

## II. Self-Regulatory Organization's Statements Regarding the Proposed Rule Change

In its filing with the Commission, Philadep 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. Philadep has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.<sup>4</sup>

### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In accordance with the Order, Philadep will amend Philadep Rule 29, entitled "Unclaimed Dividends and Other Distributions," and Philadep Rule 2, Section 1(e), which governs the retention of any unclaimed dividend or other distribution. The Order provides that within forty-five (45) days of the entry of the Order, Philadep shall file with the Commission:

A proposed rule change amending Rule 2, Section 1(e), Rule 29, Section 3 and the procedures thereunder, to provide that Philadep shall diligently research each unclaimed dividend or other distribution received after the Closing Date with a value greater than \$500. Any such unclaimed dividend or other distribution with a value of \$500 or less shall continue to be treated in accordance with Rule 29 (*i.e.*, Philadep can take it into income after five (5) years). All unclaimed dividends and other distributions subject to Rule 29 shall be held and invested in accordance with Philadep's Participants' Fund Rule 4. No unclaimed dividends or distributions received after the Closing Date in excess of \$500 shall be taken into income.

In their current form, both Philadep Rule 2, Section 1(e), and Philadep Rule 29, Section 3, provide that (i) any dividends or distributions outstanding and unclaimed after five years from the date of such dividend or distribution shall be taken into income by Philadep and (ii) the participant shall waive any claim to any such dividend or distribution except as Philadep otherwise may provide in accordance with its by-laws and rules. Rule 2 and Rule 29 will be amended to provide that Philadep may not retain any unclaimed dividends or distributions in excess of \$500 that are paid and received after the closing date.<sup>5</sup> Also under the proposed

rule change, Philadep will amend Rule 29, Section 1, to provide that Philadep shall diligently research any unclaimed dividend or distribution with a value greater than \$500 that is received after the effective date of the amendments. No changes to Philadep's rules will be made with respect to unclaimed dividends or distributions received prior to the closing.

Finally, Philadep is amending Rule 29 by adding a new Section 3 that will require that all unclaimed dividends and distributions that are subject to Rule 29, but as yet not taken into income by Philadep in accordance with Rule 29, be held and invested pursuant to the same procedures as set forth in Philadep Participants' Fund Rule 4.

Philadep believes the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act<sup>6</sup> and the rules and regulations thereunder because the amendments contemplated by the proposed rule change will better assure the safeguarding of securities and funds in the custody or control of Philadep or for which Philadep is responsible. Furthermore, Philadep believes the amendments are consistent with the undertakings set forth in the Order.

### (B) Self-Regulatory Organization's Statement on Burden on Competition

Philadep does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

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

Written comments were neither solicited nor received with respect to the proposed rule change.

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

Section 17A(b)(3)(F) of the Act<sup>7</sup> requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in its custody or control or for which it is responsible. The Commission believes that the proposed rule change is consistent with this obligation because it will increase the likelihood that unclaimed dividends and distributions will be returned to their owners.

The Commission finds good cause for approving the proposed rule change

prior to the thirtieth day after the publication of notice of the filing. Approving prior to the thirtieth day after publication of notice will allow Philadep to implement the undertakings set forth in the Order immediately which should benefit the owners of unclaimed dividends and distributions.

## 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 in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of SCCP. All submissions should refer to File No. SR-Philadep-97-05 and should be submitted by January 2, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39404; File No. SR-Phlx-97-42]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Responsibility to Represent Orders to the Trading Crowd

December 4, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on August 25, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange")

<sup>4</sup> The Commission has modified the text of the summaries prepared by Philadep.

<sup>5</sup> The closing date tentatively has been scheduled for December 15, 1997, but may be rescheduled by

mutual consent of the parties. The actual closing date will be inserted into the amended rules.

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

filed with the Securities and Exchange Commission ("SEC" or "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 Exchange, pursuant to Rule 19b-4 of the Act,<sup>2</sup> proposes to amend Floor Procedure Advice ("Advice") C-7, Responsibility to Represent Orders to the Trading Crowd, to adopt a new paragraph (b) in order to specify a Floor Broker's responsibility to be loud and audible and positioned to be heard by a majority of the trading crowd.

