options must be brought to the floor, unless permitted to be done elsewhere by CBOE Rule 6.49, and the paragraph establishes an optional procedure for transferring certain of these positions. In addition, Proposed Interpretation .02 is moved into the text of the rule. Amendment No. 1 also modifies proposed CBOE Rule 6.49A(d), which would authorize the President of the CBOE to grant exemptions from the rule's requirement to bring positions to the floor, by making the guidelines under which the President is to evaluate the exemption request more straightforward and objective; and by making it clear that the exemption is from the requirement to bring the position to the floor and not an exemption from the procedure, since the use of the procedure set forth in proposed 6.49A(c) is an optional procedure. Letter from Timothy Thompson, CBOE, to Michael Walinskas, Branch Chief, Division of Market Regulation (''Division''), Commission, dated December 20, 1995.

[5] In Amendment No. 2, the CBOE seeks to clarify the relationship between Rule 6.49 and proposed Rule 6.49A. Rule 6.49(a) describes the types of transactions in CBOE options which are required to be transacted on the floor of the Exchange or on another exchange that trades such options. Amendment No. 2 eliminates similar language from proposed Rule 6.49A. Thus, the list of transactions described in proposed Rule 6.49A(a)(1) are exceptions to the general requirement set forth in Rule 6.49(a). Letter from Timothy Thompson, CBOE, to Michael Walinskas, Branch Chief, Division, Commission, dated December 21, 1995 (''Amendment No. 2'').

multiple Transfer Packages on the floor at the same time or on the same day. Moreover, a member or member organization may make an aggregate bid or offer for any number of Transfer Packages offered by a single Transferor. In the event that the aggregate bid or offer is superior to the combination of the individual best bids or offers for the individual Transfer Packages, the Transferor will be allowed to accept that aggregate bid or offer for a combination of, or all of, the Transfer Packages. The Exchange believes that allowing the Transferor to accept aggregate bids or offers will ensure that the Transferor gets the best possible price for his positions.[6]

Any Transfer Package consisting of positions both in an option class and in other financial instruments must be offered at the Exchange's Flexible Exchange Options (''FLEX'') post, and will be subject to many of the procedures established for trading FLEX options.

Any Transfer Package consisting solely of positions in one option class that does not include stock or other securities will be offered by the Transferor at the post at which that options class is traded (''Post-Specific Transfer Packages''). Components of Post Specifer Transfer Packages should be individually priced and reported and will be subject to the Exchange's ordinary procedures for trading options.

Any firm submitting a Transfer Package will be required to designater a member of the exchange or a person associated with a member to represent the order on the floor of the Exchange. This designee must be available on the Exchange floor to answer questions regarding the Transfer Package during the entire Request Response Time (as defined below). In addition, notice must be given to the Order Book Official of each post (or the Designated Primary Market Maker, as appropriate) where a component of the Transfer Package trades.

Following the offer of the Transfer Packages, interested members of the Exchange will be given two hours to submit a bid for one or any combination of the Transfer Packages offered by the Transferor (''Response Request Time'').[7] At the end of the Response Request Time, the Transferor will be allowed to accept the best bid or offer (''BBO'') for any individual Transfer Package, or for any combination of Transfer Packages if the bid or offer for the combination is superior to the aggregate of the individual bids or offers for the individual Transfer Packages.[8] Acceptance of a BBO creates a binding contract under CBOE Rule 6.48, however, a Transferor is not obligated to accept a BBO. If the Transferor chooses not to accept the BBO for the Transfer Packages, the Transferor may offer the positions in any Transfer Package the next day. Because the Exchange intends for its proposal to be a transfer procedure and not a price discovery mechanism, the Transferor will require the permission of the President of the Exchange to offer the positions on the Exchange floor for any day subsequent to the second day.

