

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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-98-30 and should be submitted by February 2, 1999.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40876; File No. SR-Phlx 98-56]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval to Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Enhanced Parity Split Pilot Program for Equity and Index Option Specialists and the Adoption of an Enhanced Parity Split for Specialists that Develop and Trade New Products

December 31, 1998.

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 December 28, 1998, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant partial accelerated approval to the proposed rule change.

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

The Exchange seeks the extension of an permanent approval of its enhanced parity split pilot program for equity and index option specialists ("Pilot Program"). The Pilot Program is currently scheduled to expire on December 31, 1998. In addition, the Exchange proposes to amend Exchange Rule 1014(g) "Equity Option and Index Option Priority and Parity," and its corollary Option Floor Procedure Advice B-6 to provide an enhanced parity split for Exchange specialists that develop and trade new products.

The text of the proposed rule change 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

1. Purpose

a. Permanent Approval of the Pilot Program. On August 26, 1994, the Commission approved the Pilot Program to provide Exchange specialists with an enhanced participation in parity equity option trades.³ Initially, the Pilot Program was approved for a one year period ending August 26, 1995. On November 30, 1994, the Commission approved the Exchange's proposal to include index option specialists in the Pilot Program.⁴ The Pilot Program was later revised on March 1, 1995, with respect to situations where less than three controlled accounts are on parity with the specialist.⁵ The Pilot Program

was subsequently renewed without change on three occasions.⁶

Most recently, the Pilot Program was extended to December 31, 1998, and modified so that (1) the enhanced parity split applies to all index options, in addition to applying to 50% of each specialist's equity option issues and 100% of all new option classes allocated to the specialist during the year; and (2) specialists may revise the list of eligible equity options on a quarterly basis, rather than annually.⁷

The Exchange now seeks the extension⁸ of and permanent approval⁹ of the Pilot Program. The Pilot Program currently works as follows: When an equity or index option specialist is on parity will one controlled account¹⁰ and the order is for more than five contracts, the specialist will receive 60% of the contracts and the controlled account will receive 40%. When the specialist is on parity with two controlled accounts and the order is for more than five contracts, the specialist will receive 40% of the contracts and each controlled account will receive 30%. When the specialist is on parity with three or more controlled accounts and the order is for more than five contracts, the specialist will be counted as two crowd participants when dividing up the contracts. In any of these situations, if a customer is on parity, the customer will not be disadvantaged by receiving a lesser allotment than any other crowd participant, including the specialist.¹¹

⁶ Securities Exchange Act Release Nos. 36122 (Aug. 18, 1995), 60 FR 44530 (Aug. 28, 1995); 37524 (Aug. 5, 1996), 61 FR 42080 (Aug. 13, 1996); and 38924 (Aug. 11, 1997), 62 FR 44170 (Aug. 19, 1997).

⁷ Securities Exchange Act Release No. 39401 (Dec. 4, 1997), 62 FR 65300 (Dec. 11, 1997). The Exchange has noted that it maintains a separate, permanent enhanced parity split program for "new" option specialist units that trade newly listed options. See Exchange rule 1014(g)(iii), "New Unit/New Option Enhanced Specialist Participation" and Securities Exchange Act Release No. 34109 (May 25, 1994), 59 FR 28570 (June 2, 1994).

⁸ The Exchange has requested that the Commission accelerate approval of the proposed rule change for the portion relating to the extension of the enhanced parity split Pilot Program for a six-month period or until the Commission approves the Exchange's request for permanent approval of the Pilot Program, whichever occurs first.

⁹ Under the proposal, the text of Exchange Rule 1014 and its corollary Option Floor Procedure Advice B-6 would be revised to eliminate references to an expiration date.

¹⁰ A controlled account is defined as "any account controlled by or under common control with a member broker-dealer." Customer accounts, which include discretionary accounts, are defined as all accounts other than controlled accounts and specialist accounts. See Exchange Rule 1014(g).

¹¹ As the Commission noted in the most recent order extending the Pilot Program, the application of the enhanced parity split is mandatory. Therefore, with respect to any equity or index options transaction that implicates the enhanced

Continued

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 34606 (Aug. 26, 1994), 59 FR 45741 (Sept. 2, 1994).

