

1999.³ The Commission received no comments on the proposal.

II. Description of the Proposal

Currently, PCX Rule 5.12 states that "The seller shall be responsible for transactions being promptly recorded by the floor reporters." This requirement is subject to two exceptions in Equity Floor Procedure Advice 2-C, the second of which states that "Transactions in local issues in which the specialist acts as the buyer and the seller is on the opposite trading floor⁴ are to be promptly reported to the tape by the specialist. The seller is required to submit a 'goldenrod' ticket⁵ to report the transaction for clearing purposes only."

The PCX proposed to delete the second exception to Rule 5.12 in Equity Floor Procedure Advice 2-C so that the general requirement in Rule 5.12 of seller responsibility shall apply. The Exchange believes that the conditions underlying the original exception have changed and that there is no longer any reason to exempt these types of transactions from the basic requirement. The Exchange believes that electronic links between the PCX's two trading floors allow sellers to record promptly transactions in local issues in which the specialist acts as the buyer even when the seller is on the opposite trading floor.⁶ Deleting this exception will make the obligation to report transactions consistent with the general requirement that sellers report the trades.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act⁷ and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b)(5) and 11A(a)(1)(C)(iii) of the Act.⁸ Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed to perfect the mechanism of a

free and open market, to promote just and equitable principles of trade, and, in general to protect investors and the public interest.⁹ In section 11A(a)(1)(C)(iii), Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to transactions in securities.¹⁰

By deleting the second exception to PCX Rule 5.12, the Exchange is proposing that transaction in local issues in which the specialists acts as the buyer and the seller is on the opposite trading floor are to be promptly reported to the tape by the seller. The PCX maintains that the second exception provided in Equity Floor Procedure Advice 2-C was designed to facilitate the proper recording of transactions when communications between the two trading floors was less efficient (under the exception, a trade is required to be reported where it was executed). According to the PCX, electronic links between the Exchange's two trading floors should ensure that the seller is aware of the execution in a timely manner and, therefore, able to assume responsibility for transactions being promptly recorded by the floor brokers.¹¹

In light of enhanced technology between PCX's Los Angeles and San Francisco trading floors, the Commission believes that subjecting transactions in local issues in which the specialist acts as the buyer and the seller is on the opposite trading floor to the requirements of the general rule, Rule 5.12, is consistent with the provisions of the Act discussed above because imposing the transaction reporting requirements should promote the rapid and efficient reporting of transactions to the tape by applying those requirements generally to sellers.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-PCX-98-57) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 99-4961 Filed 2-26-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41081, File No. SR-Phlx-98-46]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc., Order Approving Proposed Rule Change Amending Rule 229, Philadelphia Stock Exchange Automatic Communication and Execution System, Raising the Minimum Order Delivery Requirement for Specialists from 1099 Shares to 2099 Shares

February 22, 1999.

I. Introduction

On November 12, 1998, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Phlx Rule 229 raising the minimum order delivery requirement for specialists from 1099 shares to 2099 shares on the Exchange Automatic Communication and Execution System ("PACE").³ Notice of the proposed rule change appeared in the **Federal Register** on January 7, 1999.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Specialists are required to accept orders sent by members for automatic execution on the PACE system up to the minimum order delivery requirement set forth in Phlx Rule 229. The Exchange proposed to amend Phlx Rule 229 to raise the minimum order delivery requirement for specialists from 1099 shares to 2099 on the PACE system. Thus, specialists will be required to accept PACE orders of up to 2099 shares.

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ PACE is the Exchange's automatic order routing and execution system for securities on the equity trading floor. See Phlx. Rule 229.

⁴ See Securities Exchange Act Release No. 40842 (December 28, 1998), 64 FR 10611.

² 17 CFR 240.19b-4.

³ See Exchange Act Release No. 40888 (January 6, 1999), 64 FR 2694.

⁴ The PCX maintains trading floors in two locations, Los Angeles and San Francisco.

⁵ A goldenrod ticket is a ticket that is printed on gold colored paper. It is used for clearing transactions. If a trade is properly reported to the tape on a pink ticket, but the parties have not been identified, a goldenrod ticket will be issued with the parties have been identified for clearing purposes. Telephone conversation between Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX, and Robert B. Long, Attorney, Division of Market Regulation, Commission, on February 5, 1999.

⁶ *Id.*

⁷ In approving this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78(k)-1(a)(1)(C)(iii).

