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Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38750; File No. SR-PHLX-97-04]

Self-Regulatory Organizations; Order Granting Partial Approval to a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Modifying the Index Exercise Cut-Off Time

June 20, 1997.

I. Introduction

On January 8, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder.² On January 29, 1997, the Exchange filed Amendment No. 1 to the rule proposal.³ On April 4, 1997, the Exchange filed Amendment No. 2 to the proposed rule change.⁴ On April 23, the Exchange filed Amendment No. 3 to the proposed rule change.⁵ On May 23, 1997, the Commission partially approved the proposed rule change, including Amendment Nos. 1 and 2, thereby establishing a 4:02 p.m. close of trading for equity options and narrow-based index options, and modifying certain option trading rotation procedures.⁶

¹ 15 U.S.C. § 78s(b)(1).

² 17 CFR 240.19b-4.

³ Letter from Theresa McCloskey, Exchange, to Janice Mitnick, Commission, dated January 29, 1997. Amendment No. 1 was a technical amendment.

⁴ Letter from Philip H. Becker, Exchange, to Michael A. Walinskas, Commission, dated April 4, 1997. Amendment No. 2 proposed a 4:02 p.m. close of trading for narrow-based index options and modified option trading rotation procedures. Amendment No. 2 originally contained a proposal modifying Exchange index option exercise cut-off procedures. However, this proposal was resubmitted in Amendment No. 3, constituting a withdrawal of such proposal from Amendment No. 2.

⁵ File No. SR-PHLX-97-04, Amendment No. 3, dated April 22, 1997. Amendment No. 3 proposes to amend rule 1042A and Floor Procedure Advice G-1 to change the index option exercise cut-off time from 4:30 p.m. (of 15 minutes after the close of trading if trading is closed at a time other than the regular close of trading) to five minutes after the close of trading. The proposal also deletes the current requirement that member organizations must accept exercise instructions until 4:15 p.m. each business day.

⁶ Release No. 34-38554 (May 23, 1997), 62 FR 29756 (June 2, 1997).

Notice of the substance of Amendment No. 3 was provided by issuance of a release⁷ and by publication in the **Federal Register**.⁸ Two comment letters were received.⁹ This order approves the Amendment No. 3, permitting a change to the index option exercise cut-off time from 4:30 p.m. (or 15 minutes after the close of trading if trading is closed at a time other than the regular close of trading) to five minutes after the close of trading. As a result of the rule change, the exercise cut-off time applicable to narrow-based (industry) index options (which close at 4:02 p.m.) will be 4:07 p.m., and the cut-off time applicable to broad-based (market) index options (which close at 4:15 p.m.) will be 4:20 p.m. The order also approves a deletion of the current requirement that member organizations must accept exercise instructions until 4:15 p.m. each business day.

II. Description of the Proposal

The Exchange proposes to amend Rule 1042A and Floor Procedure Advice G-1 to change the index option exercise cut-off time from 4:30 p.m. (or 15 minutes after the close of trading if trading is closed at a time other than the regular close of trading) to five minutes after the close of trading. The proposal would result in an exercise cut-off time applicable to narrow-based index options (which close at 4:02 p.m.) of 4:07 p.m., and cut-off time applicable to broad-based index options (which close at 4:15 p.m.) of 4:20 p.m.

Currently, Rule 1042A requires that a memorandum to exercise any American-style index option must be received or prepared by the Exchange member organization no later than 4:30 p.m., or 15 minutes after the close of trading if the close occurs at a time other than the regular close of trading.¹⁰ Further, Rule 1042A(a)(ii) currently requires the submission of an Exercise Advice Form to the Exchange when exercising

⁷ Securities Exchange Act Release No. 38554 (April 29, 1997).

⁸ 62 FR 24529 (May 29, 1997).

