

"adjusted stabilization" rates. Specialists are expected to stabilize stock price movements by buying and selling from their own accounts against the prevailing trend of the market. The current definition of stabilization is dealer purchases on minus and zero minus ticks, and sales on plus and zero plus ticks. The Exchange believes that certain trades outside of the definition of stabilization are not necessarily destabilizing. These would consist of proprietary zero plus tick purchases on the current bid (provided the current bid is below the offer at the time of the immediately preceding trade) and proprietary zero minus tick sales on the current offer (provided the current offer is above the bid at the time of the immediately preceding trade). Hence, the Exchange is grouping these trades with the trades within the current definition of stabilization to form an "adjusted stabilization" category for review by the Allocation Committee. Adjusted stabilization rate information would be provided, on a one-year pilot basis, solely to the Allocation Committee to assist it in assessing the value added by specialists to the depth and liquidity of stocks they currently trade.

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, and, in particular, with the requirements of Section 6(b).⁵ Specifically, the Commission believes the proposal is consistent with the Section 6(b) (5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public.⁶

The Commission believes that the proposed rule change is reasonable under the Act in that continuing to further develop objective measures of specialist performance, by adopting the "adjusted stabilization" measure, should help perfect the mechanism of a free and open market and protect investors and the public interest. The Commission believes that "adjusted stabilization" is a useful concept because it could reflect liquidity added to the market by specialists that is not otherwise captured by the current definition of stabilization, by reflecting

the fact that on certain zero plus tick purchases or zero minus tick sales the specialist is not initiating either a transaction or a price change, but is adding depth to the market at prices at which transactions have already occurred.

The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 1 will ensure that the new measure of specialist performance is used solely by the Allocation Committee to help evaluate specialist performance and the depth and liquidity specialists add to the stocks they trade. Also, by providing for the new measure on a one-year pilot basis, the Exchange will be able to monitor the success of the new performance measure in helping to evaluate specialist performance. In addition, the substance of the proposed rule change was noticed for the full statutory period and no comments were received. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the rule proposal. 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 on 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-96-34 and should be submitted by December 22, 1997.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁷ that the portion of the proposed rule change (SR-NYSE-96-34) involving the adoption of "adjusted stabilization" rate

information as a specialist performance measure,⁸ as amended, is approved on a one-year pilot basis through November 21, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97-31389 Filed 11-28-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39345; File No. SR-Phlx-97-35]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Adopt a Contingency Market Maker System for Foreign Currency Options

November 21, 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 July 17, 1997,¹ 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 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

Phlx proposes to adopt a contingency plan to trade foreign currency options ("FCOs") pursuant to a Market Maker System. The contingency Market Maker System would provide a modified trading system to ensure the continuity of FCO trading in the situation where a specialist unit is not available. In summary, the contingency Market Maker System would be contained in a new provision, Rule 1014(j), which states that assigned ROTs will be responsible for making markets and honoring the minimum guarantee (ten-

⁸ The Commission notes that this order only approves a portion of the proposed rule change. See *supra* note 3.

⁹ 17 CFR 200.30-3(a) (12).

¹ The Exchange filed Amendment No. 1 to the proposed rule filing on November 4, 1997, the substance of which is incorporated into this notice. See letter from Philip H. Becker, Senior Vice President, General Counsel and Chief Regulatory Officer, Phlx, to Michael Walinskas, Senior Special Counsel, Market Regulation, Commission, dated November 4, 1997.

⁵ 15 U.S.C. 78f(b).

⁶ In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78s (b) (2).

up) rule. Markets will be continuously disseminated and the responsibility to provide customers with minimum size guarantee markets pursuant to Rule 1033(a) shall apply. Assigned ROT participant organizations would be required to be available from the opening of trading on 50% of the trading days. An Exchange employee, assigned to be the Quote Monitor, would handle certain specialist-type functions. In addition, the proposed rule change amends Rule 1047, Commentary .01, to state that, in accordance with the FCO market maker system, the Quote Monitor is responsible for conducting trading rotations in the FCOs utilizing the market maker system. Further, the proposed rule change amends Rules 1017 and 1019 to clarify that orders would not be entrusted to a specialist respecting the FCO market maker system. Finally, the proposed rule change incorporates a disclaimer of liability into the proposal as proposed paragraph (j)(ii) of Rule 1014.