⁴ Securities Exchange Act Release No. 35028 (Nov. 30, 1994), 59 FR 63151 (Dec. 7, 1994).

⁵ Securities Exchange Act Release No. 35429 (Mar. 1, 1995), 60 FR 12802 (Mar. 8, 1995).

In connection with the most extension of the Pilot Program,¹² the Commission noted that prior to granting another extension or permanent approval of the Pilot Program, the Exchange would be required to submit a report ("Report") discussing: (i) Whether the Pilot Program has generated any evidence of any adverse effect on competition or investors, in particular, or the market for equity or index options, in general; (ii) whether the Exchange has received any complaints, either written or otherwise, concerning the operation of the Pilot Program; and (iii) whether the Exchange has taken any disciplinary action against, or commenced any investigations, examinations, or inquiries concerning the operation of the Pilot Program, as well as the outcome of any such matter.

The Exchange incorporated the findings of its Report into the proposed rule change filing. According to the Exchange, its regulatory personnel have not observed during the past year evidence of any adverse effects on competition, investors, or the market for equity or index options. As to the second issue, the Exchange has not received any complaints, either orally or in writing, from investors or Exchange members regarding the Pilot Program. Finally, regarding disciplinary actions, investigations, examinations or inquiries; the Exchange reports that it did not commence any investigations relating to the Pilot Program this past year.

b. **Enhanced Parity Split for Exchange Specialists that Develop and Trade New Products.** The Exchange separately proposes to adopt an enhanced parity split for Exchange specialists that develop and trade new products.¹³ The proposal provides that when the specialist is on parity with three or more controlled accounts in the crowd, the specialist will receive 40% of the contracts and the controlled accounts will receive the remaining 60%. When the specialist is on parity with less than three controlled accounts in the crowd, the specialist will receive 60% of the contracts and the controlled accounts will receive 40%. In either of these situations, if a customer is on parity, the

parity split, the specialist is required to accept the preferential allocation and may not decline the enhancement. See Securities Exchange Act Release No. 39401 (Dec. 4, 1997), 62 FR 65300 (Dec. 11, 1997).

¹² *Id.*

¹³ The Exchange previously filed this proposal with the Commission in the form of a pilot program. See File No. SR-Phlx-98-47. However, in accordance with the Commission's request, the Exchange has withdrawn the previous proposal and now seeks permanent approval of the proposed rule change.

customer may not receive a lesser allotment than any other crowd participant, including the specialist.

The Exchange stated that this proposal is intended to encourage specialist units to develop and trade new products, and to provide liquidity in such products, thereby attracting order flow to the Exchange. The Exchange believes the proposal balances the competing interests of specialists and Registered Option Traders, while encouraging specialists to take an active role in supporting and marketing a new product, both important activities in a competitive environment. The Exchange has indicated that the proposal is limited to new products developed and traded by the same specialist unit. Therefore, if one specialist unit develops a new product but another specialist unit is allocated specialist privileges in that same new product,¹⁴ the specialist unit trading the new product would not be entitled to the proposed enhanced parity split. The Exchange's Options Committee will determine whether a specialist "developed" a new product.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act,¹⁵ in general, and with section 6(b)(5),¹⁶ in particular, in that it is designed to promote just and equitable principles of trade; prevent fraudulent and manipulative acts and practices; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; and protect investors and the public interest. The Exchange further believes that the proposal balances the competing interests of specialists and market makers while assisting specialists in making tight and liquid markets in assigned issues. Finally, the Exchange believes the proposal protects the public interest by assuring that a customer's participation is never disadvantaged by the enhanced parity split.

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

The Exchange believes the proposed rule change will not impose any inappropriate burden on competition.

¹⁴ Allocation determination are governed by Exchange Rules 500-526.

¹⁵ 15 U.S.C. 78f.

¹⁶ 15 U.S.C. 78f(b)(5).

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

The Exchange did not solicit or receive written comments with respect to 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 Exchange 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, including whether the proposed rule change is consistent with the Act. 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 submissions, 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 persons, 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 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-98-56 and should be submitted by February 2, 1999.

