implemented by the Exchange pursuant to CBOE Rule 2.22.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [4] in general, and furthers the objectives of Section 6(b)(5) of the Act [5] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) [6] of the Act and subparagraph (e) of Rule 19b–4 [7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–97–05 and should be submitted by March 11, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

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[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5)

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(e).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38270; File No. SR–PSE–97–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to Proprietary Brokerage Order Routing Terminals

February 11, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 17, 1996, the Pacific Stock Exchange Incorporated (''PSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') 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 PSE is proposing to adopt a formal policy governing the use by PSE Members and Member Organizations (''Members'') of any proprietary brokerage order routing terminals (''Terminals'') on the Options Floor of the Exchange. The text of the proposed policy is available at the Office of the Secretary, 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 Exchange 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 Exchange 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

The Exchange is proposing to adopt a policy governing proprietary brokerage order routing terminals that Members may use on the Options Floor of the Exchange. The Policy includes specific provisions on Exchange approval of Terminals; Restrictions on Members' use of Terminals; Exchange Inspection and Audit; Exchange Liability; Termination of Exchange Approval; and pilot status of the program.

Exchange Approval

The proposed Policy specifies that Members must obtain prior Exchange approval to use any proprietary brokerage order routing terminals on the Options Floor. It states that the Exchange may grant such approval for use on an issue-by-issue basis. To request such approval, Members must submit a letter of application to the Exchange specifying the make, model number, functions and intended use of the equipment, and must also provide additional information upon the request of the Exchange. The policy further provides that the format of any orders to be transmitted over the Terminals must also be pre-approved by the Exchange.

The Exchange believes that it should have the flexibility to permit the use of Terminals on an issue-by-issue basis so that it will have an opportunity to observe the use of Terminals in particular trading crowds and to consider the benefits and any unforeseen problems that may result before floor-wide implementation occurs.

Paragraph 2 of the Policy states that, in considering the approval of an application, as well as whether a previously issued approval should be withdrawn, the Exchange will take into

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

[2] 17 CFR 240.19b–4.

account such factors as the physical size of the Terminal; space available at the post where the Terminal is to be used; telecommunication, electrical and radio frequency requirements; Terminal characteristics and capacity; and any factors that the Exchange considers relevant in the interest of maintaining fair and orderly markets, the orderly and efficient conduct of Exchange business, the maintenance and enhancement of competition, the ability of the Exchange to conduct surveillance of the use of the Terminal and the business transmitted through it, the adequacy of applicable audit trails, and the ability of the Terminal to interface with other Exchange facilities.

Paragraph 3 of the Policy provides that Members must report to the Exchange every proposed material change in functionality of a Terminal and every proposed change in the use of a Terminal. It further provides that Members must not implement any such proposed changes unless and until they have been approved by the Exchange, and that Members must also promptly file with the Exchange supplements to their applications whenever the information currently on file becomes inaccurate or incomplete for any reason.

Restrictions on Use of Terminals

Paragraph 4 sets forth four restrictions applicable to Members' use of Terminals on the Options Floor. The first restriction is that Members may receive brokerage orders in the trading crowd via Terminals, but must represent such orders in the trading crowd by open outcry in a manner that is consistent with Exchange rules.

The second restriction states that when a Member executes an order that was received over a Terminal, the Member must fill out and time stamp a trading ticket within one minute of the execution. Exchange rules on record keeping and trade reporting are unchanged.

The third restriction states that Terminals may be used to receive brokerage orders only, and that Terminals may not be used to perform a market making function. It states that any system used by a Member to operate a Terminal must be separate and distinct from any system that may be used by a Member of any person associated with a Member in connection with market making functions. It further states that, for the purpose of this paragraph, orders initiated from off the floor of the Exchange that are not counted as ''Market Maker transactions'' within the meaning of PSE Rule 6.32 and that do not create a pattern of offering in the aggregate either to make two-sided markets or simultaneously to represent opposite sides of the market in any class of options shall not be deemed to be used to perform a market making function.

The Exchange believes that if Terminals were permitted to be used to perform market making functions from off the floor of the Exchange, it may become undesirable for Exchange market makers to continue to assume the costs and obligations associated with being a registered market maker, which in turn could harm the liquidity and quality of the Exchange's market. The Exchange is particularly concerned that off-floor market making effectively would establish a market making structure devoid of affirmative market making obligations that could result in less deep and liquid markets during periods of market stress, when off-floor Terminal market makers would not be required to continue making markets. Moreover, the Exchange believes that surveillance of market making through the Terminals currently would be particularly difficult.

The Exchange intends to interpret the term ''market making'' in accordance with its traditional definition as defined under the Act, *i.e.*, holding one's self out as being willing to buy and sell a particular security on a regular or continuous basis.[3] The definition of market making would not capture parties who enter orders on one side of the market; nor would it capture parties who enter two-sided limit orders on occasion. A party would not be deemed to be engaging in market making unless it regularly or continuously holds itself out as willing to buy and sell securities.

The fourth restriction in Paragraph 4 states that no Member or any person associated with a Member may use for the benefit of such member or any person associated with such Member any information contained in any brokerage order in the Terminal system until that information has been disclosed to the trading crowd. Accordingly, prior to placing an order or making or changing a bid or offer on the Exchange or in any other securities or futures market, a Member must disclose such information to the trading crowd. The Exchange believes that this restriction will help to ensure that Members using Terminals trade on the same terms and conditions as other market participants and do not receive any trading advantages to interact with orders transmitted through the Terminals.