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 on the proposed rule change. The text of these statements 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 Exchange has traded FCOs pursuant to a specialist system since 1982. Earlier this year, due to the resignation of a specialist unit in that FCO, the Exchange determined to delist options on the European Currency Unit ("EUC"), only offering such options pursuant to its customized facility under Rule 1069.² This situation prompted a review of the specialist system on the FCO trading floor and recognition that ensuring the continuity of FCO trading where a specialist cannot

be promptly replaced may require a different system.

Thus, the purpose of this proposal is to adopt rules and procedures to govern situations where a specialist resigns from that function and no replacement specialist unit is immediately available for a particular FCO. As such, the proposal is a contingency plan, not intended as a permanent method of trading FCOs. As a contingency plan, it would be implemented until a specialist unit becomes available or the Exchange determined to take other action, such as request permanent approval of the market maker system or delist that FCO. Because the Phlx Board of Governors has already approved this proposal, the contingency plan would be implemented upon approval by the FCO Committee once the contingency occurs, or, depending upon the immediacy and circumstances, the chairperson of that Committee or their designee. In crafting this FCO contingency plan, the Exchange considered various methods of trading options, including the lead and primary market maker systems of other exchanges. The Exchange determined that such systems were intended for new products that required incentives for long-term commitment of time, personnel and capital, and are thus not appropriate for FCOs. Instead, the Exchange has determined to implement a pure market maker system. Thus, according to the Exchange, issues of trade allocation, book allocation or additional capital are not raised by the proposal, because existing ROTs would be acting as market makers under the proposal.

Currently, all ROTs on the foreign currency options floor are considered to be assigned in all FCOs. As such, no minimum number of ROTs is required for the proposed market maker system. Once the market maker system is implemented in a given situation, all assigned ROTs would be required to participate. To further assure adequate market maker participation, the proposal requires that assigned ROTs' participant organizations will be subject to an additional requirement of availability from the opening of trading on 50% of trading days. The Exchange intends to establish procedures requiring at least one ROT from each participant organization to be present throughout the trading day for 50% of the trading days during a specified period, thereby ensuring a minimum level of ROT presence on every trading day. Surveillance of this requirement would consist of a sign-in procedure in the trading crowd, with the Quote Monitor maintaining a log for Surveillance Department review. Failure

to comply with this requirement would be considered a violation of proposed Rule 1014(j). In addition, floor brokers will be required to ensure the presence of an ROT in the trading crowd, pursuant to Rule 1063. Further, ROTs can be called into the crowd pursuant to Rule 1014 (b) and (c), and failure to honor such a request may result in disciplinary action.

ROTs will have market making responsibilities to replace certain specialist functions, such as updating markets and the components to pricing models. As ten-up markets would remain in effect, if the best bid/offer is established by someone other than an ROT and is not for at least ten contracts, participation for the additional contracts needed to meet the minimum ten contract requirement would be supplied at that same price by the assigned ROT(s). Thus, the essence of the proposed Market Maker System is ROT responsibility.

Certain specialist-type functions would be handled by the Quote Monitor, who would be an Exchange employee. Other options exchanges utilize exchange employees for similar functions.³ The Exchange believes that the use of a Quote Monitor is appropriate and should facilitate disseminating firm markets in affected FCOs. The Quote Monitor would be responsible for establishing, monitoring, and updating FCO markets under the market maker system. The Quote Monitor would maintain the Auto-Quote System with input from the assigned ROTs, which shall automatically update these FCO markets, based on the spot value of the underlying foreign currency and the pricing model selected by the assigned ROTs in that FCO, pursuant to a procedure established by the Exchange. The Quote Monitor would be responsible for regularly requesting market quotations, as well as updated components to the relevant pricing model, such as interest rates and volatility levels, from assigned ROTs. Assigned ROTs would be required to voice markets in these FCOs in a loud and audible manner and update those markets, as well as other components relevant to the pricing model. The Quote Monitor would staff this position during all trading hours. The number of Quote Monitors will vary depending on the number of FCOs trading pursuant to the proposed Market Maker System. The Quote Monitor would also post bids and offers as instructed loudly and audibly by Floor Brokers. The Floor Broker would be responsible for the posted bid/

² See Securities Exchange Act Release No. 38764 (June 24, 1997), 62 FR 35535 (July 1, 1997) (SR-Phlx-97-26). The proposal at hand is not intended to replace SR-Phlx-97-26, such that FCOs on the ECU would continue to be available only on a customized basis, pursuant to Rule 1069.