Currently, Advice C-7 states that once an option order has been received on the floor, it must be represented to the trading crowd before it may be represented away from the crowd. This paragraph would be designated as paragraph (a). Proposed paragraph (b) would state that a Floor Broker must be loud and audible when requesting a market and/or representing an order in the trading crowd. Further, a Floor Broker must make reasonable efforts to position himself in the trading crowd to be heard by the majority of the trading crowd.

A fine schedule, pursuant to the Exchange's minor rule violation enforcement and reporting plan ("minor rule plan"),<sup>3</sup> is proposed to be levied for minor violations of proposed paragraph (b). Specifically, violations will be subject to the following fine schedule, which will be implemented on a one-year running calendar basis: 1st Occurrence—\$100; 2nd Occurrence—\$250; 3rd Occurrence and Thereafter—Sanction is discretionary with Business Conduct Committee ("BCC"). This fine schedule is proposed to be adopted into, and thus amend, the Exchange's minor rule plan. Instances not deemed minor, as with all floor procedure advices subject to the minor rule plan, would be forwarded to the BCC. Violations of paragraph (a) would continue to be referred to the BCC, as no fine schedule

applies. However, language indicating that such matters are subject to review by the BCC is proposed to be added. The proposal would take effect upon notice to the membership. The complete text of the proposed rule change is available at the Office of the Secretary, the 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 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 maybe 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**

The purpose of the amendment is to codify the long-standing practice of requiring, in order to promote just and equitable principles of trade, that Floor Brokers be heard by the trading crowd. Advice C-7 was adopted in 1987,<sup>4</sup> and was designed to ensure that brokered orders receive the maximum interaction with orders competing for the other side of the trade, before they may be represented away from the crowd. This, in turn, improves the functioning of the auction market and the quality of customers executions. Similarly, the proposed loud and audible and crowd positioning requirements are intended to promote maximum interaction with other interest in the crowd, by improving the likelihood that Floor Brokers are heard and facilitating price discovery.

Currently, the loud and audible requirement is rooted in Rule 110, which requires bids and offers to be made in an audible tone of voice, as well as Rule 707, Just and Equitable Principles of Trade, which prohibits members and member organizations from engaging in conduct inconsistent with just and equitable principles of trade. Floor Brokers are also required to utilize due diligence in representing orders, pursuant to Rules 155 and 1063. Specifically, Floor Brokers are responsible for using due diligence to

execute an order at the best price available, which implies complete crowd interaction. Proposed paragraph (a) would apply to Floor Brokers requesting a market (quoting) as well as representing a market, including bidding, offering, canceling, executing and inquiring as to the status of orders or bids/offers.

Similarly, the requirement that Floor Brokers position themselves so as to be heard by a majority of the trading crowd is also rooted in Rules 707, 155 and 1063, and is also intended to maximize order interaction. Crowd location, in busy situations, is especially important in fulfilling due diligence and best execution obligations. The Exchange notes that the proposal's intent is similar to that of Rule 1063(a) and Advice C-1, which require that a Floor Broker, prior to executing an order, ascertain that at least one Registered Options Principal ("ROT") is present in the trading crowd.<sup>5</sup> ROT presence is intended to confirm pricing, prevent errors, and witness specialist-Floor Broker activity. The proposal should also promote an orderly environment, where Floor Brokers choose their crowd positioning centrally to comply with the requirement, and prevent unnecessary roughness and disorderly behavior by crowd participants attempting to hear a Floor Broker.

The proposed rule change is designed to preserve and enhance auction market principles and the process of representing orders by open outcry, which is integral to exchange options trading.

As stated previously, the proposal should ensure that Floor Brokers are heard. This, in turn, should help prevent errors by allowing verification of market quotes and orders by other crowd participants. As with paragraph (a), proposed paragraph (b) should prevent fraudulent and manipulative activity. The Exchange believes that expressly codifying these requirements into an Advice should help deter such activity, due to the potential imposition of fines for minor infractions, and should help encourage crowd vigilance for proper vocalization and wrongful activity.

The Exchange believes that the proposal is appropriately codified into Advice C-7, which deals with Floor Broker responsibilities, and, more specifically, with representing orders in the trading crowd. Furthermore, the Exchange believes that the new

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

<sup>3</sup> The Phlx's minor rule plan, codified in Phlx Rule 970, contains floor procedure advice, such as Advice C-7, with accompanying fine schedules. Rule 19d-1(c)(2) authorizes national securities exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting; Rule 19d-1(c)(1) requires prompt filing with the Commission of any final disciplinary actions. However, minor rule violations not exceeding \$2,500 are deemed not final, thereby permitting periodic, as opposed to immediate, reporting.