Bids and offers will be made on a net debit or credit basis for entire Transfer Packages. In the event that a particular Transfer Package contains stock positions or other positions whose transfer must be transacted on another exchange pursuant to applicable law or regulation (''Off Floor Portions''), then any accepted quote for the Transfer Package shall give rise to a contract for the option portion of the Transfer Package, the price of which is contingent on the price at which those other portions of the Transfer Package are transacted. The price at which the options position shall be transacted is the price that is required to have the entire Transfer Package trade at the agreed upon net debit or credit, taking into consideration the prices at which the Off Floor Portions have been transacted. All transactions that are required to be completed must be completed in time to allow the option portion to be transacted by the end of the trading day.

In the event that a transaction in a non-CBOE listed component of the Transfer Package cannot be completed in a timely manner due to a trading halt, an operational problem outside the control of the parties, or the closing of the applicable market before the transaction can be completed, the trade for the option portion of the trade may be canceled at the election of any member that is a party to that trade.

To the extent possible, equal bids for Transfer Packages will be split equally among the parties submitting the equal bids, or will be split in such a manner as may be agreed upon by the submitting parties.

III. Discussion

The Commission finds the proposed rule change consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act because the proposal is designed to promote just and equitable principles of trade, foster cooperation with persons engaged in facilitating and clearing transactions in securities, and protect investors and the public interest.

The Commission believes that the CBOE's proposal clearly delineates the exceptions to CBOE Rule 6.49(a)'s general requirement that all CBOE members' transactions in CBOE options be effected on the floor of an exchange.[9] In the Commission's opinion, it is appropriate for the CBOE to provide for transfers to occur off the floor of the Exchange in certain situations. Thus, the proposal envisions allowing off-floor transfers in several narrowly-defined situations where the transfer results in some degree of continuity in the ownership or management of the position or transfer is necessitated by certain legal or similar reasons, or where the President of the Exchange judges that the market value of the Transferor's business will be compromised, or judges that market conditions make the transfer process impractical.[10] The Commission believes that it is reasonable and consistent with the Act to provide for off-floor transfers to be effected under these circumstances.

The Commission believes that the special on-floor procedures are designed to extend the benefits of an auction marketplace to the transactions outlined in Rule 6.49A(b)(1). More specifically, the special on-floor procedures proposed by the CBOE should expose the affected positions to the auction market, albeit in a somewhat different manner than governed by regular trading procedures.

The Commission finds food cause for approving Amendments No. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the

[6] Telephone conversation between Tim Thompson, Senior Attorney, Legal Department, CBOE, and Brad Ritter, Office of Market Supervision, Division of Market Regulation, Commission, on July 25, 1995 (''July 25 Conservation'').

[7] The two hour time could be shortened or lengthened with the approval of the President. Any Transfer Package offered after 1:00 p.m., Chicago time, will require the prior approval of the President. The proposed rule will prevent the President from permitting offers to be brought after 2:30 p.m., Chicago time.

[8] For example, if a Transferor offers four Transfer Packages, and following the Request Response Time, the Transferor receives bids for three of the Transfer Packages and one aggregate bid for all four Transfer Packages, then, if the aggregate bid is greater than the sum of the best individual bids for the three Transfer Packages, the Transferor may accept the aggregate bid and transfer all four Transfer Packages. See July 25 Conversation, *supra* note 6.

[9] See Amendment No. 2, *supra* note 5.

[10] See Amendment No. 1, *supra* note 4.

Federal Register. The Commission believes that Amendments No. 1 and 2 benefit the Exchange's proposal by clarifying the relationship between the proposed rule and existing Exchange Rule 6.49. The Amendments also revise the language concerning the exemptions from the general requirement of Rule 6.49(a) that transactions in CBOE options be effected on the floor of the CBOE or other exchange. The Commission believes that the amendments clarify the existing terms of the CBOE's proposal, rather than make any substantive changes. Based on the foregoing, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve Amendments No. 1 and 2 to the Exchange's proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendments No. 1 and 2 to the proposed rule change. 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 in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. 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–CBOE–95–36 and should be submitted by January 29, 1996.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposal, as amended, is consistent with the Act, and, in particular, Section 6 of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (File No. SR–CBOE–95–36), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12) (1994).