⁹ Letter from Michael Schwartz, Committee On Options Proposals, to Jonathan Katz, Commission, dated January 10, 1997 ("CO-OP Letter") (referencing Chicago Board Options Exchange, Inc. ("CBOE"), American Stock Exchange, Inc. ("Amex"), and Pacific Exchange, Inc. ("PCX") proposals to establish a 4:02 p.m. trading close for equity and narrow-based index options); letter from Gerald D. O'Connell, Susquehanna Investment Group, Michael Walinskas, Commission, dated May 28, 1997 ("Susquehanna Letter").

¹⁰ Release No. 34-37077 (April 5, 1996), 61 FR 16156 (April 11, 1996) (Order approving SR-PHLX-95-86).

American-style index option contracts.¹¹

The Exchange states that in the process of reviewing and amending its rules to provide for a 4:02 p.m. close for narrow-based index options, it re-examined the reference in Rule 1042A to a 4:30 p.m. exercise cut-off time. As a result of this re-examination, the Exchange has proposed an exercise cut-off time for five minutes after the close of trading to establish a cut-off time similar to that of the other options exchanges.¹²

The proposal also would amend Rule 1042A to delete the requirement that member organizations must accept exercise instructions until 4:15 p.m. each business day. Under the proposal, member organizations could establish earlier cut-off times. The Exchange states that the purpose of this change is to eliminate a restriction in its rules which the CBOE and Amex do not have in their rules. The Exchange also states it believes that it is appropriate for member organizations to determine how best to comply with the Exchange's exercise cut-off time.

The Commission received two comment letters regarding the proposal to change the index option exercise cut-off.¹³ The CO-OP Letter supported a change in the Exchange's exercise cut-off, in order to conform its rules with those of the other options exchanges. The commenter suggested that such a change to the Exchange's exercise cut-off would assist in ensuring that the Exchange's rule did not appear to give professionals an advantage over public customers.

The Susquehanna Letter objected to the proposed reduction of the exercise cut-off time from 4:30 p.m. to 4:07 p.m. The commenter stated that such a change would have a negative impact on market makers' ability to facilitate orders received near the close of trading. The commenter also argued that the proposal would hinder market makers' ability to effect the exercises necessary to control their risk and stabilize their positions in preparation for the next day's trading. Finally, the commenter argued that the change will provide an unfair competitive advantage to broad-based index products.

The Exchange responded to the comment letter, stating that

¹¹ These requirements are currently not in effect on the last business day before expiration, pursuant to Rule 1042A(b). Nor are they applicable to European-style index options, which by definition cannot be exercised prior to expiration.

¹² See Amex Rule 980C(a)(i); CBOE Rule 11.1, Interpretations and Policies .03(b); and PCX Rule 7.15.

¹³ CO-OP Letter and Susquehanna Letter, *supra* n.9.

notwithstanding the issues raised in the comment letter, it continues to believe that the adoption of the rule proposal is appropriate.¹⁴ The Exchange reiterated its position that the basis of the proposal is to conform the Exchanges rules to those of the other options exchanges. In addition, the Exchange stated that the rule change has merit for reasons other than establishing uniform options exercise deadlines. The Exchange believes that the proposal will establish a deadline for narrow-based index option exercise that is likely to precede most post-4:00 p.m. news announcements, thereby assuring a level playing field for both long and short investors in narrow-based index options.¹⁵ The Exchange also stated that different exercise cut-off times for narrow-based index options and broad-based index options are unlikely to confuse market participants or member firms because other options exchanges have long operated with different closing times and exercise cut-off for narrow and broad-based index options.¹⁶

In addition, the Exchange noted that it has examined the impact of the reduced exercise cut-off time on the risk assessment of its specialists and market makers, and believes that Exchange market professionals and market participants will still have adequate time to assess their risk in deciding whether to exercise. The Exchange noted that trading volume in such index options between 3:50 p.m. and the close of trading should not unduly impede the ability of market professionals to make these decisions. Finally, the Exchange indicated that it will monitor the impact of this rule change on all market participants to determine whether its implementation meets the desired result.

