

withdrawn under the Contract due to the following: withdrawals taken in order to meet minimum distribution requirements under the Code; annuitization; payment of a death benefit; free-withdrawals taken as allowed under the contract; or any other type of withdrawal not subject to a CDSC. In no event will the amount recaptured equal more than the amount of the Credit that Nationwide paid out of its general account. Although Contract owners will be entitled to retain any investment gain attributable to the Credit the amount of such gain will be determined on the basis of the current net asset value of the respective Separate Account.

Thus, no dilution will occur upon the recapture of the Credit. Applicants also submit that the second harm that Rule 22c-1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Credit. To avoid any uncertainty as to full compliance with the 1940 Act, Applicants request an exemption from the provisions of Section 22(c) and Rule 22c-1 to the extent deemed necessary to permit them to recapture the Credit under the Contracts and any Future Contracts (that are substantially similar in all material respects to the Contracts described herein) issued in conjunction with the Separate Accounts or any Future Separate Accounts.

Section 6(c) of the Act provides: The Commission, by rules and regulations upon its own motion, or by Order upon application, may conditionally or unconditionally exempt any person, security, or transactions, or any class or classes of persons, securities, or transactions, from any provision or provisions of this title or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

Applicants assert that their request for an Order is appropriate in the public interest. Applicants state that such an Order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Applicants argue that investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the 1940 Act that has not

already been addressed in their amended Application described herein. Applicants assert that having them file additional applications would impair their ability to effectively take advantage of business opportunities as they arise. Further Applicants state that if they were required repeatedly to seek exemptive relief with respect to the same issues addressed in the amended Application described herein, investors would not receive any benefit or additional protection thereby.

Conclusion

Applicants assert, based on the grounds summarized above, that their exemptive request meets the standards set out in Section 6(c) of the 1940 Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-34015 Filed 12-30-99 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42272; File No. SR-PHLX-99-42]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change on an Accelerated Basis Relating to Exchange Rule 98, Emergency Committee

December 23, 1999.

On October 13, 1999 the Philadelphia Stock Exchange ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 relating to Exchange Rule 98, Emergency Committee. The proposed rule change was published for comment in the **Federal Register** on November 29, 1999.³ The Commission received no comments on the proposal. On December 22, 1999 the Exchange submitted to the Commission Amendment No. 2 to the proposed rule

change, requesting that the proposed rule be approved for a 120 day pilot to expire on April 21, 2000.⁴ This order approves the proposal, as amended, on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to amend Exchange Rule 98, *Emergency Committee* ("Emergency Committee") to update certain of its provisions. First, the composition of the Emergency Committee is to be updated to correspond with previous revisions to the Exchange's governance structure. In 1997, various amendments to the Exchange's Certificate of Incorporation and By-Laws dealing with the governance structure of the Exchange were approved by the Commission.⁵ Among other things, a provision was added authorizing the Board of Governors to appoint a Chairman of the Board who would be the full-time, paid Chief Executive Officer of the Exchange, and the President position was eliminated.⁶ The proposed rule change, therefore, would replace the "Chairman of the Exchange" with the current "Chairman of the Board" designation; delete the word "President" from the rule as the Exchange no longer has a "President"; and include the Exchange's On-Floor Vice Chairman⁷ as a member of the Emergency Committee.⁸

Second, the proposed rule change deletes a provision authorizing the Emergency Committee to take action regarding CENTRAMART, an equity order entry system which is no longer used on the Exchange's equity trading floor.

Finally, the Exchange is proposing to clarify that the Emergency Committee is authorized to take action if any emergency condition is created by the Year 2000 date change.

⁴ See letter from Richard S. Rudolph, Counsel, Exchange, to Rebekah Liu, Special Counsel, Division of Market Regulation ("Division"), Commission, dated December 22, 1999. Because Amendment No. 2 only requests that the proposed rule be approved for a 120-day pilot, the Amendment is non-substantive in nature. Therefore, the Commission will not solicit comments on Amendment No. 2.

⁵ See Securities Exchange Act Release No. 38960 (August 22, 1997), 62 FR 45904 (August 29, 1997).

⁶ *Id.* Other corresponding amendments to the By-Laws were made in connection with the 1997 changes to the Exchange's governance structure. For example, references to "President" were changed to "Chief Executive Officer" or "Chairman of the Board." See PHLX By-law Article IV, Section 4-1 and PHLX By-Law Article V, Section 5-1.

⁷ See PHLX By-Law, Article IV, Section 4-2.

