

economically efficient execution of securities transactions, and in Section 11A(a)(1)(C)(ii) to assure fair competition between exchange markets and markets other than exchange markets.⁸

As discussed more fully in the NYSE Approval order, the existence of off-board trading restrictions can no longer be justified in an age when advancing technology and expanding trading volume are introducing new competitive challenges for the U.S. securities markets, both at home and abroad. Off-board trading rules such as Rules 5.43–5.49 directly restrict a certain type of market center competition—competition between exchange markets and markets other than exchange markets. Their rescission today eliminates an inappropriate regulatory burden on competition that runs contrary to the objectives set forth in the Act.

Off-board trading restrictions have been justified on the basis that they promote the interaction of investors' orders without participation by a dealer—indeed an objective set forth in the Act.⁹ The Commission believes, however, that whatever beneficial effect off-board trading restrictions such as Rules 5.43–5.49 may have in enhancing the interaction of investor orders can no longer justify their anticompetitive nature. To the extent off-board trading rules enhance order interaction, they do so in an undesirable way—by attempting a direct restriction on competition. Such attempts are never wholly successful and typically only distort, rather than eliminate, competition and introduce unnecessary costs ultimately borne by investors.

The outcome of competition between market centers should depend on which market centers are most able to serve investor interests by providing the highest quality trading services at the lowest possible prices; the Commission's regulatory task is removing unwarranted regulatory barriers to competition between market centers. As stated in the NYSE Approval Order, the rescission of off-board trading rules is "intended solely to free the forces of competition and allow investor interests to control the success or failure of individual market centers."¹⁰ The same rationale and motivation support the Commission's action today.

⁸In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹Section 11A(a)(1)(C)(v) of the Act.

¹⁰NYSE Approval Order at 30179.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-PCX-00-11) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42889; File No. SR-Phlx-00-12]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Ordering Approving Proposed Rule Change to Rescind Rule 132, the Exchange's Off-Board Trading Rule

June 2, 2000.

I. Introduction

On February 10, 2000, the Philadelphia Stock Exchange, Inc. ("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 to rescind Rule 132, the Exchange's off-board trading rule. The proposed rule change was published for comment in the **Federal Register** on March 3, 2000.³ Proposed rule changes filed by the American Stock Exchange and the Chicago Stock Exchange to rescind their off-board trading rules were published on the same date as the Phlx proposing release.⁴ Shortly thereafter, the Boston Stock Exchange and the Pacific Exchange filed similar proposed rule changes.⁵ The Commission received no comments on any of these proposals. Today, in separate orders, the Commission is approving the proposed rule changes to

¹ 15 U.S.C. 78s(b)(2).

² 17 CFR 200.30-3(a)(12).

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

⁵ Securities Exchange Act Release No. 42458 (February 25, 2000), 65 FR 11628.

⁶ Securities Exchange Act Release No. 42460 (February 25, 2000), 65 FR 11618 (March 3, 2000) (File No. SR-Amex-00-05); Securities Exchange Act Release No. 42459 (February 25, 2000), 65 FR 11619 (March 3, 2000) (File No. SR-CHX-99-28).

⁷ Securities Exchange Act Release No. 42661 (April 10, 2000), 65 FR 20497 (April 17, 2000) (File No. SR-BSE-00-02); Securities Exchange Act Release No. 42660 (April 10, 2000), 65 FR 21052 (April 19, 2000) (File No. SR-PCX-00-11).

rescind off-board trading rules filed by the exchanges noted above.⁶

II. Description of the Proposal

Exchange Rule 132 restricts a member's ability to effect transactions in Exchange-listed securities off a national securities exchange. In the proposing release the Exchange noted that the "staff of the Commission recently asked the Exchange to review its off-board trading restrictions and consider measures to repeal such restrictions." Therefore, the Exchange proposed rescinding Rule 132 to "broaden the free market trading activities of Exchange members and the investors they represent by removing restrictions on over-the-counter trading in listed securities."

III. Discussion

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. In particular, the Commission finds the proposed rule change is consistent with Section 6(b)(5) of the Act⁷ 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, and Section 6(b)(8), which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the Act. The rescission of the Exchange's off-board trading restrictions is also consistent with Section 11A of the Act⁸ which sets forth the findings and objectives that are to guide the Commission in its oversight of the national market system. Specifically, rescinding the off-board trading

⁶ The New York Stock Exchange was first to submit a proposed rule change rescinding its off-board trading rule, Rule 390. Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (February 28, 2000) ("NYSE Release").

