

rate of overnight dollar LIBOR plus 0.5%.

5. Applicants propose that the Global Fund sell the Investec Shares to the Trust. The purchase price to be paid by the Trust will be the July Price plus carrying costs relating to such investment. These carrying costs will consist of (a) reimbursement of the carrying costs actually paid by the Global Fund to Investec in consideration of the deferral of the Global Fund's purchase of the Investec Shares and (b) reimbursement of the Global Fund of its cost of funds (the overnight LIBOR plus 0.5%) from the Initial Purchase Settlement Date through the date on which the Trust purchases the Investec Shares (the "Trust Purchase Date").

Applicants' Legal Analysis

1. Section 17(a) of the Act provides, in pertinent part, that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such an affiliated person, acting as principal, knowingly to sell or purchase securities to or from such registered company.

2. Section 2(a)(3) of the Act defines the term "affiliated person" of another person to include, in pertinent part (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of such other person, (b) any person directly or indirectly controlling, controlled by, or under common control with such other person or (c) if such other person is an investment company, any investment adviser thereof.

3. The Trust and the Global Fund are both subject to control, as defined in section 2(a)(9) of the Act,² by Old Mutual. Also, the Trust and the Global Fund share a common investment adviser. Thus, the Trust and the Global Fund are "affiliated persons" within the meaning of section 2(a)(3). As a result, sales of securities on a principal basis by the Global Fund to the Trust are prohibited by section 17(a) of the Act.

4. Section 17(b) of the Act provides that the SEC may exempt a transaction from the prohibitions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed

transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act.

5. Applicants believe that the requested relief meets the standards set forth in section 17(b). Applicants believe that the proposed transaction is consistent with the objective and policies of the Trust and that the proposed transaction is consistent with the general purposes of the Act. In addition, the terms of the transaction were presented to the board of trustees of the Trust and at a meeting on February 14, 1997, the board of trustees of the Trust, including a majority of the independent trustees, approved the purchase of the Investec Shares. In evaluating the terms of the transaction, the trustees of the Trust considered the fact that the proposed purchase price to be paid by the Trust will include reimbursement of Global Fund for its payment of Investec's carrying costs and for its own carrying costs.

6. Applicants state that the proposal does not involve dumping. Further, applicants state that the transaction is consistent with the requirements of rule 17a-7,³ except that the purchase price will be below market price and the Trust and the Global Fund are not affiliated persons solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common directors, and/or common officers.

7. Applicants state that if the Trust were not able to purchase the Investec Shares from the Global Fund on the basis proposed, it would be disadvantaged relative to other portfolios and funds managed by Old Mutual and its affiliates because, unlike those other portfolios and funds that have been allocated shares of the placing, the Trust would, in order to increase its investment in Investec, have to purchase shares on the open market without the benefit of the discount negotiated by Old Mutual. Applicants state that the Trust is not obligated to purchase the Investec Shares if the market price of the shares falls below the proposed purchase price. Thus, the Global Fund bears the investment risk of holding the Investec Shares. Applicants state that the Global Fund has in effect granted an option to the Trust and the Trust has not paid, and is not required to pay, any fee to the Global Fund or any other party for this option.

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

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-38393; File No. SR-CBOE-97-12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Amend the Exchange's Rule Concerning the Pre-Opening Application of the Intermarket Trading System

March 12, 1997.

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 February 26, 1997, the Chicago Board Options Exchange, Inc. ("CBOE" 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The CBOE proposes to amend CBOE Rule 30.72, Pre-Opening Application Rule, with respect to the Pre-Opening Application in the Intermarket Trading System ("ITS"). The proposed amendment is to enhance the operation of the Pre-Opening Application by effectively including circuit breakers as a trading halt situation that will trigger the Pre-Opening Application.¹

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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received

² Section 2(a)(9) defines "control" as the power to exercise a controlling influence over the management or policies of a company. The section creates a presumption that owners of 25% or more of a company's voting securities control such company.

³ Rule 17a-7 permits certain purchase and sale transactions between an investment company and certain of its affiliated persons provided that certain conditions are met, including that the transaction be effected at the current market price of the security.

¹ The Commission notes that the majority of other ITS Participants (the American Stock Exchange, Boston Stock Exchange, Chicago Stock Exchange, Cincinnati Stock Exchange, National Association of Securities Dealers, New York Stock Exchange, Pacific Stock Exchange) have filed essentially the same proposals to amend each of their rules concerning the Pre-Opening Application. See Securities Exchange Act Release No. 38285 (February 13, 1997), 62 FR 8065 (February 21, 1997).

on the proposed rule change. The text of these statement may be examined at the places specified in Item IV below. The self-regulatory organization 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 enhance the operation of CBOE Rule 30.72, the ITS Pre-Opening Application. The CBOE's Pre-Opening Application rule contains basic definitions pertaining to ITS, prescribes the sorts of transactions that may be effected through ITS and the pricing of commitments to trade, and specifies the procedures pertaining to the Pre-Opening Application, whereby an Exchange Designated Primary Market-Maker ("Exchange DPM") who wishes to open a market in an ITS stock may obtain any pre-opening interest in that stock by other market-makers registered in that stock in other Participant markets.

