

**(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.

**(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

Written comments on the proposed rule change were neither solicited nor 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 the self-regulatory organization 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 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 File No. SR-PSE-96-12 and should be submitted by June 5, 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. 34-37178; File No. SR-PSE-96-10]**

**Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange, Inc., To Establish a Firm Facilitation Exemption**

May 8, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 4, 1996, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The PSE subsequently filed Amendment No. 1 to the proposed rule change on May 2, 1996.<sup>3</sup> The PSE has requested accelerated approval for the proposal. This order approves the PSE's proposal, as amended, on an accelerated basis and solicits comments from interested persons.

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

The PSE is proposing to amend its rules on option position limits in order to establish a firm facilitation exemption to such limits.

**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 PSE 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 III below. The PSE 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 PSE is proposing to establish a firm facilitation exemption<sup>4</sup> for all non-multiply-listed Exchange option issues by adding new Commentary .08 to Exchange Rule 6.8, the general options position limit rule.<sup>5</sup> The exemption would be available to equity, broad-based index, narrow-based index, Flexible Exchange ("FLEX"), interest rate, and government securities option issues to the extent and at the levels specified therein.

Under the proposal, the procedures in Exchange Rule 6.47(b) and Options Floor Procedure Advice A-6 for crossing a customer order with a firm facilitation order must be followed. In this regard, before a customer order can be crossed with a firm facilitation order, the trading crowd must be given a reasonable opportunity to participate. Moreover, only after it has been determined that the trading crowd will not fill the order, may the firm's customer order be crossed with the firm's facilitation order.

In addition, except for an interest rate firm facilitation exemption, which is set at a higher level, the firm facilitation exemption will be twice the standard limit.

The PSE notes that the firm facilitation exemption will be in addition to and separate from the standard limit, as well as other exemptions available under Exchange position limit rules. For example, if a firm desires to facilitate customer orders in the XYZ option issue, which is assumed not to be multiply-listed and also assumed to have a 25,000 contract standard position limit, the firm may qualify for a firm facilitation exemption of up to twice the standard limit (50,000 contracts), as well as an equity hedge exemption of up to twice the standard limit (50,000 contracts), in addition to

<sup>4</sup> The Commission notes that a facilitation trade is defined as a transaction that involves crossing an order of a member firm's public customer with an order for the member firm's proprietary account.

<sup>5</sup> The PSE's exercise limit provisions will correspond to the increase in position limit levels permitted by the firm facilitation exemption.

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

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4 (1994).

<sup>3</sup> On May 2, 1996, the PSE filed Amendment No. 1 to the proposed rule change to include within the rule text the requirement that if the Exchange grants a facilitation exemption on the basis of oral representations, the member organization must file the appropriate forms and documentation substantiating the basis for the exemption within either two business days or a period of time to be designated by the Exchange ("Amendment No. 1"). See Letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Matthew S. Morris, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, dated May 2, 1996.

the 25,000 contract standard limit. If both exemptions are allowed, the facilitation firm may hold or control a combined position of up to 125,000 XYZ contracts on the same-side of the market.

The PSE notes, however, that the firm facilitation exemption will not presently extend to all option issues listed on the Exchange. Rather, until coordinated intermarket procedures are developed, the exemption will be extended only to non-multiply-listed option issues.<sup>6</sup>

Under the proposal, the facilitation firm must receive approval from the Exchange prior to executing facilitating trades. Although Exchange approval may be granted on the basis of verbal representations, the facilitation firm is required to furnish to the Exchange's Department of Options Surveillance, within two business days or such other time period designated by the Exchange, forms and documentation substantiating the basis for the exemption. Within five business days after the execution of a facilitation exemption order, a facilitation firm must hedge all exempt option positions that have not previously been liquidated, and furnish to the Exchange's Department of Options Surveillance documentation reflecting the resulting hedging positions. In meeting this requirement, the facilitation firm must liquidate and establish its customer's and its own option and stock positions or their equivalent in an orderly fashion, and not in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes. In addition, a facilitation firm is not permitted to use the facilitation exemption for the purpose of engaging in index arbitrage. Moreover, the facilitation firm is required to promptly provide to the Exchange any information or documents requested concerning the exempted option positions and the positions hedging them, as well as to promptly notify the Exchange of any material change in the exempted options position or the hedge.