On May 5, 2000, the Commission approved the New York Stock Exchange's proposed rule change to rescind Rule 390. Securities Exchange Act Release No. 34-42758 (May 5, 2000), 65 FR 30175 (May 10, 2000) ("NYSE Approval Order").

In the NYSE Release, the Commission also solicited the public's views on a broad range of issues related to market fragmentation—the trading of orders in multiple locations without interaction of those orders. The period for public comment on market fragmentation expired on May 12, 2000. The Commission currently is reviewing the comments submitted in response to the NYSE Release.

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78k-1.

restrictions will help further the national market system objective in Section 11A(a)(1)(C)(i) to assure the economically efficient executive of securities transactions, and in Section 11A(a)(1)(C)(ii) to assure fair competition between exchange markets and markets other than exchange markets.⁹

As discussed more fully in the NYSE Approval Order, the existence of off-board trading restrictions can no longer be justified in an age when advancing technology and expanding trading volume are introducing new competitive challenges for the U.S. securities markets, both at home and abroad. Off-board trading rules such as Rule 132 directly restrict a certain type of market center competition—competition between exchange markets and markets other than exchange markets. Their rescission today eliminates an inappropriate regulatory burden on competition that runs contrary to the objectives set forth in the Act.

Off-board trading restrictions have been justified on the basis that they promote the interaction of investors' orders without participation by a dealer—indeed an objective set forth in the Act.¹⁰ The Commission believes, however, that whatever beneficial effect off-board trading restrictions such as Rule 132 may have in enhancing the interaction of investor orders can no longer justify their anticompetitive nature. To the extent off-board trading rules enhance order interaction, they do so in an undesirable way—by attempting a direct restriction on competition. Such attempts are never wholly successful and typically only distort, rather than eliminate, competition and introduce unnecessary costs ultimately borne by investors.

The outcome of competition between market center should depend on which market centers are most able to serve investor interests by providing the highest quality trading services at the lowest possible prices; the Commission's regulatory task is removing unwarranted regulatory barriers to competition between market centers. As stated in the NYSE Approval Order, the rescission of off-board trading rules is "intended solely to free the forces of competition and allow investor interests to control the success or failure of individual market centers."¹¹ The

same rationale and motivation support the Commission's action today.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-Phlx-00-12) is approved.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 42898; File No. SR-Phlx-00-41]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Extending the Pilot Program Regarding Exchange Rule 98, Emergency Committee, Until August 21, 2000

June 5, 2000.

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 April 18, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Exchange. On April 20, 2000, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Exchange filed the proposed rule change, as amended, pursuant to Section 19(b)(3)(A) of the Act,⁴ and Rule 19b-4(f)(6) thereunder,⁵ which renders the proposed rule change

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.16b-4.

³ See April 19, 2000 letter from Richard S. Rudolph, Counsel, Exchange, to Rebekah Liu, Special Counsel, Division of Market Regulation, SEC ("Amendment No. 1"). In Amendment No. 1, the Exchange requested that the proposed rule change be filed under Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b-4(f)(6). The Exchange also requested that the Commission waive the 5-day notice of its intent to file the proposal, and requested that the Commission waive the 30-day period before the proposal becomes effective to permit the proposed rule change to become immediately effective.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange is proposing to extend the pilot program relating to Exchange Rule 98, Emergency Committee, for an additional 120 days, or until August 21, 2000. No changes to the existing rule language are being proposed.

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, as amended, 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

On December 23, 1999, the Commission granted approval to amendments to Exchange Rule 98, Emergency Committee (the "Committee") on a 120-day pilot basis.⁶ In general, the Committee is authorized to determine the existence of, and take action with respect to, extraordinary market conditions or other emergencies at the Exchange. The amendments to Exchange Rule 98 updated the composition of the Committee to reflect the current governance structure of the Exchange,⁷ clarified that the Committee was authorized to act in the event of any emergency condition created by the Year 2000 date change, and deleted a provision referencing CENTRAMART, an equity order entry system which is no longer used on the Exchange. The Committee is now composed of five individuals: the Chairman of the Board of Governors; the On-Floor Vice Chairman of the Board of Governors;

⁶ See Exchange Act Release No. 42272 (December 23, 1999), 65 FR 153 (January 3, 2000) SR-Phlx-99-42).

⁷ The amendments replaced the President, which the Exchange no longer has, with the On-Floor Vice Chairman of the Board of Governors.

⁹ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ Section 11A(a)(1)(C)(v) of the Act.

¹¹ NYSE Approval Order at 30179.