

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 in Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-96-01 and should be submitted by February 16, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

Margaret H. McFarland,  
Deputy Secretary.

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[Release No. 34-36752; File No. SR-Phlx-95-77]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Rules of the Allocation, Evaluation and Securities Committee.**

January 22, 1996.

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 December 22, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("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 Exchange proposes to update its rules relating to the Allocation, Evaluation and Securities Committee ("Committee"). Specifically, Rules 500, 501, 505, 506, 508 and 511 are being amended as well as By-Law Article X, Section 10-7. The text of the proposed rule change is available at the Exchange 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.

**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 update the Exchange's 500 Series of rules, which govern the allocation of specialist privileges. The rules that are currently in place have not been significantly amended since they were adopted in 1987 as a pilot program.<sup>1</sup> as described below, almost all of the rules are being revised in order to address issues that have come up over the past eight years. All of the proposed changes are described below.

**Composition of Allocation, Evaluation and Securities Committee**

Currently, the Committee has a minimum nine member requirement but has no maximum requirement. For competitive reasons, the Committee is often called upon to meet on short notice and meets more frequently than other committees that may only hold monthly meeting. Having a large committee makes it difficult to obtain a quorum, and thus, conduct business.

Accordingly, By-Law Article X, Section 10-7 and Rule 500 are being amended to revise the Committee size and structure. The By-Law section will still require a minimum of nine members on the Committee but would add that a quorum will always be five members. The Committee would also be structured differently. Pursuant to proposed new subsection (b) to Rule 500, for each meeting, the Committee will be composed of five core committee members and four members of a 20 member allocation panel. The core committee, whose members would serve for three year terms (no more than two consecutive terms), would be created to

<sup>1</sup>The rules initially were approved by the Commission as an eight month pilot program on May 21, 1987. See Securities Exchange Act Release No. 24496 (May 21, 1987), 52 FR 20183 (May 29, 1987). On February 23, 1988, the pilot program was extended indefinitely until further action was taken by the Commission. See Securities Exchange Act Release No. 25388 (Feb. 23, 1988), 53 FR 6725 (Mar. 2, 1988). The rules were permanently approved on June 26, 1991. See Securities Exchange Act Release No. 29369 (June 26, 1991), 56 FR 30604 (July 3, 1991).

assure some continuity of membership on the Committee. The allocation panel would also be created, whose members would serve for one-year terms, to allow for new persons with fresh perspectives.

Rule 500 would be amended to provide who may serve on the core committee and allocation panel and how many members of each must attend meetings in order for a quorum to be reached. Specifically, the core committee would have five members: three who conduct a public securities business, one from the equity floor, and one from the options floor. The allocation panel would have twenty members: six who conduct a public securities business, five from the equity floor, five from the options floor, and four from the foreign currency options ("FCO") floor.

For each meeting, the Committee will be composed of the five core committee members and four members of the 20 member panel chosen on a rotating alphabetical basis. The Chairman will, however, have the discretion to also specifically invite any other members of the panel who he believes would have particular knowledge or expertise respecting the subject matter of the meeting. For example, if a FCQ is being allocated and the four alphabetically chosen panel members for the meeting happen to all be from the equity and equity options floors, the Chairman could also invite any or all of the four FCO panel members to the meeting. Additionally, all other members of the panel will always be notified of meetings and may attend and vote if they so chose even if they are not at the top of the rotation list. Finally, at least two of the core committee members must be part of the quorum at every meeting in order to assure that there are some experienced committee members in attendance.<sup>2</sup>

**Transfers of Specialist Privileges**

Currently, a specialist does not have to seek Committee approval when it proposes to transfer all of its specialist privileges, but it must do so in order to transfer less than all of its privileges. The Exchange has determined to amend Rule 508 to now require that all proposed transfers of specialist privileges be subject to prior Committee approval so that the Committee has the ability to consider the qualifications of all proposed transferees. The criteria provided in Rule 511 that is currently used for making allocation and reallocation decisions would now also

<sup>2</sup>At least one of the core committee members in attendance must conduct a public securities business.

<sup>7</sup> 17 CFR 200.30-3(a)(12).

be applicable to transfer approval decisions.

Often, when option specialist privileges are transferred, the physical trading location on the floor is also moved. In the past, the Exchange has often been requested to effect a move of screens and equipment overnight. Not only is this difficult for the staff to accomplish but it could also cause problems for the market makers in the trading crowd who may have part of their assigned classes of options moved.<sup>3</sup> Thus, new Commentary .01 would also be added to Rule 508 in order to impose a 45 day moratorium on trading floor location moves in order to give the staff and the traders in the crowd time to prepare for the move.