[3] *See.* 15 U.S.C. 78c(a)(38).

Inspection and Audit

Paragraph 5 of the proposed policy states that the operation and use of all aspects of the Terminal and all orders entered through the Terminal are subject to inspection and audit by the Exchange at any time upon reasonable notice. It further provides that Members must furnish to the Exchange such information concerning the Terminal as the Exchange may from time to time request upon reasonable notice, including without limitation an audit trail identifying transmission, receipt, entry, execution and reporting of all orders. For the purpose of this paragraph, a notice of at least twenty-four hours shall be deemed to be reasonable (however, shorter periods may be provided in appropriate circumstances).

Exchange Liability

Paragraph 6 states that neither the Exchange nor its directors, officers, employees or agents shall be liable to a Member, a Member's employees, a Member's customers or any other person for any loss, damage, cost, expense or liability arising from the installation, operation, relocation, use of, or inability to use a Terminal on the floor of the Exchange (including any failure, malfunction, delay, suspension, interruption or termination in connection therewith).

Termination of Approval

Paragraph 7 of the Policy provides that the Exchange may at any time determine to terminate all approvals for the installation and use by Members of Terminals on the floor of the Exchange or at particular trading posts, in which event such approvals will be deemed terminated on the 30th calendar day following the day on which the Exchange gives notice to such Member(s) of such termination of approval. It further provides that Members who incur costs in developing or implementing proprietary systems do so at their own risk, due to the fact that the Exchange intends to roll out its own brokerage order routing system for Floor Brokers. It further provides that a Member's approval to use a Terminal may also be summarily terminated by the Exchange, once notice has been provided to the affected Member, if any statement by such Member in its application or any supplement thereto is inaccurate or incomplete, or if such Member has failed to comply with any provision of this Policy, or if the operation of the Terminal is causing operational difficulties on the floor of the Exchange, and the Member has

failed to cure the same within seven calendar days following the giving of notice (or such shorter period of time as the Exchange may deem appropriate if it determines the circumstances have created a situation requiring a shortened cure period). It states that Members must immediately stop using their Terminals and must remove such Terminals from the floor of the Exchange upon the termination of approval pursuant to this paragraph, and that nothing in this paragraph shall be construed as a waiver of or limitation upon whatever right Members may otherwise have to seek appropriate relief pursuant to PSE Rule 11 in the event the Exchange terminates approval of a Member's Terminal pursuant to this paragraph.[4]

Pilot Program

Finally, Paragraph 8 of the proposed policy states that the Pilot Program expires six months after its implementation, but may be renewed upon an Exchange filing with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934.

The Exchange notes that, except in certain minor respects, the proposed Policy is consistent with an approved rule change of the Chicago Board Options Exchange (''CBOE'') relating to the use of proprietary brokerage order routing terminals on the CBOE floor.[5]

Basis

The Exchange believes that proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5) of the Act, in particular, in that it is designed to facilitate transactions in securities; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing with respect to transactions in securities; to promote just and equitable principles of trade; and 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 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 Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principle office of the PSE. All submissions should refer to File No. SR–PSE–97–02 and should be submitted by March 11, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–3915 Filed 2–14–97; 8:45 am]

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[4] PSE Rule 11.7 provides due process protections for persons who have been aggrieved by Exchange action. It gives such persons an opportunity to be heard and to have the complained of action reviewed by the Exchange.

[5] *See* Exchange Act Release No. 38054 (December 16, 1996), 61 FR 67365 (December 20, 1996).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38269; File No. SR–Phlx–96–41]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Designating Options as Tier I Securities

February 11, 1997.

On October 11, 1996, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] to include equity options, index options and other option like products issued, cleared and guaranteed by the Options Clearing Corporation (''OCC'') as Tier I securities under Exchange Rule 803. Notice of the proposed rule change, together with the substance of the proposal, was published in the Federal Register.[2] One comment letter was received on the proposal.[3] The Commission is approving the proposed rule change contingent upon NASAA's[4] amendment of the Phlx MOU to permit OCC issued options to be designated as Tier I securities.[5]

I. Background

In 1994, the Exchange adopted a two tier listing criteria program for equity and debt securities.[6] The Exchange originally adopted its Tier I listing standards based on standards established in a MOU between the NASAA and the Phlx. The Phlx MOU is modeled after the MOU between the

[1] 15 U.S.C. § 78s(b)(1).

[2] Securities Exchange Act Release No. 37914 (Nov. 1, 1996), 61 FR 57940 (Nov. 8, 1996).

[3] *See* Letter from Karen M. O'Brien, General Counsel, North American Securities Administrators Association, Inc. (''NASAA''), to Karl Varner, Division of Market Regulation, SEC, dated January 27, 1997, which indicated that OCC cleared options qualify for designation as Tier I securities under the NASAA Memorandum of Understanding (''MOU'') between NASAA and the Phlx. *But see infra* note 5.

[4] NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico and ten Canadian provinces.

[5] NASAA plans to have its board ratify this amendment to the Phlx MOU at its February 21, 1997, board meeting. According to NASAA, because the Phlx MOU is a membership document, it cannot be revised until the members vote on this amendment during the April 1997, membership meeting. Telephone conversation between Karen O'Brien, General Counsel, NASAA, and Karl Varner, Attorney, Division of Market Regulation, SEC, on February 7, 1997.

[6] *See* Securities Exchange Act Release No. 34235 (June 17, 1994), 59 FR 32736 (June 24, 1994).