

"On Send" fees of \$.25/million current face from 8:00 a.m. to 1:00 p.m. and \$1.25/million current face from 3:00 p.m. to 5:00 p.m. MBSCC also assesses a message processing "On Receive" fee of \$.50/million current face 8:00 a.m. to 1:00 p.m. MBSCC does not charge a message processing On Receive fee from 3:00 p.m. to 5:00.

On occasion, MBSCC may open the EPN service before 8:00 a.m. or close it after 5:00 p.m. to accommodate the processing needs of its participants.<sup>3</sup> When this happens, MBSCC does not charge higher fees for the additional usage. The proposed rule change codifies this practice by amending the EPN Schedule of Charges to reflect that the "On Send" fee will be \$.25/million from the opening of business to 1:00 p.m. and \$1.25/million from 3:00 p.m. to the close of business. The proposed rule change also amends fees to reflect that the EPN "On Receive" fee will be \$.50/million from the opening of business to 1:00 p.m. and no charges from 3:00 p.m. to the close of business. As a result, MBSCC's schedule of charges now reflects that message processing fees will not be altered when the normal hours of operation for the EPN service are extended. MBSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>4</sup> and the rules and regulations thereunder because it will promote the prompt and accurate clearance and settlement of securities transactions.

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

MBSCC does not believe that the proposed rule change will impact or impose a 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 have been solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act<sup>5</sup> and pursuant to Rule 19b-4(e)(1)<sup>6</sup> promulgated

thereunder because the proposal constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of existing MBSCC rules. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**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 in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR-MBSCC-97-08 and should be submitted by January 14, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-39458; File No. SR-NASD-97-87]

**Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Extending the Pilot Injunctive Relief Rule**

December 17, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 8, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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**

NASD Regulatory is herewith filing a proposed rule change to extend for six months the pilot injunctive relief rule, Rule 10335 (formerly Section 47) of the Code of Arbitration Procedure ("Code").

**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 III 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**

NASD Regulation's injunctive relief rule, Rule 10335 of the Code, provides a procedure for obtaining injunctive relief in arbitration and for expediting proceedings for injunctive relief in

<sup>3</sup> Conversation between Richard Paley, Associate Counsel, MBSCC, and Jeffrey Mooney, Attorney, Division of Market Regulation, Commission (November 6, 1997).

<sup>4</sup> 15 U.S.C. 78q-1.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>6</sup> 17 CFR 240.19b-4(e)(1).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

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

intra-industry disputes. Rule 10335 took effect on January 3, 1996, for a one-year pilot period. The initial pilot period was subsequently extended on January 3, 1997 for another year in order to permit NASD Regulation's Office of Dispute Resolution to gain additional experience with the rule before determining whether the rule should be made permanent, the pilot period should be extended, or the rule should be permitted to terminate by its terms.<sup>3</sup>

In September 1997, the NASD published a Notice to Members (97-59) requesting comment on the rule.<sup>4</sup> At that time, approximately 433 cases had been filed in which injunctive relief was sought pursuant to the rule. The average number of days between filing and the arbitrator's initial injunctive relief order was approximately 7.5 days. The majority of cases in which injunctive relief was sought involved associated persons leaving one firm for another. In most but not all cases, the associated person's former firm was the petitioner. The Notice to Members sought comment on how the injunctive relief and expedited proceedings work and how they could be improved, and identified more than twenty specific questions based on previous comments received from users of the rule. The comment period closed on October 31, 1997. The NASD has received 19 comment letters in response to the Notice to Members.<sup>5</sup>

On the basis of NASD Regulation's experience and the comments of the participants, NASD Regulation believes that the procedures set forth in Rule 10335 represent a significant improvement to the procedures for resolving intra-industry disputes. However, NASD Regulation also believes that additional time is necessary to adequately review the comments received about the rule and to evaluate how the Rule could be improved to meet the needs of the participants more effectively.

Accordingly, NASD Regulation is proposing to extend the injunctive relief Rule as a pilot program for another six months. During the next six months NASD Regulation will review the comments received in response to Notice to Members 97-59, as well as comments from arbitrators and NASD employees who have had experience with the application of the rule, and will develop modifications or

interpretations of the Rule in response thereto.

The NASD requests the Commission to find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. Rule 10335 expires by its terms on January 3, 1998. As discussed above, NASD Regulation believes that Rule 10335 represents a significant improvement to the procedures for resolving intra-industry disputes, and that an extension will permit more careful consideration of modifications in response to comments. Accordingly, NASD Regulation believes that it is in the interest of users of Rule 10335 for the procedures to remain in effect without interruption.

