

for first, second and third-time violations of the restriction against entering broker-dealer orders for execution on the Auto-Ex system.

II. Discussion

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Sections 6(b)(5) and 6(b)(6)⁸ in that they are designed to facilitate transactions in securities, promote just and equitable principles of trade, protect investors and the public interest, and provide for the appropriate disciplining of the PSE's members. Specifically, the Commission finds that limiting execution of options orders through Auto-Ex to non-broker-dealer customers is appropriate and consistent with the Act. Automatic execution systems such as Auto-Ex were developed, in part, to aid public customers by providing nearly instantaneous execution of small orders at a guaranteed price.⁹ The rule change codifies PSE's existing policy regarding those market participants that may utilize Auto-Ex and is consistent with the policies of several of the other optional markets, which currently limit the availability of their respective automatic execution systems to non-broker-dealer customer orders.¹⁰

With regard to the change to Rule 6.52(a) the Commission finds that this is also consistent with the Act. The Exchange has represented that the change is merely to conform the language in Rule 6.52(a) with that of Rule 6.86(a) and proposed Rule 6.87(a). The Commission finds that the change in the language of the rule makes no substantive change with regard to the determination of those orders that may be placed with an Order Book Official, and should help to avoid confusion concerning the applicability of the Rule.

Additionally, the Commission believes that including violations of Rule 6.87(a) in the Exchange's Minor Rule Plan ("MRP") is consistent with the Act. The Commission has previously found that the Exchange's MRP provides fair procedures for appropriately disciplining members and member

organizations for minor rule violations that warrant a sanction more severe than a warning or cautionary letter, but for which a full disciplinary proceeding would be unsuitable because such a proceeding would be costly and time-consuming in view of the minor nature of the violation.¹¹ The Commission believes that violations of Rule 6.87(a) are objective and easily verifiable, thereby lending themselves to the use of expedited proceedings.

Specifically, the entering of a broker-dealer order on Auto-Ex may be determined objectively and adjudicated quickly without complicated factual and interpretive inquiries.¹²

Finally, the Commission believes that the proposed changes to the Recommended Fine Schedule are consistent with the Act. The fine level increases will enhance the Exchange's ability to enforce compliance with its rules through the appropriate discipline of members and member organizations in a manner that is proportionate to the minor nature of such violations. Further, the Exchange has represented that its membership will be informed of the amended Recommended Fine Schedule via a Rule Adoption Notice.¹³

The Commission finds good cause for approving Amendment No. 2 to the proposal prior to the thirtieth day after the date of publication of the notices of filing thereof in the Federal Register. Specifically, Amendment No. 2 withdraws that portion of the filing which would have defined "broker-dealer" to include "foreign broker-dealers" for purposes of Rules 6.86 and 6.87. The term "foreign broker-dealers" was not defined in the original proposal. Deletion of the term is therefore appropriate, absent objective standards necessary to ensure the fair enforcement of the affected rules. Therefore, by eliminating a potential ambiguity in the Rules 6.86 and 6.87, Amendment No. 2 strengthens the proposal. The other change made by Amendment No. 2 is technical and non-substantive in nature. Based on the above, the Commission finds good cause for approving Amendment No. 2 to the proposed rule change on an accelerated basis and believes that the proposal, as amended,

is consistent with Sections 6(b)(5), 6(b)(6), and 19(b)(2)¹⁴ of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2. 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 in 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 PSE. All submissions should refer to the File No. SR-PSE-96-19 and should be submitted by October 16, 1996.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-PSE-96-19) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-37694; File No. SR-Phlx-95-19]

Self-Regulatory Organizations; Notice of Filing of Amendments No. 2, 3, and 4 to Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing and Trading of DIVS, OWLS and RISKS

September 17, 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 May 8, 1995, 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

⁸ 15 U.S.C. 78f(b) (5) and (6).

⁹ See Securities Exchange Act Release No. 25995 (August 15, 1988), 53 FR 31781 (August 19, 1988) (order approving changes to the Chicago Board Options Exchange's ("CBOE") Retail Automatic Execution System).

¹⁰ See e.g. CBOE Rule 6.8, and Securities Exchange Act Release No. 37429 (July 12, 1986) (order approving proposed rule change by the American Stock Exchange, Inc. relating to "unbundling" of Auto-Ex orders).

¹¹ See Securities Exchange Act Release No. 32510 (June 24, 1993), 58 FR 35491 (July 1, 1993).