#### *Specialist Unit Performance Reviews*

Currently, the Committee conducts two kinds of reviews of specialist units pursuant to Exchange Rule 511. First, the Committee performs routine quarterly reviews of any specialist unit. Second, special reviews are conducted within 60 days after a transfer has been effected or a material change in a specialist unit has occurred. The Committee will still conduct the routine reviews, except that now the Quality of Markets Subcommittee will perform the initial stage of the review.<sup>4</sup>

In the cases of transfers of specialist privileges and material changes to the units, the Exchange proposes to commence the reviews after 90 days rather than 60 days because the Exchange has found that 60 days is not enough time in which to determine the adequacy of performance. The second proposed change to these types of reviews is that in the case of transfer reviews, if the new unit's performance is below minimum standards, the unit will be given 30 days in which to improve prior to beginning reallocation proceedings. This review provision will be renumbered as new subsection (d)(2) to Rule 511.

Finally, a new type of review will be instituted regarding new allocations of specialist privileges in new proposed subsection (d)(1) to Rule 511. When a specialist unit applies for a new equity book or options class, it is required to

fill out an application and sometimes to have a representative appear before the Committee. The Committee makes allocation decisions, in part, based on representations made by the applicant either orally or in writing. For instance, an options specialist might commit to being 100 up on all displayed markets or an equity specialist might commit to a volume guarantee on PACE significantly larger than the minimum. In order to help ensure that the Committee is making allocations based on realistic expectations of performance, the Exchange proposes to now commence reviews of specialist units that are awarded books within 90 days thereafter to specifically consider whether the unit has attempted to comply with the information that it gave to the Committee when applying. If the Committee finds that the unit is not in compliance, they will be given 30 days in which to comply prior to instituting reallocation proceedings.

#### *Registration of Specialist Privileges*

Presently, equity books and options classes may be registered in the name of either the specialist unit, the individual specialist or both. There is no requirement, however, in the rules that the registrant be an Exchange member or approved specialist. The Exchange proposes to add this language into Rule 505. Also, where a specialist unit has leased its specialist privileges to another unit, the Exchange will now require that both the lessor and the lessee be noted on the Registration form.

#### *Specialist Applications*

Exchange Rule 501 only presently addresses the contents of applications to become specialist units. The Committee's practice has been, however, to require both specialist units and individual specialists to apply in writing to the Committee for approval. Therefore, Rule 501 is being amended to specify that both specialists and specialist units must apply in writing to the Committee and to note what information must be in the applications.

Exchange Rule 506 will also be amended to require that when five or more specialist units apply for a particular equity book or options class, personal appearances before the Committee will be required. Currently, appearances are discretionary with the Committee. Finally, various amendments have been made to the rules to include references to the Foreign Currency Options Committee where appropriate.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as 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 inappropriate burden on competition.

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

No written comments were received.

## 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, 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

<sup>3</sup>Registered Options Traders ("ROTs") are assigned one or more classes of options by the Exchange and have affirmative obligations to make markets in such options pursuant to Exchange Rule 1014. ROTs, thus, usually request assignments in options classes that are physically traded in the same general area of the floor.

<sup>4</sup>The Exchange is concurrently filing SR-PHLX 95-91, which proposes to revise the options specialist evaluation form and review procedure. The proposed amendments to Rule 511(c) herein are the same as those proposed in that filing and are explained in more detail.

available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 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-95-77 and should be submitted by February 16, 1996.

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

Margaret H. McFarland,

*Deputy Secretary.*

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[Release No. 34-36747; File No. SR-PHLX-95-87]

**Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Advice F-15 and the Expanded Equity Option Hedge Exemption**

January 19, 1996.

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 December 7, 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 and II below, which Items have been prepared by the self-regulatory organization. The Commission is approving this proposal on an accelerated basis.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The PHLX proposes to amend paragraph (b) of Floor Procedure Advice ("Advice") F-15, "Minor Infractions of Position/Exercise Limits and Hedge Exemptions," to indicate that the maximum allowable position for each option contract "hedged" by 100 shares of stock or securities convertible into the stock will be three times, instead of twice, the standard position and exercise limit of the option.<sup>1</sup> The proposed amendment to Advice F-15 will make Advice F-15 consistent with

<sup>1</sup> Position limits impose a ceiling on the aggregate number of option contracts on the same side of the market that an investor, or group of investors acting in concert, may hold or write. Exercise limits impose a ceiling on the aggregate long positions in option contracts that an investor, or group of investors acting in concert, can or will have exercised within five consecutive business days.

a proposal approved previously by the Commission which expands the maximum allowable hedge exemption for equity options to three times the standard limit of the option.<sup>2</sup>

The text of the proposal is available at the Office of the Secretary, the 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.