## 2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act<sup>6</sup> in that extending the effectiveness of the injunctive relief procedures will serve the public interest by enhancing the satisfaction with the arbitration process afforded by expeditious resolution of certain disputes.

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

The NASD does not believe that the proposed rule change 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*

No written comments were either solicited or received.

## III. 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 NASD. All submissions should refer to File No. SR-NASD-97-87 and should be submitted by January 14, 1998.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change to extend the pilot injunctive relief rule is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and particularly with Section 15A(b)(6) of the Act.<sup>7</sup> Rule 10335 is intended to provide a pilot system within the NASD arbitration forum to process requests for temporary injunctive relief. The Rule is intended principally to facilitate the disposition of employment disputes and related disputes concerning whether registered representatives who move to other firms may transfer their accounts to their new firms. The Commission finds it is appropriate to extend the pilot for six months. During that time the NASD Regulation will be able to evaluate the success of the Rule, to adequately review the comments received, and to determine whether to extend the pilot further or make the Rule permanent.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate because members will continue to have the benefit of injunctive relief in arbitration without interruption. The Rule was previously available through the pilot and the Commission is extending the pilot for only six months. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is consistent with Section 15A of the Act.

*It is therefore ordered*, pursuant to Section 19(b)(2)<sup>8</sup> that the proposed rule change (SR-NASD-97-87) is hereby approved on an accelerated basis for a six-month pilot basis, through July 3, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>3</sup> See Securities Exchange Act Release No. 38069 (December 20, 1996), 61 FR 68806 (December 30, 1996).

<sup>4</sup> A copy of Notice to Members 97-59 is attached as Exhibit 2 to the filing.

<sup>5</sup> The comment letters are attached as Exhibit 3 to the filing.

<sup>6</sup> 15 U.S.C. 78o-3.

Margaret H. McFarland,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39460; International Series Release No. 1109; File No. SR-Phlx-97-22]

### Self-Regulatory Organizations; Order Approving a Proposed Rule Change, as Amended, and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2 and 3 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Trading of Customized Foreign Currency Options on the Mexican Peso

December 17, 1997.

#### I. Introduction

On May 2, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend its rules to accommodate the trading of customized foreign currency options ("FCOs") on the Mexican peso.<sup>3</sup> On May 21, 1997, the Phlx submitted to the Commission Amendment No. 1 to the proposal.<sup>4</sup> Notice of the proposal was published for comment and appeared in the **Federal Register** on May 30, 1997.<sup>5</sup> On July 15, 1997, the Phlx submitted to the Commission Amendment No. 2 to the proposal.<sup>6</sup> On

December 12, 1997, the Phlx submitted to the Commission Amendment No. 3 to the proposal.<sup>7</sup> No comment letters were received on the proposed rule change. This order approves the Exchange's proposal, as amended.

#### II. Description of the Proposal

The Phlx proposes to amend its rules to accommodate the trading of customized foreign currency options on the Mexican peso. Currently, the Phlx offers listed FCOs on the British pound, French franc, Swiss franc, Japanese yen, Canadian dollar, Australian dollar, German mark and the European Currency Unit. Since November 1994, the Exchange has offered the ability to trade customized contracts on all of the above currencies in relation to the U.S. dollar or in relation to each other.<sup>8</sup> In 1995, the Exchange listed for trading customized options on the Italian Lira and the Spanish peseta.<sup>9</sup> The Exchange is proposing to list and trade customized options on the Mexican peso pursuant to Phlx Rule 1069. The Exchange is requesting approval to trade the peso only against the U.S. dollar and the Canadian dollar. In making this proposal, the Exchange states that it wants to capitalize upon Mexico's position near the forefront of the world's emerging markets, as well as the increased activity in Mexican equities and derivative securities based on Mexican markets.

Because the peso would only trade as a customized contract, there would be no continuously quoted series of peso contracts. Phlx Rule 1069(a)(1) provides that customized options contracts may be traded on any approved underlying foreign currency pursuant to Phlx Rule 1009. Therefore, the Exchange proposes to amend Phlx Rule 1009 to add the Mexican peso to the list of approved underlying foreign currencies. Pursuant to Phlx Rule 1069(a)(1)(B), users would be able to trade customized contracts

Commission, dated July 11, 1997 ("Amendment No. 2").