III. Discussion

The Commission finds that the rule change is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to

a national securities exchange, and, in particular, Section 6(b)(5).¹⁷ Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, perfect the mechanism of a free and open national market, and, in general, to further investor protection and the public interest.¹⁸

The Commission believes that it is reasonable for the Exchange to amend its rules to change the index option exercise cut-off time to five minutes after the close of trading. The Commission notes that the Exchange determined to revisit this issue¹⁹ in connection with its earlier approved proposal to establish a 4:02 close of trading for narrow-based index (and equity) options. The Exchange consulted informally within its membership and other options industry members through discussions with compliance, operations and trading representatives of its member firms, the Committee on Options Proposals (CO-OP), and the Options Clearing Corporation Roundtable in its re-evaluation. As a result of this re-evaluation of appropriate exercise cut-off procedures, the Exchange concluded that achieving uniformity with the rules of the other options exchanges is desirable and appropriate. As noted above, the Exchange's proposal for index exercise cut-off is similar to the current practices of the CBOE, Amex, and the PCX. In determining the appropriate exercise cut-off time, the Exchange also specifically considered the amount of time market participants will have to assess their risk in deciding whether to exercise against the benefits of uniformity in rules among the options exchanges.

The Commission has considered the issues raised in the proposal, the comment letters, and the Exchange's response. The Commission believes that the Exchange has adequately responded to the comments raised in the comment letters. In addition, the Commission believes that the proposal reflects a reasonable balance between the anticipated benefits to the Exchange and the options industry as a whole that should result from conforming its policy to that of the other options exchanges,

and the potential adverse impact of the proposal on certain market participants. Specifically, the Commission concludes that a 4:07 p.m. exercise cut-off for narrow-based (American-style) index options provides investors and other market participants with adequate time to assess their risk in deciding whether to exercise long options positions in such options. Moreover, the Commission does not believe that different exercise cut-off times for narrow-based index options and broad-based index options will create confusion for market participants or member firms. Finally, the Commission does not believe that the trading volume in narrow-based index options between 3:50 p.m. and the close of trading will unduly impede the ability of market professionals to make a decision as to whether to exercise.

The Commission also believes that it is reasonable for the Exchange to amend Rule 1042A to delete the requirement that member organizations must accept exercise instructions until 4:15 p.m. each business day, permitting member organizations to establish earlier cut-off times. The Commission notes that the CBOE and Amex rules do not contain such a limitation. Further, the Commission believes the change will permit member organizations to determine how best to comply with the Exchange's exercise cut-off time.²⁰

It is contemplated that the Exchange will implement this rule change on or about June 23, 1997.²¹

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act, and, in particular, Section 6 of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²² that Amendment No. 3 to the proposed rule change (SR-PHLX-97-04) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²³

¹⁴ Letter from Philip H. Becker, Exchange, to Michael Walinskas, Commission, dated June 5, 1997.

¹⁵ The exercise of options after the close of stock trading as a result of significant news announcements often can adversely impact uncovered short investors in the affected options. For instance, if a particular news announcement after the close of stock trading has the effect of increasing an index level, uncovered short call positions would bear a risk of being assigned without having the ability to cover or offset their position until the market reopens, potentially at a higher level.

¹⁶ The Exchange has notified its membership of this proposal, and represents it will issue another notification to its membership upon approval of proposal by the Commission.

¹⁷ 15 U.S.C. § 78f(b)(5).

¹⁸ In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. § 78c(f).

¹⁹ See Release No. 34-37077 (April 5, 1996), 61 FR 16156 (April 11, 1996) (order approving SR-Phlx-95-86 extending the exercise cut-off for narrow-based (American-style) index options from 4:15 p.m. (five minutes after the close of trading) to 4:30 p.m.).

²⁰ The Commission notes that the Exchange represents it will include in its notification to members covering the approval of this proposal a provision indicating that members establishing customer exercise cut-off limitations should take into account customers' desires to maximize the time available to make an options exercise determination. This goal should be balanced with the need of members to have sufficient time to compile and relay exercise instructions to the Exchange. Phone conversation between Edith Hallahan, Exchange, and Michael Walinskas, Commission, June 19, 1997.

