

4-3 because it no longer provides any constructive use.²

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

Article IV of the Phlx By-Laws presently provides for three Appointed Public Governors. These Governors presently serve three-year terms and have no term limits. The Phlx proposes to increase the number of Appointed Public Governors from three to four, while eliminating the *ex-officio* position presently held by the immediate past President of the Phlx.³

Additionally, the proposed amendment establishes term limits for Appointed Public Governors of no more than two consecutive three year terms (total of six consecutive years). The term limit provision makes Appointed Public Governors ineligible for further service in such capacity until an interval of at least one year passes.⁴ By imposing term

limits on the Appointed Public Governors, the Phlx hopes to promote diversity amongst the Appointed Public Governors. The Exchange believes this diversity will better serve the Exchange, its members, its member organizations, and investors.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b)(3) of the Act⁵ because it provides in part that one or more directors shall be representative of issuers and investors and not associated with a member of the Exchange, broker, or dealer. The Exchange also believes the proposed rule change furthers the objectives of Section 6(b)(5)⁶ in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Competition

The Exchange believes the proposed rule change will impose no 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

The Exchange did not receive any written comments in response to Phlx Circular 95-193.⁷

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 its 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 available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Also, copies of such filing will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-95-93 and should be submitted by February 22, 1996.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-2058 Filed 1-31-96; 8:45 am]

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[Release No. 34-36776; File No. SR-Phlx-95-91]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Option Specialist Evaluations

January 26, 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, 1996, 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

² This paragraph currently provides that "Notwithstanding the provisions of By-Law 4-1 and the first paragraph of this by-law, the classes whose terms expire in 1986, 1987 and 1988 shall remain as currently constituted until their terms expire." It was included in connection with the last amendment to this by-law to ensure a smooth transition of the Governors whose terms were scheduled to expire in 1986, 1987, and 1988. Telephone conversation between Murray L. Ross, Secretary, Phlx, and Anthony P. Pecora, Attorney, SEC (Jan. 22, 1996).

³ The Commission notes, according to the proposal, that the fourth Appointed Public Governor's term would commence in 1996. Hence, one Appointed Public Governor would be selected every year, except in 1996 and every third year thereafter. In those years, two Appointed Public Governors would be selected.

⁴ The Commission notes, in addition to the Appointed Public Governors, that the Exchange's Board of Governors would be composed of the offices of the Chairman of the Board, two Vice Chairmen of the Board, 9 On-Floor Governors, 9 Off-Floor Governors, 2 At-Large Governors, the President of the Exchange, and an *ex-officio* position held by the immediate past Chairman of the Board. The Chairman may serve in such office for two consecutive two-year terms, and the Vice

Chairman may serve in such office for four consecutive one-year terms. After serving for such periods, these Governors are ineligible for further service in such office until an interval of at least one year passes. The immediate past Chairman may serve in such office for a one-year term. The 9 On-Floor Governors, the 9 Off-Floor Governors, the 3 At-Large Governors, and the President of the Exchange, however, are not subject to term limits. See Phlx By-Laws, Article IV, §§ 4-1 and 4-2.

⁵ 15 U.S.C. 78f(b)(3).

⁶ 15 U.S.C. 78f(b)(5).

⁷ In accordance with Phlx By-Law Article XXII, § 22-2, this circular announced the current proposal to the Exchange's members.

⁸ 17 C.F.R. 200.30-3(a) (12).

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 Phlx, pursuant to Rule 19b-4 of the Act,¹ proposes to update its Options Specialist Evaluation System by adopting a new questionnaire and revising Exchange Rules 509, 511 and 515 regarding the evaluation procedure.

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

Since at least 1978, the Exchange has been evaluating its options specialists based on the same questionnaire in use today. This quarterly survey is a series of subjective questions answered by floor brokers that have traded with the particular specialist over the last quarter. The purpose of this filing is to propose a new updated survey which requests information that the Exchange believes is more relevant to a specialist's performance in this day and age. The results of these evaluations are used by the Allocation, Evaluation and Securities Committee when making allocation and reallocation decisions regarding option specialist privileges.

The new survey has 15 all-new questions and will be answered by floor brokers who, Exchange records show, have traded at least a minimum number of contracts over the subject quarter.² Only specialist units (not individual specialists) will be graded as allocations are made to units, not individual specialists. The same questionnaire will be used for equity option specialists,

index option specialists³ and foreign currency option specialists. Each question must be answered by giving the unit a score of 1 through 9 (very poor to excellent) and any question that is answered with a score of less than 4 must be accompanied by a written explanation. Floor brokers who do not complete and return the surveys still will be subject to fines pursuant to Options Floor Procedure Advice C-8. An overall score of 5.00 or above on the survey continues to be considered acceptable and will not trigger a review by the Committee.

The proposed questionnaire covers a wide range of specialist responsibilities such as the degree of liquidity provided, the tightness of quotes, timeliness of quote updates, ability to fill small lot orders, timeliness of reports, ability to conduct opening rotations, maintenance of crowd control, and clerical staffing.

The process by which a specialist unit's scores will be reviewed and used as the basis of a reallocation proceeding is also being amended. Currently, there is a very complicated review system in place that the Exchange has determined needs to be simplified in order to be effective. An average score of below 5.00 for the whole survey still will trigger a review but the existing additional criteria of a score below 5.00 on three or more questions in a quarter or a score below 5.00 for one question in three consecutive quarters will be eliminated.

Under the proposed new procedure, if a unit receives an average score of below 5.00 on the whole questionnaire for two consecutive quarters, it will be deemed to have performed below minimum standards⁴ and the head specialist will be required to appear before the Quality of Markets Subcommittee in order to discuss the reasons for such score and what can be done to improve the unit's performance.⁵ If the specialist unit then receives an overall score below 5.00 for the next review period, the matter will be brought to the attention of the full

³ Currently, all of the specialist units that have been allocated index options are also equity option specialists; however, if a unit only traded index options, the survey would be equally applicable.