Lastly, to aid in understanding the scope of the firm facilitation exemption, Commentary .08 will include both a table and an example showing how the exemption will be applied.

## 2. Statutory Basis

The PSE believes that the proposal is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to facilitate transactions in

securities while continuing to further investor protection and the public interest, and will accommodate the needs of investors and other market participants without substantially increasing concerns regarding manipulation and other trading abuses.

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

The PSE 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*

Comments were neither solicited nor received with respect to the proposed rule change.

## III. 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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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. 20549. Copies of such filings also will be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-96-10 and should be submitted by [insert date 21 days from date of publication].

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

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)(5).<sup>7</sup> Specifically, the Commission believes that the PSE's proposal is reasonably designed to accommodate the needs of investors and other market participants

without substantially increasing concerns regarding the potential for manipulation and other trading abuses. The Commission also believes that the proposed rule change has the potential to enhance the depth and liquidity of the options market by providing Exchange members greater flexibility in executing large customer orders. Accordingly, as discussed below, the Commission believes that the rule proposal is consistent with the requirements of Section 6(b)(5) that exchange rules facilitate transactions in securities while continuing to further investor protection and the public interest.

The PSE proposal contains several safeguards that will serve to minimize any potential disruption or manipulation concerns. First, the facilitation firm must receive approval from the Exchange prior to executing facilitating trades. Although Exchange approval may be granted on the basis of verbal representations, the Commission believes that trading abuses are unlikely because the facilitation firm is required to furnish to the Exchange's Department of Options Surveillance, within two business days or such other time period designated by the Exchange, forms and documentation substantiating the basis for the exemption.

Second, a facilitation firm must, within five business days after the execution of a facilitation exemption order, hedge all exempt options positions that have not previously been liquidated, and furnish to the Exchange's Department of Options Surveillance documentation reflecting the resulting hedging positions. In meeting this requirement, the facilitation firm must liquidate and establish its customer's and its own options and stock positions or their equivalent in an orderly fashion, and not in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes. In addition, a facilitation firm is not permitted to use the facilitation exemption for the purpose of engaging in index arbitrage. The Commission believes that these requirements will help to ensure that the facilitation exemption will not have an undue market impact on the options or any underlying stock positions.

Third, the facilitation firm is required to promptly provide to the Exchange any information or documents requested concerning the exempted options positions and the positions hedging them, as well as to promptly notify the Exchange of any material change in the exempted options position or the hedge.

Fourth, neither the member's nor the customer's order may be contingent on

<sup>6</sup>The PSE notes, however, that the Intermarket Surveillance Group ("ISG") is currently working on developing such procedures.

<sup>7</sup> 15 U.S.C. 78f(b)(5) (1988).

"all or none" or "fill or kill" instructions, and the orders may not be executed until the procedures in Exchange Rule 6.47(b) and Options Floor Procedure Advice A-6 have been satisfied, and crowd members have been given a reasonable time to participate in the trade.

Fifth, in no event may the aggregate exempted position under Commentary .08 exceed the number of contracts specified in the exemption's table, *i.e.*, twice the applicable standard limit, excluding interest rate options which are set at three times the applicable standard limit.

Sixth, the facilitation firm may not increase the exempted options position once it is closed, unless approval from the Exchange is again received pursuant to a reapplication under Commentary .08.

In summary, the Commission believes that the safeguards built into the facilitation exemption process discussed above should serve to minimize the potential for disruption and manipulation, while at the same time benefitting market participants by allowing member firms greater flexibility to facilitate large customer orders. This structure substantially mirrors the firm facilitation exemption process that was recently approved for the Chicago Board Options Exchange, Inc. ("CBOE").<sup>8</sup> The PSE also has surveillance procedures to surveil for compliance with the rule's requirements. Accordingly, the Commission believes it is appropriate to extend the benefits of a firm facilitation exemption to non-multiply-listed PSE option issues.