⁸ Thus, under the proposed rule, the Emergency Committee would include five individuals: the Chairman of the Board of Governors; the On-Floor Vice Chairman of the Board of Governors; and the Chairmen of the Floor Procedure Committee, the Options Committee, and the Foreign Currency Options Committee.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 34-42156 (November 19, 1999), 64 FR 66684.

III. Discussion

The Commission finds that the proposed rule change is consistent with Section 6 of the Act⁹ and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act¹⁰ which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.¹¹

The proposed rule change is consistent with the requirements of the Act because by conforming the composition of the Emergency Committee to structural amendments that were made to the Exchange's governance structure, the proposed rule will help to ensure that the Emergency Committee can operate in times of emergency, which will foster investor and public interest, and promote just and equitable principles of trade.

The proposed rule is making one new change to the structure of the Emergency Committee by replacing the President, which the Exchange no longer has, with the On-Floor Vice Chairman. While this means that the Emergency Committee will have, at a minimum, two On-Floor representatives—the On-Floor Vice Chairman and the Chairman of the Floor Procedure Committee—the Commission believes that the Exchange has justified the change.¹² The Exchange notes that addition of the On-Floor Vice Chairman will preserve the five-member structure of the Emergency Committee, minimizing the possibility of a tie vote on the Emergency Committee, and provides the Emergency Committee with the most qualified replacement for the President; that is, a member that can contribute direct knowledge of any potential or existing emergencies existing on the trading floor.¹³ In addition, while the Commission would be concerned about any committee structure that is dominated by one Exchange interest, the Commission believes that the Chairman of the Board,

as well as the other remaining members of the Emergency Committee, which may or may not be from the floor, should help to convert any such concerns. The Commission is granting accelerated approval to this proposed rule change for a 120-day pilot basis to allow the Exchange to further consider whether the overall Emergency Committee structure ensures that all Exchange interests are fairly represented.¹⁴

By clarifying that the Emergency Committee has the authority to take action if "extraordinary market conditions or other emergencies" arise due to the Year 2000 date change, the proposed rule also removes possible impediments to the Exchange's market that may arise due to the Year 2000 date change, thereby perfecting the mechanism of a free and open market and a national market system. As noted by the Exchange, the proposed Rule was submitted as part of the Year 2000 contingency plan designed by the Exchange's Year 2000 Task Force. The Commission notes that the current rule gives the Emergency Committee the power to act in any "emergency condition," which in the Commission's opinion, would include one created by the Year 2000 date change.¹⁵ While the Exchange desired to clarify this, the Commission notes that the Rule proposal does not go beyond true emergency situations. Accordingly, not every problem that arises from the Year 2000 date change would necessarily rise to the level of an emergency warranting action by the Emergency Committee.

Finally, by deleting references to CENTRAMART, the proposed rule makes clear that this equity order system is no longer in use at the Exchange. Taken together, then, the provisions of the proposed rule change should protect investors and the public interest.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Accelerated approval

of the proposed rule change should help the Emergency Committee to be ready to take action on issues related to the Year 2000 date change prior to January 1, 2000. The Commission notes that the Exchange's proposal was published in the **Federal Register** for the full statutory period and no comments were received. Therefore, the Commission believes it is consistent with Section 6(b)(5) and Section 19(b)(2) of the Act to grant accelerated approval to the proposed rule change.¹⁶

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-PHLX-99-42), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

[FR Doc. 99-34016 Filed 12-30-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 42271; File No. SR-PHLX-99-45]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to a Pilot Program to Impose Fees For Computer Equipment Services, Repairs or Replacements and Relocation of Computer Equipment

December 23, 1999.

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 October 29, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. On December 16, 1999, the Exchange

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹² The Commission notes that previously, the President could have been a floor member.

¹³ Letter from Richard S. Rudolph, Counsel, Exchange, to Rebekah Liu, Special Counsel, Division, Commission, dated November 16, 1999.

¹⁴ The Commission requests that the Exchange report back to the Commission 45 days prior to the expiration of the 120-day pilot on its views as to whether the Emergency Committee structure ensures that all Exchange interests, including On-Floor and Off-Floor, are fairly represented on the committee.

¹⁵ Previously, the Exchange described "extraordinary market or emergency conditions" as, among other things, a declaration of war, a presidential assassination, an electrical blackout, or events such as the 1987 market break or other highly volatile trading conditions that require intervention for the market's continued efficient operation. Letter from William W. Uchimoto, General Counsel, Exchange, to Sharon L. Itkin, Division, Commission, dated March 15, 1989.

¹⁶ 15 U.S.C. 78f(b)(5) and 78s(b)(2).

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 USC 78s(b)(1).

² 17 CFR 240.19b-4.