

the Commission is accelerating approval of the filing on the twenty-ninth day after publication of the proposed rule change in the **Federal Register**. The Commission believes that accelerated approval will permit the Exchange to implement, and investors to benefit from, the proposed rule change without undue delay. Amendment No. 1 clarifies that "batching" of violations can occur only where the Exchange uses automated surveillance to detect violations. In addition, the Commission notes that it received no comments on the proposed rule change. For these reasons, the Commission finds good cause exists, consistent with Sections 6(b)(5)<sup>16</sup> and 19(b)(2) of the Act,<sup>17</sup> to approve the proposed rule change and Amendment No. 1 thereto on an accelerated basis.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 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 20549-0609. 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to file number SR-Phlx-2001-114 and should be submitted by April 12, 2002.

#### V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> that the proposed rule change (SR-Phlx-2001-114) and Amendment No. 1 thereto are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45569; File No. SR-Phlx-2001-60]

#### Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Adopting Sanctioning Guidelines for Violations of the Exchange's Order Handling Rules

March 15, 2002.

#### I. Introduction

On May 31, 2001, 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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt new sanctioning guidelines to assist the Exchange in enforcing compliance with its options order handling rules.<sup>3</sup> On December 18, 2001, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on February 13, 2002.<sup>5</sup> No comments were

<sup>19</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Exchange filed this proposed rule change pursuant to the provisions of Section IV.B.1 of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Exchange to adopt rules establishing, or modifying existing, sanctioning guidelines such that they are reasonably designed to effectively enforce compliance with options order handling rules. See Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3-10282 (the "Order").

<sup>4</sup> See letter from Linda S. Christie, Counsel, Phlx, to Deborah Lassman Flynn, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 17, 2001 ("Amendment No. 1"). In Amendment No. 1, the Exchange amended Phlx Rule 960.10(a) to incorporate the Exchange's Enforcement Sanction Guide by reference into the Exchange's rules. The proposed new language requires the Exchange's Business Conduct Committee ("BCC") to refer to the Enforcement Sanction Guide for factors to be considered and appropriate sanctions when imposing disciplinary sanctions for violations of the Exchange's option order handling rules.

<sup>5</sup> See Securities Exchange Act Release No. 45415 (February 7, 2002), 67 FR 6781.

received on the proposed rule change. This order approves the proposed rule change, as amended.

#### II. Description of the Proposal

The Exchange proposes to adopt sanctioning guidelines ("Guide") to assist the various individuals involved in the Exchange's enforcement process, including the Exchange's BCC, by recommending ranges of monetary sanctions to be applied to violations of certain Exchange rules and Option Floor Procedure Advices ("OFPA's"). The Guide covers certain offenses related to the trading of options on the Exchange trading floor, with particular emphasis on options order handling rules.<sup>6</sup> The Guide is proposed as an internal document to be used by the BCC, hearing panels, and the Board of Governors ("Adjudicatory Bodies") in determining appropriate sanctions to be imposed in formal disciplinary proceedings. The Exchange's enforcement staff may also refer to the Guide in negotiating settlements.

The Exchange has drafted the Guide with an introduction and matrices. The introduction explains the purpose and intent of the Guide and presents an overview of the Exchange's enforcement program, including a description of factors to be considered when sanctioning misconduct in disciplinary proceedings. The matrices cover the Exchange's options order handling rules. Each matrix outlines recommended monetary sanction ranges and specific factors for consideration when a particular options order handling rule has been violated.<sup>7</sup> The proposed Guide would also allow for non-monetary sanctions, such as suspension, expulsion, or other sanctions in egregious cases. The matrices are also arranged by subject matter and trading floor participant (floor broker, registered options trader, specialist).

The proposed Guide would cover only matters brought before the Exchange's BCC, which has jurisdiction over disciplinary actions pursuant to Exchange By-law Article X, Sec. 10-11

<sup>6</sup> In addition to filing this proposed Guide, the Exchange has submitted another proposed rule change to adopt guidelines to be used in determining when it is appropriate to aggregate violations of the Exchange's options order handling rules. See Securities Exchange Act Release No. 45421 (February 7, 2002), 67 FR 6961 (February 13, 2002) (SR-Phlx-2001-114).