The Commission finds good cause to approve the proposed rule change, including Amendment No. 1, prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Specifically, by accelerating the approval of the Exchange's rule proposal, as amended, the Commission is conforming the Exchange's firm facilitation exemption to the relief recently approved for the CBOE. Accelerated approval of the proposed rule change will thereby provide for the desired uniformity of the exchanges' position limit exemptions. Any other course of action could lead to unnecessary investor confusion. In addition, the CBOE's proposal was noticed for the entire twenty-one day comment period and generated no responses. Accordingly, the Commission believes that it is

consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change, as amended, on an accelerated basis.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2)<sup>9</sup> of the Act, that the proposed rule change (File No. SR-PSE-96-10), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96-12173 Filed 5-14-96; 8:45 am]

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[Release No. 34-37180; File No. SR-Phlx-96-04]

## **Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Relating to Amendment of Its By-Laws To Require That the Chairman of Each Standing Committee Must Be a Member of the Board of Governors**

May 9, 1996.

### I. Introduction

On January 22, 1996, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to require that the Chairman of each Standing Committee of the Exchange's Board of Governors must be a member of the Board of Governors.

The proposed rule change was published for comment in Securities Exchange Act Release No. 36832 (February 12, 1996), 61 FR 6280 (February 16, 1996). No comments were received on the proposal. On May 9, 1996, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.<sup>3</sup> This order

<sup>9</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>10</sup> 17 CFR 200.30-3(a) (12) (1994).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Letter from Murray L. Ross, Secretary, Phlx, to Jon Kroeper, Attorney, SEC, dated May 8, 1996 ("Amendment No. 1"). Amendment No. 1 amends the text of the proposed rule change to delay the implementation of the proposed rule change until March 26, 1997, which is the organizational meeting of the Phlx Board of Governors after the next scheduled annual election of governors. In its April 17, 1996 meeting, the Board resolved by

approves the proposal, including Amendment No. 1 on an accelerated basis.

## II. Description

The proposed rule change to Article X, Section 10-1(a) of the Exchange's By-Laws mandates that, effective March 26, 1997, the Chairman of each Standing Committee of the Phlx's Board of Governors shall be a member of the Board of Governors. The proposed rule change is intended to update the structural composition of the Standing Committees and make them more directly responsive to the Board of Governors.

## III. Discussion

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).<sup>4</sup> Specifically, the Commission believes that the proposed rule change is consistent with the Section 6(b)(1)<sup>5</sup> requirement that an exchange be organized to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act and the rules and regulations thereunder.

By requiring that the Chairman of each Standing Committee of the Board of Governors<sup>6</sup> must be a member of the Board of Governors, the proposed rule change will enable the Board to more closely oversee the exercise of the authority it has delegated to the Standing Committees and increase the responsiveness of the Committees to the Board's concerns therewith. As a result, the proposed rule change may enhance the Board's ability to perform its responsibilities under the By-Laws and Rules of the Exchange and, in turn, the

consensus to retain for the 1996-97 governance year recently appointed Chairmen of Standing Committees that are not members of the Board. Amendment No. 1 also contains representations by the Exchange as to the application of its conflict of interest policy to Standing Committees of the Board and the Chairmen thereof. See *infra* note 7 for a description of such representations.

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(1).

<sup>6</sup> Presently, the Standing Committees of the Phlx Board of Governors consist of the following: an Admissions Committee, an Allocation, Evaluation and Securities Committee, an Arbitration Committee, an Audit Committee, a Business Conduct Committee, an Elections Committee, an Executive Committee, a Finance Committee, a Foreign Currency Options Committee, a Marketing Committee, a Nominating Committee, and an Options Committee. See Phlx By-Laws, Art. X, § 10-1(a).

<sup>8</sup> See Securities Exchange Act Release No. 36964 (March 13, 1996), 61 FR 11453 (March 20, 1996) (File No. SR-CBOE-95-68).