²¹ Phone conversation between Edith Hallahan, Exchange and Janice Mitnick, Commission, on May 23, 1997.

²² 15 U.S.C. § 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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SOCIAL SECURITY ADMINISTRATION

Information Collection Activities: Proposed Collection Requests and Comment Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), as well as information collection packages submitted to OMB for clearance, in compliance with Public Law 104-13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

I. The information collection(s) listed below require(s) extension(s) of the current OMB approval(s) or are proposed new collection(s):

Waiver of Benefit Payments—0960-0533. Form SSA-149 is required to document the fact that benefits due are not being paid, because the beneficiary (for personal reasons) has requested nonreceipt. Personal reasons can range from religious, patriotic, or political beliefs to situations where continued receipt of payment causes some adverse effect. The respondents are beneficiaries who waive entitlement to benefit payments.

Number of Respondents: 100.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Average Burden: 8 hours.

Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 6401 Security Blvd., 1-A-21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

II. The information collection(s) listed below have been submitted to OMB:

1. *Application for Special Age 72-or-Over Monthly Payments—0960-0096.* The information collected on form SSA-19 is used by SSA to determine entitlement of individuals to special age

72-or-over payments. The respondents are applicants who file for the special payment.

Number of Respondents: 15.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Average Burden: 5 hours.

2. *State Agency Report of Obligations for SSA Disability Program—0960-0421.* The information collected on form SSA-4513 is used by SSA in a detailed analysis and evaluation of costs incurred by the State Disability Determination Services (DDS) in making determinations of disability for SSA and to determine funding levels for each DDS. The respondents are State DDS offices.

Number of Respondents: 54.

Frequency of Response: 4.

Average Burden Per Response: 1 hour.

Estimated Annual Burden: 216 hours.

3. *Statement for Determining Continuing Eligibility for Supplemental Security Income Payments—0960-0416.* The information collected by the Social Security Administration on form SSA-8203 is used to determine whether SSI recipients have met and continue to meet all statutory and regulatory requirements for SSI eligibility and whether they have been and are still receiving the correct payment amount. The information collected will also assist agencies administering Medicaid programs in ascertaining the legal liability of third parties to pay for care and services. The respondents are recipients of SSI benefits or their representative payees.

Number of Respondents: 552,000.

Frequency of Response: 1.

Average Burden Per Response: 17 minutes.

Estimated Annual Burden: 156,400 hours.

Written comments and recommendations regarding the information collection(s) should be directed within 30 days to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB) Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, DC. 20503

(SSA) Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 1-A-21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965-4125 or write to him at the address listed above.

Dated: June 20, 1997.

Nicholas E. Tagliareni,

Reports Clearance Officer, Social Security Administration.

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Albany County, NY

AGENCY: Federal Highway Administration (FHWA), New York State Department of Transportation (NYSDOT).

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Albany County, New York.

FOR FURTHER INFORMATION CONTACT:

Harold J. Brown, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518) 431-4127, or Bonny J. Cawley, Regional Director, New York State Department of Transportation, Region 1, 84 Holland Avenue, Albany, New York 12208, Telephone: (518) 474-6178.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the NYSDOT, on behalf of the county of Albany and town of Colonie, will prepare an Environmental Impact Statement (EIS) on a proposal to improve Albany Shaker Road and Watervliet Shaker Road in Albany County. The proposed improvements involve the reconstruction of Albany Shaker Road from Route 7 to Watervliet Shaker Road for a distance of 1.9 miles, and Watervliet Shaker Road from Karner Road/Vly Road to Albany Shaker Road for a distance of 1.5 miles. Both roadways are located in the town of Colonie.

Alternatives under consideration include: (1) taking no action; (2) widening the existing tow-lane highways to four lanes; and (3) constructing new four-lane highways on new locations. Incorporated into and studied with the various build alternatives will be design variations of grade, alignment and traffic flow patterns.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, State and local agencies, and to private organizations