<sup>4</sup> Securities Exchange Act Release No. 24309 (April 7, 1987), 52 FR 11894 (April 13, 1987) (SR-Phlx-86-49).

<sup>5</sup> Prior to the adoption of a minor rule plan, this requirement appeared in Phlx Rule 1014.06. Securities Exchange Act Release No. 23296 (June 4, 1986), 51 FR 21430 (June 12, 1987) (SR-Phlx-86-11).

requirement is appropriate for the minor rule plan, because it involves actions that are objective and easily verifiable. The reference in the fine schedule to infractions of paragraph (a) being referred to the BCC is intended to bolster the distinction between provisions subject to fines and those referred directly to BCC; it does not imply that violations of paragraph (a) cannot result in fines or disciplinary action.

For these reasons, the proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest, by maximizing order interaction and thus improving the functioning of the auction market, including price discovery and liquidity, and the quality of customer executions. The proposal is also consistent with Sections 6(b)(1) and (6), which require, respectively, that the Exchange have the capacity to enforce compliance with its rules and that members be appropriately disciplined.

#### *B. Self-Regulatory Organization's Statement on 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 either solicited or received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes it reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve such 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 in the Commission's Public Reference Section, 450 Fifth Street, NW., 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-97-42 and should be submitted within January 2, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Jonathan G. Katz,**

*Secretary.*

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## **DEPARTMENT OF STATE**

### **United States International Telecommunications Advisory Committee (ITAC), Radiocommunication Sector (ITAC-R) Joint Task Group 4-9-11 Meeting Notice**

The Department of State announces the formation of U.S. Joint Task Group 4-9-11 (JTG 4-9-11), under the Radiocommunication Sector of the U.S. International Telecommunication Advisory Committee. This Joint Task Group is the focal point within the United States to prepare for meetings of the corresponding international JTG 4-9-11 which was recently formed at the ITU-R Chairman/Vice Chairman meeting November 25 and 28, 1997. The JTG is to conduct studies and prepare a report for the next Conference Preparatory Meeting (CPM-99). The report will be based on the results of studies, in accordance with Resolutions COM5-18, COM5-19 and COM5-23 of the 1997 World Radiocommunication Conference, that are associated with

items 1.13.1 and 1.13.2 of the agenda for WRC-99. These agenda items are:

*1.13.1*—review and, if appropriate, revise the power limits appearing in <sup>1</sup> Articles S21 and S22 in relation to the sharing conditions among non-GSO, GSO FSS, GSO BSS, space sciences and terrestrial services, to ensure the feasibility of these power limits and that these limits do not impose undue constraints on the development of these systems and services; and

*1.13.2*—consider the inclusion of limits similar to those in Article S21 and S22 in other frequency bands, or other regulatory approaches to be applied in relation to sharing situations.

Chairman of the U.S. Joint Task Group 4-9-11 is Mr. Harry Ng of the Federal Communications Commission. Mr. Ng may be reached at telephone 202-418-0752.

The initial organizational meeting of U.S. JTG 4-9-11 will be held on December 18, 1997 at 9:30 a.m. at the Department of State in Room 1912. Members of the General Public may attend this meeting and join in the discussions, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled.

Persons intending to attend the meeting should send a fax to (202) 647-7407 not later than 24 hours before the meeting. On this fax, please include the name of the meeting, your name, social security number, date of birth and organization. One of the following valid photo identifications will be required for admittance: U.S. driver's license with your picture on it, U.S. passport, or a U.S. Government identification (company ID's are no longer accepted by Diplomatic Security). Enter from the 'C' Street Main Lobby.

Subsequent meetings will be held at the FCC, 2000 M Street, NW, Washington, D.C., in Room 110 on January 7, 1998 at 9:30 a.m. and on February 4, 1998 at a time and location to be determined.

Dated: December 9, 1997.

**John T. Gilseman,**

*Acting Chairman, U.S. ITAC for Radiocommunications Section.*

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<sup>1</sup> Articles S21 and S22 of the international Radio Regulations, as agreed by the 1997 World Radiocommunication Conference.

<sup>6</sup> 17 CFR 200.30-3(a)(12).