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

Recently, the Commission approved proposals by various options exchanges, including the PHLX, to create two additional tiers of equity option position and exercise limits and to expand the equity option hedge exemption from two times to three times the applicable position limit for the option.<sup>3</sup> The PHLX's equity option hedge exemption, which is contained in Commentary .07 to PHLX Rule 1001, "Position Limits," was adopted originally on a pilot basis, and recently was permanently approved by the Commission.<sup>4</sup> The equity hedge exemption applies where each option contract is "hedged" by 100 shares of stock or securities convertible into such stock, (in the case of an adjusted option, the number of shares at option), as follows: (1) long call and short stock; (2) short call and long stock; (3) long put and long stock; and (4) short put and short stock.

Advice F-15 was adopted in 1993.<sup>5</sup> Paragraph (a) of Advice F-15 provides

<sup>2</sup> See Securities Exchange Act Release No. 36409 (October 23, 1996), 60 FR 55399 (October 31, 1995) (order approving File Nos. SR-NYSE-95-31; SR-PSE-95-25; SR-Amex-95-42; and SR-PHLX-95-71) ("Hedge Exemption Order"). See also Securities Exchange Act Release No. 36371 (October 13, 1995), 60 FR 54269 (October 20, 1995) (order approving File No. SR-CBOE-95-42).

<sup>3</sup> *Id.*

<sup>4</sup> See Securities Exchange Act Release No. 35738 (May 18, 1995), 60 FR 27573 (May 24, 1995) (order approving File Nos. SR-Amex-95-13; SR-CBOE-95-13; SR-NYSE-95-04; SR-PSE-95-05; and SR-PHLX-95-10).

<sup>5</sup> Securities Exchange Act Release No. 32423 (June 7, 1993), 58 FR 32976 (June 14, 1993) (order approving File No. SR-PHLX-92-21).

for a fine for violations of the Exchange's position and exercise limits which do not exceed the position and exercise limits by more than 5%. Paragraph (b) of Advice F-15 governs the equity option hedge exemption, with paragraph (b)(1) requiring the filing of a hedge exemption report and paragraph (b)(ii) providing for a fine if an option position is not reduced when the stock side to a hedge exemption is decreased.

The PHLX proposes to amend Advice F-15(b) to reflect the recent expansion of the equity option hedge exemption,<sup>6</sup> which was inadvertently omitted from the PHLX's proposal to expand the equity option hedge exemption. Specifically, the PHLX proposes to amend Advice F-15 to provide that the equity hedge exemption permits positions up to three times the applicable equity option position limit, rather than two times the applicable equity option position limit.

The PHLX notes that because Advice F-15 contains a fine schedule which is administered pursuant to the PHLX's minor rule violation enforcement and reporting plan ("Minor Rule Plan"),<sup>7</sup> the proposal necessarily amends the Exchange's Minor Rule Plan. Since the equity option hedge exemption has already been expanded to three times the position limit,<sup>8</sup> the PHLX believes that the proposal does not raise new regulatory issues; rather, the Exchange believes that the proposal enhances investors' hedging abilities by correcting Advice F-15 to correspond to PHLX Rule 1001, as amended by the Hedge Exemption Order.

The PHLX believes that increasing the maximum levels of the automatic hedge exemption should provide greater depth and liquidity, and, hence, greater protection to investors against market declines. Because the proposal codifies the expanded exemption in Advice F-

<sup>6</sup> See Hedge Exemption Order, *supra* note 2.

<sup>7</sup> The PHLX's Minor Rule Plan, codified in PHLX Rule 970, "Floor Procedure Advices: Violations, Penalties, and Procedures," contains Advices with accompanying fine schedules. Pursuant to paragraph (c)(1) of Rule 19d-1 under the Act, a self-regulatory organization ("SRO") is required to file promptly with the Commission notice of any "final" disciplinary action taken by the SRO. Pursuant to paragraph (c)(2) of Rule 19d-1, any disciplinary action taken by the SRO for violation of an SRO rule that has been designated a minor rule violation pursuant to the plan shall not be considered "final" for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding \$2500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies. By deeming unadjudicated minor violations as not final, the Commission permits the SRO to report violations on a periodic (quarterly), as opposed to immediate, basis.

<sup>8</sup> See Hedge Exemption Order, *supra* note 2.