³ See e.g., CBOE Rule 7.1.

offer until he or she had properly informed the Quote Monitor that it is withdrawn. The Floor Broker responsibilities applicable to markets maintained by the Quote Monitor are included in Rule 1063(e).

The implementation of the proposed market maker system would result in elimination of the specialist or limit order book, as the Quote Monitor's responsibilities would be directed at monitoring markets but not holding orders. Currently, FCO specialists maintain a specialist limit order book. Generally, smaller customer orders are placed on the book, but the book is not limited to customer orders. Depending upon the option and the market conditions, an FCO book's content varies. Orders on the book at the time of the implementation of the market maker system would be canceled, and could be re-entered for representation by floor brokers. The Exchange would announce the required cancellation of such orders by memorandum to FCO participants.⁴

The Exchange has been informed of a decreased use in the book. The Exchange believes this decreased use is a result of decreased FCO volume, increased costs and the more institutional nature of FCO trading. All of these factors were taken into account when determining to eliminate the book. The Exchange acknowledges that eliminating the book is a departure from the procedures of other exchanges employing a market maker system, who generally utilize an exchange employee to operate the book. Although the Exchange considered this approach, it was determined that venturing into the business of operating a limit order book was not appropriate for the Exchange to do on a sudden, contingency basis in light of both the liability as well as operational and staffing burdens. The Exchange also cites to the institutional nature FCO trading, including larger sizes, which diminishes reliance on the limit order book. Certain FLEX products currently trading on other exchanges do not offer a limit order book, in view of the institutional nature of FLEX options. In fact, FCO customized options, pursuant to Phlx Rule 1069, trade without a specialist or limit order book. The Exchange believes that this experience, coupled with the need for quick implementation of the contingency plan in order to provide a continuous auction market for FCOs,

despite the absence of a specialist, outweighs the benefits of providing a limit order book.

Because the proposal replaces the specialist system with a market maker system, the Exchange proposes to amend certain other rules to clarify that a specialist's traditional responsibilities would not apply under the proposal. For instance, for purposes of Rule 1047, Trading Rotations, Halts and Suspensions, Commentary .01, new paragraph (e) would state that, in accordance with the FCO Market Maker System as defined in Rule 1014(j), the Quote Monitor is responsible for conducting trading rotations in those foreign currency options utilizing the Market Maker System. In addition, Rules 1017 and 1019 would clarify that orders would not be entrusted to a specialist respecting the FCO Market Maker System, as defined in Rule 1014(j).

Because the proposed Quote Monitor functions would involve a new type of activity by Exchange employees, a disclaimer of liability is incorporated into the provision as paragraph (j)(ii). Specifically, in no event shall the Exchange be liable to any person or organization or to its members, participants, member organizations or participant organizations (hereinafter referred to collectively as "members") or persons associated therewith for any loss, (including any indirect or consequential loss), expense, damages or claims arising out of any errors or omissions in the collection and dissemination of any foreign currency options quotations by a Quote Monitor.

The Complete text of the proposed rule change is available at the Commission and at the office of the Exchange.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act⁵ in general, and in particular, with Section 6(b)(5),⁶ in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, as well as to protect investors and the public interest, by providing a contingency plan for the trading of FCOs without an assigned specialist unit.

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, 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 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-Phlx-97-35 and should be submitted by December 22, 1997.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97-31390 Filed 11-28-97; 8:45 am]

BILLING CODE 8010-01-M

⁴ This procedure is similar to the current procedure used for equity index options when there is a change in contract terms or a transfer of the book. See Floor Procedure Advice A-6.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).