⁴ Under the current procedure, a specialist unit that receives an average score under 5.00 in any one quarter would be deemed to have performed below minimum standards.

⁵ The Quality of Markets Subcommittee was created in 1994 in order to conduct reviews for specialists subject to the enhanced parity splits provided for in Exchange Rule 1014. See Securities Exchange Act Release No. 34606 (August 28, 1994), 59 FR 45741 (September 2, 1994) (File No. SR-Phlx-94-12). Pursuant to Exchange Rule 509, it is a permanently standing subcommittee composed of a floor broker chairman (who must be a member of the Allocation, Evaluation & Securities Committee) and an equal number of specialists and market makers. Rule 509 will also be amended to reflect this new added responsibility of the Subcommittee.

Allocation, Evaluation & Securities Committee, which will institute proceedings to determine whether to remove or reallocate specialist privileges from that unit. Rules 511(c) and 515 will be amended to reflect this new review procedure. The hearing procedures set forth in Rule 511(e) will not change and decisions still will be subject to appeal to the Board of Governors, as provided for under Article XI, Section 11-1 of the Phlx By-Laws.

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),⁶ 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 Phlx 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 either solicited or 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

¹ 17 CFR 249.19b-4.

² The number of contracts is variable based on the number of contracts traded in a particular quarter and may, for example, be 10 contracts.

⁶ 15 U.S.C. 78f(b)(5).

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 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-95-91 and should be submitted by February 22, 1996.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-2060 Filed 1-31-96; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-21710; 812-9932]

Cityfed Financial Corp.; Notice of Application

January 26, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Cityfed Financial Corp. ("Cityfed").

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 6(e) of the Act.

SUMMARY OF APPLICATION: Applicant requests an order that would exempt it from all provisions of the Act, except sections 9, 17(a) (modified as discussed herein), 17(d) (modified as discussed herein), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act and the rules thereunder until the earlier of one year from the date of the requested order or such time as Cityfed would no longer be required to register as an investment company under the Act. The requested exemption would extend an exemption granted until February 28, 1996.

FILING DATE: The application was filed on December 21, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing.

Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 20, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 4 Young's Way, P.O. Box 3126, Nantucket, MA 02584.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Senior Counsel, at (202) 942-0563, or Robert A. Robertson, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Cityfed was a savings and loan holding company that conducted its savings and loan operations through its wholly-owned subsidiary, City Federal Savings Bank ("City Federal"). City Federal was the source of substantially all of Cityfed's revenues and income. As a result of substantial losses in its mortgage banking and real estate operations, City Federal was unable to meet its regulatory capital requirements. Accordingly, on December 7, 1989, the Office of Thrift Supervision (the "OTS") placed City Federal into receivership and appointed the Resolution Trust Corporation (the "RTC") as City Federal's receiver. City Federal's deposits and substantially all of its assets and liabilities were acquired by a newly created federal mutual savings bank, City Savings Bank, F.S.B. ("City Savings"). The OTS appointed the RTC as receiver of City Savings.

2. Once City Savings was placed into receivership, Cityfed no longer conducted savings and loan operations through any subsidiary and substantially all of its assets consisted of cash that has been invested in money market instruments with a maturity of one year or less and money market mutual funds. As of September 30, 1995, Cityfed held cash and securities of approximately \$8.9 million. Because of

Cityfed's asset composition, it may be an investment company under the Act. Rule 3a-2 under the Act provides a one-year safe harbor to issuers that meet the definition of an investment company but intend to engage in a business other than investing in securities. Because of various claims against Cityfed and certain Cityfed officers and directors, Cityfed could not acquire an operating company within the one year safe harbor. The expiration of the safe harbor period necessitated the filing of an application for exemption from all provisions of the Act, with certain exceptions. In 1995, Cityfed was granted an exemption from all provisions of the Act until February 28, 1996.¹

3. While Cityfed's board of directors has considered from time to time whether to engage in an operating business, the board has determined not to engage in an operating business at the present time because of the claims filed against Cityfed, whose liability thereunder cannot be reasonably estimated and may exceed its assets.

4. On June 2, 1994, the OTS issued a Notice of Charges and Hearing for Cease and Desist Order to Direct Restitution and Other Appropriate Relief and Notice of Assessment of Civil Money Penalties ("Notice of Charges") against Cityfed and certain current or former directors and, in some cases, officers of Cityfed and City Federal. The Notice of Charges requests that an order be entered by the Director of the OTS requiring Cityfed to make restitution, reimburse, indemnify or guarantee the OTS against loss in an amount not less than \$118.4 million, which the OTS alleges represents the regulatory capital deficiency reported by City Federal in the fall of 1989. The Notice of Charges provides that a hearing will be held before an administrative law judge on the question of whether a final cease and desist order should be issued against Cityfed. As of the date of the filing of the application, no date has been set for such hearing. On November 30, 1995, the OTS issued an Amended Notice of Charges and Hearing for Cease and Desist Order to Direct Restitution and Other Appropriate Relief and Notice of Assessment of Civil Money Penalties ("Amended Notice of Charges") that is identical to the Notice of Charges except that the Amended Notice of Charges includes a reference to a federal statutory provision not referred to in the Notice of Charges that the OTS asserts provides an additional basis for the issuance of a Cease and

¹ *Cityfed Financial Corp.*, Investment Company Act Release Nos. 20877 (Feb. 2, 1995) (notice) and 20929 (Feb. 28, 1995) (order).