¹² If the Exchange determines that a violation of Rule 6.87(a) is not minor in nature, the Exchange retains the discretion to initiate full disciplinary proceedings in accordance with PSE Rule 10.3. Indeed, the Commission fully expects the PSE to bring full disciplinary proceedings in appropriate cases.

¹³ Telephone conversation between Michael D. Pierson, Senior Attorney, Regulatory Policy, PSE, and James T. McHale, Attorney, OMS, Division, Commission, on September 5, 1996.

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).

below, which Items have been prepared by the self-regulatory organization. On July 12, 1996, Phlx submitted Amendment No. 1 ("Amendment No. 1") to the proposal to address various issues.¹ Notice of the proposal and Amendment No. 1 appeared in the Federal Register on August 28, 1995.² No comments were received on the proposal. On May 30, August 22, and September 9, 1996, Phlx submitted Amendments No. 2, 3, and 4 to the proposal, respectively, to address, among other things, issues related to spread margin and position limits.³ The commission is publishing this notice to solicit comments on the Amendments from interested persons.

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

Phlx proposes to amend its limiting standards applicable to the trading of DIVS, OWLS and RISKS ("DIVS, OWLS and RISKS" or "DORS"). The text of the Amendments are available at the Office of the Secretary, Phlx and at the Commission.

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

Phlx proposes to amend its DORS filing in the following respects:

1. *Contract Size:* Phlx originally proposed that one DIVS, OWLS or RISKS contract represent an interest in one share of the underlying security. In

order to prevent rounding problems that may occur at settlement, the Exchange proposes to have the DIVS, OWLS and RISKS each represent 100 shares of the underlying security. For example, a purchaser of one DIVS contract would own the right to receive substitute payments in the same amount as the regular dividends declared and paid on 100 shares of the underlying common stock.

2. *Position Limits:* The Exchange originally proposed to adopt a position limit of 1 million each of DIVS, OWLS and RISKS and would not have required aggregation with options positions pursuant to new Rule 1001D. In Amendment No. 2, the Exchange proposed that the greater of a holder's OWLS or RISKS positions be aggregated with option positions on the underlying security and have the same position limit as that set for the options on the underlying security. In Amendment No. 3, Phlx now proposes to aggregate all positions in OWLS and RISKS with put and call options on the same side of the market on the same underlying security.

According to Phlx, since an OWLS or RISKS position to the holder is a bullish position, the Exchange proposes that long OWLS and RISKS be aggregated with long call and short put positions in the related class of equity options. Similarly, since the Exchange believes that OWLS and RISKS, from the position of the seller is a bearish position, short OWLS and RISKS will be aggregated with short call and long put positions in the related class of equity options.

Because the DIVS positions only entitle holders to a substitute dividend stream and not actual control of the underlying stock, the Exchange proposes that the position limit for DIVS be equal to the position limit on the same class of options pursuant to Rule 1001, however, they would not be aggregated with positions in those options or with positions in OWLS and RISKS on that same underlying security. As an example, a customer could hold 25,000 XON DIVS in addition to a combined total of 25,000 OWLS, RISKS or equity options on XON on the same side of the market.

3. *Adjustments:* Phlx originally proposed a specific scheme for adjusting DIVS, OWLS and RISKS positions for stock splits, stock dividends, liquidating, special or partial liquidating dividends, spin-offs, mergers, rights offerings and tender offers. Phlx now proposes to withdraw those sections of the filing. Adjustments to the products for all corporate and other actions will be made in accordance with the rules of

the Options Clearing Corporation ("OCC").⁴

4. *Customer Margin:* Phlx originally proposed equity margin for all positions in DORS. In Amendment No. 1, Phlx proposed options margin requirements for RISKS positions and equity margin for positions in OWLS and DIVS. In addition, Phlx proposed the use of escrow receipts or letters of guarantee in lieu of margin. Finally, Amendment No. 1 also introduced the use of spread margin treatment for certain positions in DORS. In Amendment No. 2, Phlx proposed that both OWLS and RISKS be margined as options (DIVS remain subject to equity margin). Accordingly, the full value of the purchase price of an OWLS or RISKS must be paid at the time of purchase. The minimum margin required for any short position would be 100% of the OWLS or RISKS current market price plus 20% of the market value of the OWLS or RISKS except that the maximum margin for a short OWLS position shall not exceed its termination claim. In Amendment No. 3, however, Phlx proposes two spread margin exceptions to this general rule.

