

change that implemented the pilot program initially was published in the **Federal Register** for the full comment period, and no comments were received.¹⁸ The Commission also finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice in the **Federal Register**. Amendment No. 2 strengthened the proposed rule change by clarifying that the EAC will consider mitigating circumstances only on a case-by-case basis, and will only apply them in exceptional circumstances which demonstrate that imposing the restrictions is not justified. Accordingly, the Commission believes good cause exists, consistent with the Act, to accelerate approval of the proposed rule change and of Amendment No. 2.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2 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 of 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-PCX-97-43 and should be submitted by January 21, 1998.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2)¹⁹ that the proposed rule change, as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39468; File No. SR-PHLX-97-39]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Changes in Insider Trading and Securities Fraud Enforcement Act Rules

December 18, 1997.

I. Introduction

On August 18, 1997, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to include PHLX member organizations within the scope of Insider Trading and Securities Fraud Act ("ITSFEA") coverage and clarify the definition of "employee" to include indirectly compensated persons such as independent contractors.

The proposed rule change was published for comment in the **Federal Register** on October 9, 1997.³ No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

Presently, PHLX is the designated examining authority ("DEA") for approximately eighteen firms that do not have a floor presence. Because PHLX Rule 761 and Floor Procedure Advice F-13 (collectively, "PHLX ITSFEA rules") which implement ITSFEA-related written supervisory procedures currently only cover PHLX floor units, members without a floor unit are exempt from the application of these rules. The Exchange is removing this exception. Accordingly, all PHLX members will be covered by the PHLX ITSFEA rules.

Additionally, the PHLX ITSFEA rules currently impose certain regulatory requirements upon "employees" of members. The rule, however, does not contain a definition of such term. PHLX proposes to add a commentary to these rules in order to interpret the term "employee" to include "every person who is compensated directly or indirectly by the member organization for the solicitation or handling of

business in securities, including those trading securities from the account of the member organization, whether such securities are those dealt in on the Exchange or those dealt over-the-counter." This change will now include persons as "employees" who might have previously been excluded based on the nature of their compensation arrangements.⁴

III. Discussion

After careful review, 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. The Commission believes the proposal is consistent with the requirements of 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 and prevent fraudulent and manipulative acts and practices.⁵

The Commission finds that the proposal will further the goals of ITSFEA by extending to all PHLX members the requirements to maintain written supervisory procedures designed to prevent the misuse of material, non-public information by employees. The rules of other self-regulatory organizations currently extend ITSFEA-related requirements to all members.⁶

The Commission believes that the proposal will also further the goals of ITSFEA by defining the term "employees" to include "every person compensated directly or indirectly by the member organization for the solicitation or handling of business in securities, including those trading securities from the account of the member organization, whether such securities are those dealt in on the Exchange or those dealt over-the-counter." In particular, this proposed change appropriately expands coverage of Rule 761 and Floor Procedure Advice F-13 to include as employees those

⁴ The PHLX has represented that it currently interprets the term "employees" in Rule 761 to include persons such as partners, directors, officers and branch managers. The PHLX has also represented that the proposed commentary will not change the existing interpretation of the term "employee" except to expand the universe of persons defined as employees. Letter from Michele R. Weisbaum, Vice President and Associate General Counsel, PHLX, to Kevin Ehrlich, Attorney, Division of Market Regulation, dated December 18, 1997.

⁵ 15 U.S.C. 78f(b)(5).

⁶ See Chicago Stock Exchange Rule 5 and Interpretation .02; Cincinnati Stock Exchange Rule 5.1; Pacific Exchange Rule 2.6(e) and Commentary .03; Chicago Board Options Exchange Rule 4.18 and Commentary .02; Boston Stock Exchange Rule 37(a) and Commentary .03.

¹⁸ See Securities Exchange Act Release 37770, *supra* note 4.

¹⁹ 19 U.S.C. 78s(b)(2).