¹¹ See telephone conversation discussed in note 5 above.

¹² 15 U.S.C. 78s(b)(2).

Phlx Rule 229, Supplementary Material .06 through .10 previously required specialists to accept orders of 1099 shares in the following situations: (i) Section 229.06—market orders entered before the New York market opening; (ii) Section 229.07(b)—market orders entered after the New York market opens; and (iii) Sections 229.10(b)–(c)—the method of execution given to PACE orders. The Exchange proposed to increase the minimums contained in these sections to 2099 shares. Under the proposal, specialists will continue to be able to raise their own minimum delivery requirements for individual stocks to level higher than the proposed minimum of 2099 shares.

III. Discussion

After careful review, 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.⁵ In particular, the Commission believes the proposal is consistent with Section 6(b)(5), which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.⁶ The Commission believes that the proposed 2099 share minimum guaranteed order delivery size is reasonable and may benefit investors by providing them with the flexibility to deliver large sized orders to the specialist for automatic execution through PACE. The Commission further notes that specialists may voluntarily increase the minimum guaranteed order delivery size on an issue by issue basis.

IV. Conclusion

For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with section 6(b)(5).⁷

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-Phlx-98-46) is approved.

⁵ In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78f(b)(5).

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-4956 Filed 2-26-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41079; File No. SR-Phlx-98-38]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Assessment of a Fee on Persons Who Unsuccessfully Contest an Options Ruling Involving a Trading Dispute

February 22, 1999.

I. Introduction

On August 26, 1998, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change assessing a fee on persons who unsuccessfully contest an options ruling involving a trading dispute. Several amendments were thereafter received.³

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ By letter dated August 31, 1998, the Exchange revised the effective date of its proposal. See letter from Linda S. Christie, Counsel, Phlx, to Mandy Cohen, Special Counsel, Division of Market Regulation ("Division"), Commission ("Amendment No. 1"). Next, the Exchange (a) clarified that the proposed fee would apply to frivolous appeals of option floor decisions only, and (b) made conforming changes to Rule 124 and Options Floor Procedure Advice F-27. See letter from Nandita Yagnik, Attorney, Phlx, to Mandy Cohen, Special Counsel, Division, Commission, dated November 18, 1998 ("Amendment No. 2"). In its December 9, 1998 letter, the Exchange clarified that (a) the Options Committee approved the changes made by Amendment No. 2, and (b) the amendment dated November 18, 1998, is Amendment No. 2. In addition, the Phlx made minor technical changes to the rule language. See letter from Nandita Yagnik, Attorney, Phlx, to Mandy Cohen, Special Counsel, Division, Commission ("Amendment No. 3"). The Exchange also made technical changes to its proposed rule language and further clarified that the proposed rule change amends only Advice F-27 for options and not for equities. See letter from Nandita Yagnik, Attorney, Phlx, to Mandy Cohen, Special Counsel, Division, Commission, dated December 23, 1998 ("Amendment No. 4"). In a final amendment, the Exchange made technical changes to its proposed rule change. See letter from Nandita Yagnik, Attorney, Phlx, to Mandy Cohen, Special Counsel, Division, Commission dated January 12, 1999 ("Amendment No. 5").

The proposed rule change, as amended by Amendments No. 1 through 4, was published for comment in the **Federal Register** on January 22, 1999.⁴ No comments were received on the proposal. This order approves the approval.

II. Description

The Exchange proposes to amend Phlx Rule 124 and Options Floor Procedure Advice F-27, Floor Official Rulings, to assess a \$250.00 fee on persons who unsuccessfully contest an options ruling imposed under Phlx Rule 124, upon a finding by a Rule 124(d) review panel that the appeal is frivolous.

III. Discussion

After careful review the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ Specifically, the Commission believes that the proposal is consistent with the requirements of section 6(b)(5) of the Act,⁶ because it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices and remove impediments to and perfect the mechanism of a free and open market and a national market system by discouraging unwarranted appeals that may slow the appeals process, and allowing swifter access to the appeals process by bona fide claimants.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-Phlx-98-38) is approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-4957 Filed 2-26-99; 8:45 am]

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⁴ Securities Exchange Act Release No. 40936 (January 12, 1999), 64 FR 3581. Since Amendment No. 5 was technical in nature, it does not require publication for notice and comment.

⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).