First, under proposed Rule 1022D(C)(4)(A), if a customer has a short OWLS position and as long OWLS position which expires on or before the termination date of the short position, Phlx proposes to treat the positions exactly like an options spread. Accordingly, the margin requirement will be the lesser or the uncovered margin requirement or the amount, if any, by which the termination claim of the short position exceeds the termination claim of the long position. Similarly, pursuant to subparagraph (a)(B), the margin requirement for a short RISKS position and a long RISKS position which expires after the termination date of the short position would be the lesser of the uncovered margin requirement or the amount by which the termination claim of the long position exceeds the termination claim of the short position.⁵

Second, under Rule 1022D(c)(5)(A), Phlx proposes to treat covered OWLS or RISKS short positions similar to the method in which covered call positions are treated in Rule 722(c)(2)(F). Accordingly, if a customer holds a short OWLS or RISKS position and a long position in the underlying security or one exchangeable or convertible into the underlying security (excluding warrants), no margin will be required on the short position provided the long position is margined in accord with Rule 722 and the long position expires

¹Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to; Sharon Lawson, SEC, dated June 30, 1996.

²Securities Exchange Act Release No. 36127 (Aug. 18, 1995), 60 FR 44533.

³Letters from Michele R. Weisbaum, Phlx, to: Sharon Lawson, SEC, dated May 30, 1996 ("Amendment No. 2") and August 21, 1996 ("Amendment No. 3"); and Stephen Youhn, SEC, dated September 6, 1996 ("Amendment No. 4" together with Amendments No. 2 and 3, "Amendments"). In Amendment No. 3, Phlx responds to issues raised by the SEC's review of Amendment No. 2. Amendment No. 4 addresses strike price intervals for the products.

⁴ See Amendment No. 2.

⁵ See Amendment No. 3.

after the termination date of the short OWLS or RISKS position.⁶

Also under proposed Rule 1022D(c)(5), the margin requirement for a short OWLS or RISKS position which is covered by a long warrant convertible into an equivalent number of shares of the underlying security, will be the lesser of the uncovered margin requirement or the amount by which the conversion price of the long warrant exceeds the termination claim of the short OWLS or RISKS provided the right to convert the warrant does not expire on or before the termination date of the short OWLS or RISKS.⁷

Phlx believes the sum of the prices for an OWLS and RISKS position on the same underlying stock should approximate the price of the underlying stock (less the value of the DIVS component). Accordingly, Phlx proposes that a long stock position be sufficient cover for both a shows OWLS and a short RISKS position, provided the OWLS and RISKS have the same strike price and expiration date.

Phlx proposes that DIVS margin will be the same as it is for stock. The margin requirement will be 25% of the market value of all long positions plus 30% of the market value of each short position in a customer's account. Where a short DIVS position is covered by a long position in the underlying security or any other security immediately exchangeable or convertible (other than warrants) into the security, the margin on the short DIVSs position will be 10% of the market value of the long securities position.⁸

Finally, because OCC cannot yet facilitate escrow receipts or letters of guarantee for these products, Phlx proposes to withdraw all corresponding provisions as they relate to DORs.⁹

5. *Strike Price Intervals*: The Phlx proposes to amend proposed new Rule 1012D in order to address strike price intervals for DORs. Specially, Phlx proposes that DORs not be subject to the strike price interval, bid/ask differential and continuity rules respecting put and call options until the time to expiration is less than nine months. Phlx represents that this treatment is consistent with the rules for trading long-term equity and index options.¹⁰

The Exchange believes the proposed Amendments are consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that they are designed to

prevent fraudulent and manipulative acts and practices and to promote just and equitable principle of trade, and are not designed to permit unfair discrimination between customers, issuers, brokers, and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed Amendments will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed Amendments.

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 longer 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 Amendments. 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. 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 No. SR-Phlx-95-19 and should be submitted October 16, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements, Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 3, 1996 [FR 61, page 34921-34922].

DATES: Comments must be submitted on or before October 25, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Street, Federal Aviation Administration, Corporate Information Division, ABC-100, 800 Independence Ave., SW., (202) 267-9895, Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Anti-Drug Program for Personnel Engaged in Specified Aviation Activities.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120-0535.

Form Number: 9000-2.

Affected Public: Specified aviation employers.

Abstract: Federal Aviation Regulations require specified aviation employers to implement and conduct FAA-Approved anti-drug plans. They monitor program compliance, institute program improvements, and anticipate program problem areas. The FAA receives drug test reports from the aviation industry. More detailed and specific information is necessary to effectively manage the anti-drug program.

⁶ *Id.*

⁷ *Id.*

⁸ See Amendment No. 1.

⁹ See Amendment No. 3.

¹⁰ See Amendment No. 4.

¹¹ 17 CFR 200.30-3(a)(12) (1994).