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 39178 (October 1, 1997), 62 FR 52804.

individuals who are technically independent contractors, but carry out the same functions as persons employed directly by the member organization. Expanding the class of persons required to supply member firms with all trading accounts for which that person maintains a beneficial interest should help members to monitor the trading activities of those individuals that have a close nexus to the member's solicitation or handling of business in securities. The requirement should also make covered individuals aware of the prohibition against the misuse of material, nonpublic information. In addition, the Commission believes that requiring all covered persons to update the Exchange's "ITSFEA Account List" should assist Exchange and Commission review of those records and make any fraudulent acts easier to deter and detect.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-PHLX-97-39) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39481; File No. SR-PHLX-96-14]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 2 to Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Universal Trading System's Morning Session

December 22, 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 April 29, 1996 the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change, and on July 26, 1996, submitted to the Commission Amendment No. 1 to the proposed rule change.¹ The original filing, as amended

by Amendment No. 1, was published for comment in Securities Exchange Act Release No. 37640 (September 4, 1996), 61 FR 47993 (September 11, 1996). No comment letters were received. On October 29, 1997, the Exchange submitted to the Commission Amendment No. 2 to the proposed rule change. The proposed rule change, as amended, is 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, as amended, 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 under the Act,² proposes to implement a daily pre-opening order matching session ("Morning Session" or "Session") for the execution of large-sized stock orders on a volume weighted average price ("VWAPTM") basis. This amendment restates the original proposal and proposes to: (1) Clarify the system functions of the Exchange and the Universal Trading System ("System" or "UTSTM"); (2) delete references to over-the-counter ("OTC") securities; (3) provide for an equity trading floor UTS terminal and prohibit floor members from UTS trading in non-specialty issues; (4) update and detail matching priority provisions; (5) update and detail order types and order entry procedures; (6) clarify participation and subscriber access; (7) separate and elaborate "upon extraordinary circumstances" language; and (8) expand upon the liability provisions.

The Morning Session has been designed to provide investors with the means to execute large-sized stock orders anonymously and at fair market prices approximately 15 minutes prior to the opening of the "regular trading session" (*i.e.*, 9:30 A.M.-4:00 P.M.).³ The price of Morning Session transactions will be determined at approximately 4:15 P.M. on the same day. At that time, the Exchange shall assign the applicable VWAP and report each such trade to the appropriate reporting authority, the Consolidated Tape or other, as "VWAP" trades.

The receipt and matching of orders for the Morning Session will be handled electronically through the UTS. The UTS is a system which was devised for facilitating the operational aspects of the

Morning Session. The UTS was developed by Universal Trading Technologies Corporation ("UTTC") by agreement with the Exchange. This proposal relates only to the first product of the UTS, the VWAP Trading System ("VTSTTM").⁴

Each of the approximately 2,700 equity securities currently available for trading on the Exchange, both listed and traded pursuant to Unlisted Trading Privileges ("UTP") (except OTC securities) will be eligible for the Morning Session. However, the Exchange will publish a list of securities trading on the UTS, periodically reflecting additions and deletions. Upon implementation of this proposal, a certain number of Phlx issues will be activated for UTS trading, as a phase-in of the System, and a list of these securities will be published.

The present proposal consists of the adoption of a new rule applicable solely to the Morning Session, Rule 237—UTS Morning Session ("Rule"). In addition, Phlx Rule 101 is proposed to be amended to add the Morning Session as an exception to regular trading hours.⁵

The Rule is organized as follows: an introductory paragraph, followed by paragraphs: (a) Explaining reporting; (b) defining the UTS; (c) governing who the participants are; (d) explaining order entry; (e) specifying order priority; (f) defining the VWAP; (g) governing short sales in the UTS; (h) concerning disputes; (i) containing provisions relating to limitation of liability; (j) pertaining to trading halts; and (k) governing extraordinary circumstances.

UTS trades will be subject to transaction and access fees as established in the Exchange's fee schedule.

The Universal Trading System

The UTS will operate as a separate system, linked to Exchange systems at the reporting stage. UTS access will be available to direct subscribers, by dial-up into the UTS system, utilizing software and a log-on procedure dependent upon whether the subscriber is accessing UTS through a personal computer or main-frame system. UTS access is also available through subscribers acting as brokers. Participation is described more fully below. Thus, UTS access may include various types of computer hardware, software and handheld devices.

⁴ VTS and UTS are trademarks of UTTC and VWAP is a trademark of the Dover Group.

⁵ The Exchange also proposes several minor amendments to Rule 101, including placing "A.M." and "P.M." in capital letters and adding a heading to each commentary.

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ See Letter from Gerald D. O'Connell, Senior Vice President, Market Regulation and Trading, Operations, Phlx, to Jennifer Choi, Division of

Market Regulation, SEC, dated July 26, 1996 ("Amendment No. 1").

² 17 CFR 240.19b-4.

³ All times refer to Eastern Time (ET).