<sup>7</sup> The Exchange informed Commission staff that the Adjudicatory Bodies would be permitted to consider the entire disciplinary history of the member and, in any event, would be required to consider all violations within the past three years. Telephone conversation between Linda Christie, Counsel, Phlx, and Sonia Patton, Special Counsel, Division, Commission, on March 8, 2002.

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> 15 U.S.C. 78s(b)(2).

and Exchange Rule 960.1. The Guide would not apply to violations charged under the Exchange's minor rule violation enforcement and reporting plan, which consists of Exchange Rule 970 and the corresponding OFPA.

### 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.<sup>8</sup> In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>9</sup> 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 to protect investors and the public interest. The Commission also finds that the proposed rule change is consistent with Section 6(b)(6) of the Act,<sup>10</sup> which requires that the rules of an exchange provide that its members be appropriately disciplined for violations of exchange rules, the Act, and rules and regulations thereunder, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

At this time, the Commission believes the proposed sanctioning guidelines are reasonably designed to effectively enforce compliance with the options order handling rules. Nevertheless, the Commission expects the Exchange to continue to evaluate the adequacy of the proposed sanctioning guidelines to determine whether they do, in fact, effectively enforce compliance with the options order handling rules.<sup>11</sup>

### IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the

proposed rule change (SR-Phlx-2001-60), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45581; File No. SR-Phlx-2002-05]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. Amending Existing Exchange Rules and Options Advices To Eliminate References to Fractional Pricing

March 18, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 14, 2002, 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 Phlx. The Phlx submitted an amendment to the proposed rule change on March 8, 2002.<sup>2</sup> 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 proposes to amend certain Phlx rules and Phlx Options Floor Procedure Advices and Order and Decorum Regulations ("Options Advices"), to remove references to fractional pricing. The text of the proposed rule change is available at the Commission and the Phlx.

#### 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 Phlx 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 Phlx 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

The purpose of the proposed rule change is to amend certain existing Exchange rules and Options Advices to delete references to fractions and dual pricing in fractions and in decimals. Although references in Exchange rules to both fractional and decimal pricing were necessary during the phase-in period of decimalization since June of 2000, such references are no longer needed after full, industry-wide implementation of decimal pricing as a result of which all equity and option products are now quoted only in decimals.

In June 2000, the Commission reviewed the Decimals Implementation Plan ("Decimals Plan")<sup>3</sup> submitted by the National Association of Securities Dealers and the national securities exchanges. The Decimals Plan proposed a Minimum Price Variation ("MPV") of \$.01 for equities, and an MPV of \$.05 for options trading under \$3.00 and \$.10 for options trading at \$3.00 or higher, which the Exchange implemented in Phlx Rules 125 and 1034 ("MPV rules").<sup>4</sup> Because decimals pricing was instituted in several phases in the years 2000 and 2001, during which time securities were quoted in both fractional and decimal prices, the Exchange modified its MPV rules and various other rules to include references to both fractional and decimal pricing. After the implementation of full, industry-wide decimalization such that all securities now quote in decimals, references to

<sup>3</sup> See Securities Exchange Release No. 42914 (June 8, 2000), 65 FR 38101 (June 19, 2000).

<sup>4</sup> See Securities Exchange Act Release No. 43421 (October 6, 2000), 65 FR 61207 (October 16, 2000). The Exchange has indicated that it believes the MPV for equities should be \$.05 and not the current \$.01 MPV. See Phlx Decimal Pricing Impact Study for Equities and Options (September 7, 2001) and Phlx comment letter to Commission sub-pennies concept release S7-14-01 (November 19, 2001), wherein Phlx suggested that the investing public and the markets would be best served by mandating a nickel MPV for equity trading. For competitive reasons, however, the Exchange intends to continue the penny MPV for equities, and the nickel/dime MPV for options. The Exchange therefore reaffirms the MPVs currently in its rules: \$.01 for equities (Rule 125), and \$.05 for equity and index options and Exchange-Traded Fund Shares quoting under \$3.00 and \$.10 for those quoting at \$3.00 or higher (Rule 1034).

<sup>8</sup> 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).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78f(b)(6).

<sup>11</sup> The Commission's examination staff will also monitor the application of these guidelines to determine whether they do, in fact, improve member compliance with the options order handling rules.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>14</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> The Phlx submitted a new Form 19b-4, which replaces and supersedes the original filing in its entirety.