V. Commission's Findings and Order Granting Partial Accelerated Approval of Proposed Rule Change

The Commission has carefully reviewed the Exchange's proposed rule change and believes, for the reasons set forth below, the proposal is consistent with the requirements of section 6 of the

Act¹⁷ and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with section 6(b)(5) of the Act¹⁸ because it will promote just and equitable principles of trade; remove impediments to, and perfect the mechanism of a free and open market; and protect investors and the public interest.¹⁹

The Exchange has requested partial accelerated approval of the proposed rule change so that the Pilot Program may continue to operate without interruption. Specifically, the Exchange has requested that the Commission accelerate approval of the proposed rule change for the portion relating to the extension of the enhanced parity split Pilot Program for a six-month period or until the Commission approves the Exchange's request for permanent approval of the Pilot Program, whichever occurs first. As noted earlier, the Pilot Program is due to expire on December 31, 1998. Therefore, unless the Pilot Program is immediately extended, the Exchange's equity and index option specialists will no longer be permitted to avail themselves of the enhanced parity split.

The Commission finds good cause for granting partial accelerated approval of the proposed rule change prior to the thirtieth day after the date of publication of notice therefore in the **Federal Register**. The Commission believes it is reasonable that Exchange specialists be permitted to avail themselves of the enhanced parity split on a continuous basis without disruption. Therefore, the Commission believes it is appropriate to grant partial accelerated approval of the proposal to extend the Pilot Program for six months or until the Commission approves the Exchange's request for permanent approval of the Pilot Program, whichever occurs first.

The Commission recognizes that the purpose of the enhanced parity split is to encourage equity and index option specialists to make deep and liquid markets in order to attract order flow to the Exchange. The Commission has previously noted that specialists have responsibilities that other crowd participants do not share, such as the staff costs associated with continually updating and disseminating quotes.²⁰

As a result, the Commission believes it is reasonable for the Exchange to grant certain advantages to specialists, such as the enhanced parity split, to attract and retain well capitalized specialist at the Exchange. As long as these advantages do not unreasonably restrain competition and do not harm investors, the Commission believes that the granting of such benefits to specialists, in general is within the business judgment of the Exchange.

The Commission notes that the application of the Exchange's enhanced parity split cannot cause a customer on parity to receive a smaller participation than any other crowd participant, including the specialist. The Commission believes this provision adequately protects customer orders from any negative impact that might flow from application of the enhanced parity split. As a result, a customer on parity is ensured a participation that, at a minimum, is equal to that given any other crowd participant on parity.²¹ Therefore, the Commission believes it is consistent with section 6(b)(5) and Section 19(b)(2) of the Act to grant partial accelerated approval to the proposed rule change.²²

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the portion of the proposed rule change, SR-Phlx-98-56, seeking the extension of the enhanced parity split Pilot Program for a six-month period ending June 30, 1999, or until the Commission approves the Exchange's request for permanent approval of the Pilot Program, whichever occurs first, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²³

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40885; File No. SR-SCCP-98-04]

January 5, 1999.

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Reducing Certain Trade Recording Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on September 29, 1998, the Stock Clearing Corporation of Philadelphia ("SCCP") 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 primarily by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The purpose of the proposed rule change is to extend on a pilot basis for three months through December 31, 1998, a reduction in SCCP's fee schedule for trade recording fees for certain specialists.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, SCCP included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

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

SCCP proposes to extend, for a three month period, its pilot program that reduces SCCP's trade recording fees for certain specialists. On February 9, 1998, the Commission temporarily approved the trade recording fee reduction effective for trades settling January 2,

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified parts of these statements.

¹⁷ 15 U.S.C. 78f.

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ In granting partial accelerated approval of this proposed rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²⁰ See e.g. Securities Exchange Act Release No. 35177 (Dec. 29, 1994), 60 FR 2419 (Jan. 9, 1995).

²¹ The Commission notes that this provision is consistent with the enhanced parity split that currently applies to the Exchange's specialists in foreign currency options. See Securities Exchange Act Release No. 40557 (Oct 15, 1998), 63 FR 56284 (Oct. 21, 1998).

²² 15 U.S.C. 78f(b)(5) and 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12).