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96–179 Filed 1–5–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36660; File No. SR–Phlx–95–73]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to New Organizational Structures for Members

December 29, 1995.

On October 4, 1995, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''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 include within the definition of ''member firm'' found in the Phlx By-Laws and rules entities with organizational structures essentially similar to partnerships and corporations and to make the provisions in its By-Laws and rules that pertain to partners of partnership member firms applicable to those persons performing similar functions in non-partnership member firms. On October 11, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change,[3] and on November 1, 1995, the Exchange submitted Amendment No. 2 to the proposed rule change.[4]

The proposed rule change and Amendment Nos. 1 and 2 were published for comment in Securities Exchange Act Release No. 36482 (November 14, 1995), 60 FR 58126 (November 24, 1995). No comments were received on the proposal.

Recently, Pennsylvania law and the laws of 46 other jurisdictions have recognized the existence of new legal entities such as limited liability companies (''LLCs''),[5] limited liability partnerships (''LLPs''),[6] and business trusts.[7] As of February 5, 1995, Pennsylvania has authorized the existence of LLCs and LLPs. Presently, the Exchange's By-Laws and Rules recognize two types of member organizations: partnerships under the term ''member firm'' and corporations under the term ''member corporation.''

The proposed rule change would allow the Exchange to recognize these new legal entities as Phlx member firms by amending the definitions of ''member firm'' found in Article I, Section 1–1(c) of the By-Laws and Rule 3 to encompass organizations that are essentially similar to member firms including, but not limited to, LLCs, LLPs, and business trusts.

The Exchange also proposes to amend Article I, Section 1–1(c) and Rule 3 to make provisions in the Phlx By-Laws and rules that pertain to general, special or limited partners in partnership member firms applicable, as appropriate, to those persons who perform essentially similar functions as such partners in non-partnership member firms.[8]

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, with the requirements of Section 6(b).[9] Specifically, the Commission believes that the proposed rule change is consistent with Section 6(b)(2) of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Letter from Murray L. Ross, Secretary, Phlx, to Glen Barrentine, Senior Counsel, SEC, dated October 2, 1995. Amendment No. 1 renumbered the rule filing.

[4] See Letter from Murray L. Ross, Secretary, Phlx, to Glen Barrentine, Senior Counsel, SEC, dated October 25, 1995. See *infra* note 8 and text accompanying note 11 for a description of Amendment No. 2.

[5] An LLC combines various characteristics of both corporations and partnerships. For example, an LLC is a non-corporate entity under which neither the owners nor those managing the business are personally liable for the entity's obligations, however, the LLC is treated as a pass-through entity for federal income tax purposes. See Robert R. Keatinge et al., *The Limited Liability Company: A Study of the Emerging Entity*, 47 Bus. Law. 378 (1992).

[6] An LLP differs from a traditional partnership entity in two significant ways. First, in an LLP the liability of a partner or the partnership is no longer joint and several among the partners; instead, a partner generally will be personally liable only for his or her own conduct and that of those under his or her direct supervision. Second, an LLP is treated as a pass-through entity for federal income tax purposes. See Sharon Kanovsky, *LLPs: A New Form of Organization*, 25 Tax Advisor 409 (1994).

[7] The term ''business trust'' is generally used to describe a trust in which the managers are principals and the shareholders are *cestuis que* trust. Its essential attribute is that property is placed in the hands of trustees who manage and deal with it for the use and benefit of beneficiaries. Black's Law Dictionary 180 (5th ed. 1979).

[8] Amendment No. 2 added this provision to the proposed rule change. Amendment No. 2 also withdrew a proposed change to Rule 902 that would have required a member intending to form a non-partnership member firm to submit certain specified documentation to the Exchange, as the proposed change to Rule 3 gives the Exchange the authority to require the submission of such documentation under the current Rule 902. Amendment No. 2 also included additional minimum requirements to be satisfied before LLCs, LLPs, business trusts, or other organizations with characteristics of partnerships or corporations could be approved as Phlx members. See note 11 and accompanying text.

[9] 15 U.S.C. 78f(b).