CBOE's current Pre-Opening Application prescribes that if an Exchange DPM anticipates that the opening transaction on the Exchange will be at a price that represents a change from the security's previous day's consolidated closing price of more than the "applicable price change," the Exchange DPM shall notify other Participant markets by sending a pre-opening notification through the ITS. The "applicable price changes" are:

Consolidated closing price ²	Applicable price change (more than)
Network A: ³	
Under \$15	1/8 point.
\$15 or over	1/4 point.
Network B:	
Under \$5	1/8 point.
\$5 or over	1/4 point.

²If the previous day's closing price of an eligible listed security exceeded \$100 and the security does not underlie an individual stock option contract listed and currently trading on an exchange, the "applicable price change" is one point.

³Network A is comprised of New York Stock Exchange securities; Network B is comprised of American Stock Exchange securities.

Thereafter, the Exchange DPM shall not open the market in the security until not less than three minutes after the transmission of the pre-opening notification. Once an Exchange DPM has issued a pre-opening notification, other Participant markets may transmit

"pre-opening responses" to the Exchange DPM through the ITS that contain "obligations to trade." The Exchange DPM is then obligated to combine these obligations with orders it already holds in the security, and, on the basis of this aggregated information, decide upon the opening transaction in the security.

The Pre-Opening Application also applies whenever an "indication of interest" is sent to the Consolidated Tape Association ("CTA") Plan Processor prior to the opening of trading in the relevant security or prior to the reopening of trading in the relevant security following the declaration of a trading halt for certain defined reasons, even if the anticipated opening or reopening price is not greater than the "applicable price change." The current Pre-Opening Application provides that the Pre-Opening Application Rule applies when an indication of interest is disseminated following five defined trading halt situations; reopenings following order imbalance, order influx, equipment, communications or technical problems, news pending and news dissemination, and for a delayed opening.

The purpose of the proposed amendment is to amend the CBOE's Pre-Opening Application rule to provide that the Pre-Opening Application would be triggered whenever any "indication of interest" (i.e., an anticipated opening price range) is sent to the Consolidated Tape System prior to the opening or reopening of trading in the relevant security. Under the proposed change, the Pre-Opening Application would also be triggered when indications of interest are disseminated in situations other than those five defined trading halts, including the resumption of trading following the activation of market-wide circuit breakers. In particular, the proposed amendment would delete the definition of "Trading Halt," which is limited to the five defined trading halt situations mentioned above, and replace all references to "Trading Halt" with "halt or suspension in trading." As a result, one standard procedure would then govern all trading halt situations and would include suspensions of trading pursuant to circuit breakers.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act⁴ in that it is designed to promote just and equitable principles of trade, to remove impediments to 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. The proposed rule change is also consistent with Section 11A(a)(1)(D)⁵ of the Act which provides that the linking of all markets for qualified securities through communications and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to the best execution of such orders.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

No written comments were either solicited or received.

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 it 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 foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 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

⁴ 15 U.S.C. 78f(b)(5).

⁵ 15 U.S.C. 78k-1(a)(1)(D).

the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CBOE-97-12 and should be submitted by April 9, 1997.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-6892 Filed 3-18-97; 8:45 am]

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[Release No. 34-38383; File No. SR-Phlx-97-12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Maintenance Criteria for the PHLX Phone Index

March 11, 1997.

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 March 5, 1997, 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Phlx, pursuant to Rule 19b-4 of the Act, proposes to amend the maintenance standards applicable to the PHLX Phone Index ("Index") to allow the number of stocks in the index to decline to six stocks without having to delist the index.

II. Self-Regulatory Organization's Statement of the Purpose of, and the 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 Index is a capitalization weighted index composed of eight widely held U.S. companies created as a result of the divestiture of American Telephone and Telegraph Co. ("AT&T") in 1983. The Index includes seven regional telephone companies spun off from AT&T and AT&T itself.³ Currently, the Index would not meet the maintenance standards if less than 90% of the component stocks in the Index, by weight, are eligible for Exchange options trading or if the number of stocks in the index ever decreases to less than eight or increases to more than ten. In such case, the Exchange is required to wind down the Index by restricting trading to closing only transactions and not opening any new series of options on the Index unless a new Rule 19b-4 filing is submitted to the Commission and approved.

The Exchange is proposing, herein, to amend the maintenance standards to allow the number of component stocks in the index to decrease to six without having to wind down the Index. Thus, if the number of stocks in the index decreases to less than six or increases to more than ten, the Exchange would restrict trading to closing only transactions and not open any new series of options on the Index until it seeks and gains approval for such a revised index. The 90% Exchange options eligibility maintenance standard will still apply.

The Exchange expects that in the near future, two separate mergers involving four of the components may occur. NYNEX and Bell Atlantic are proposing a merger with Bell Atlantic as the survivor and SBC Communications is proposing to merge with Pacific Telesis with SBC Communications as the survivor. If these two mergers are consummated, the Index would only have six component issues which would still pass the new proposed maintenance criteria.

2. Basis

The Phlx believes that the proposed rule change is consistent with Section 6 of the Act in general and furthers the objective of Section 6(b)(5) in

particular⁴, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest.

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

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date 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 it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory agency 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 foregoing. 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 34345 (July 11, 1994), 59 FR 36245 (July 15, 1994) (approval for index options on the Phone Index).

⁴ 15 U.S.C. 78f(b)(5).