<sup>7</sup> In Amendment No. 3, the Phlx proposes to increase the proposed customer margin for FCOs on the Mexican Peso from 8% to 17%. Further, the Phlx states that the margin level of 17% will remain in effect until the Phlx receives Commission approval for the new customer margining system which will be filed with the Commission after it is approved by the Phlx Board of Directors. If approved by the Commission, margin for options on the Mexican peso would then be set at levels established by the new margining system. See Letter from Nandita Yagnik, Phlx, to John Ayanian, OMS, Market Regulation, Commission, dated December 10, 1997.

<sup>8</sup> See Securities Exchange Act Release No. 34925 (November 1, 1994), 59 FR 55720 (November 8, 1994).

<sup>9</sup> See Securities Exchange Act Release No. 36255 (September 20, 1995), 60 FR 50229 (September 28, 1995).

between the Mexican peso ("MXP") and the U.S. dollar ("USD") in U.S. terms (USD/MXP), or as an inverse contract (MXP/USD) (*i.e.*, the trading currency is Mexican pesos and the underlying currency is U.S. dollars). The contract size for the customized contract in U.S. terms would be 250,000 MXP.<sup>10</sup> The premium will be .00001 USD per unit or 2.50 USD for an option contract having a unit of trading of 250,000 MXP. The contract size for the inverse would be 50,000 USD. The premium will be .0001 MXP per unit or 5.00 MXP for an option contract having a unit of trading of 50,000 USD.

No cross rate FCO on the peso will be offered at this time except for the Mexican peso against the Canadian dollar ("CAD"). The contract size for the cross-rate (CAD/MXP) would be 250,000 MXP. The premium will be .00001 CAD per unit or 2.50 CAD for an option contract having a unit of trading of 250,000 MXP. The contract size for the cross-rate (MXP/CAD) would be 50,000 CAD. The premium will be .0001 MXP per unit or 5.00 MXP for an option contract having a unit of trading of 50,000 CAD.

Consistent with Exchange Rule 1069(j), no quote spread parameters will apply to these contracts. The Exchange also proposes to amend Rules 1033 and 1034 to explain how premiums will be quoted and what the minimum fractional change will be for USD/MXP.

The Exchange proposes to apply customer margin "add-on" percentage of 17% for customized MXP contracts.<sup>11</sup> In no event will the Exchange reduce the margin levels for customized FCOs involving the peso below the 17% level without the prior approval of the Commission pursuant to Section 19(b) of the Act. Whenever the customer margin levels for customized FCOs on the peso are changed, the Exchange will promptly notify the Exchange's membership and the public. The Exchange represents that this margin level covers at least 99% of all five day price movements over the last three years.<sup>12</sup>

As with customized FCOs currently being listed by the Phlx. The Options

<sup>10</sup> Based on an exchange rate of 8.1070 Mexican peso/U.S. dollars on December 9, 1997, as published in The Wall Street Journal, this would correspond to an opening position for a Mexican peso FCO transaction (*i.e.*, 100 contracts) valued at approximately \$3,083,000.

<sup>11</sup> For these purposes, "add-on" is the percentage of the current market value of the currency a Customized FCO that the holder of a "short" position must pay in addition to the current market value of each Customized FCO. The 17% add-on applies to both initial and maintenance margin positions in Mexican peso options.

<sup>12</sup> See Amendment No. 3, *supra* note 7.

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

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

<sup>3</sup> Customized FCOs provide investors with the ability, within specified limits, to trade FCOs with customized strike prices, cross-rate FCOs on any two approved currencies, and FCOs where the U.S. dollar is the underlying currency. In addition, FCO participants may express quotes for customized FCOs as a percentage of the underlying currency, in addition to quoting in terms of the base currency per unit of the underlying currency. See Securities Exchange Act Release No. 34925 (November 1, 1994), 59 FR 55720 (November 8, 1995) ("Release No. 34-34925").

<sup>4</sup> In Amendment No. 1, the Phlx clarified the contract specifications for the U.S. dollar/Mexican Peso contract, the inverse contract (Mexican Peso/U.S. dollar), and the Canadian dollar cross-rates, as described more fully herein. See Letter from Nandita Yagnik, Phlx, to Margaret Blake, Office of Market Supervision ("OMS"), Division of Market Regulation ("Market Regulation"), Commission, dated May 21, 1997.

<sup>5</sup> See Securities Exchange Act Release No. 38667 (May 22, 1997), 62 FR 29385.

<sup>6</sup> In Amendment No. 2, the Phlx proposes to set the position limit for the Mexican Peso at 100,000 contracts. See Letter from Nandita Yagnik, Phlx, to Margaret Blake, OMS, Market Regulation,