

failed to cure the same within seven calendar days following the giving of notice (or such shorter period of time as the Exchange may deem appropriate if it determines the circumstances have created a situation requiring a shortened cure period). It states that Members must immediately stop using their Terminals and must remove such Terminals from the floor of the Exchange upon the termination of approval pursuant to this paragraph, and that nothing in this paragraph shall be construed as a waiver of or limitation upon whatever right Members may otherwise have to seek appropriate relief pursuant to PSE Rule 11 in the event the Exchange terminates approval of a Member's Terminal pursuant to this paragraph.<sup>4</sup>

#### Pilot Program

Finally, Paragraph 8 of the proposed policy states that the Pilot Program expires six months after its implementation, but may be renewed upon an Exchange filing with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934.

The Exchange notes that, except in certain minor respects, the proposed Policy is consistent with an approved rule change of the Chicago Board Options Exchange ("CBOE") relating to the use of proprietary brokerage order routing terminals on the CBOE floor.<sup>5</sup>

#### Basis

The Exchange believes that proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5) of the Act, in particular, in that it is designed to facilitate transactions in securities; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing with respect to transactions in securities; to promote just and equitable principles of trade; and to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>4</sup> PSE Rule 11.7 provides due process protections for persons who have been aggrieved by Exchange action. It gives such persons an opportunity to be heard and to have the complained of action reviewed by the Exchange.

<sup>5</sup> See Exchange Act Release No. 38054 (December 16, 1996), 61 FR 67365 (December 20, 1996).

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

Written comments on the proposed rule change were neither solicited nor received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing of 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 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 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 Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principle office of the PSE. All submissions should refer to File No. SR-PSE-97-02 and should be submitted by March 11, 1997.

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

Margaret H. McFarland,  
Deputy Secretary.

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

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38269; File No. SR-Phlx-96-41]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Designating Options as Tier I Securities

February 11, 1997.

On October 11, 1996, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> to include equity options, index options and other option like products issued, cleared and guaranteed by the Options Clearing Corporation ("OCC") as Tier I securities under Exchange Rule 803. Notice of the proposed rule change, together with the substance of the proposal, was published in the Federal Register.<sup>2</sup> One comment letter was received on the proposal.<sup>3</sup> The Commission is approving the proposed rule change contingent upon NASAA's<sup>4</sup> amendment of the Phlx MOU to permit OCC issued options to be designated as Tier I securities.<sup>5</sup>

#### I. Background

In 1994, the Exchange adopted a two tier listing criteria program for equity and debt securities.<sup>6</sup> The Exchange originally adopted its Tier I listing standards based on standards established in a MOU between the NASAA and the Phlx. The Phlx MOU is modeled after the MOU between the

<sup>1</sup> 15 U.S.C. § 78s(b)(1).

<sup>2</sup> Securities Exchange Act Release No. 37914 (Nov. 1, 1996), 61 FR 57940 (Nov. 8, 1996).

<sup>3</sup> See Letter from Karen M. O'Brien, General Counsel, North American Securities Administrators Association, Inc. ("NASAA"), to Karl Varner, Division of Market Regulation, SEC, dated January 27, 1997, which indicated that OCC cleared options qualify for designation as Tier I securities under the NASAA Memorandum of Understanding ("MOU") between NASAA and the Phlx. *But see infra* note 5.

<sup>4</sup> NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico and ten Canadian provinces.

<sup>5</sup> NASAA plans to have its board ratify this amendment to the Phlx MOU at its February 21, 1997, board meeting. According to NASAA, because the Phlx MOU is a membership document, it cannot be revised until the members vote on this amendment during the April 1997, membership meeting. Telephone conversation between Karen O'Brien, General Counsel, NASAA, and Karl Varner, Attorney, Division of Market Regulation, SEC, on February 7, 1997.

<sup>6</sup> See Securities Exchange Act Release No. 34235 (June 17, 1994), 59 FR 32736 (June 24, 1994).

National Association of Securities Dealers ("NASD") and NASAA,<sup>7</sup> which is entitled "A Model Uniform Marketplace Exemption."

In the order approving the Exchange's Tier I listing standards, the Commission noted that the Exchange was adopting the MOU standards in an effort to provide issuers whose securities were designated as Tier I a greater opportunity to obtain blue sky exemptions.<sup>8</sup> With the adoption of the MOU, the Exchange has received blue sky exemptions for its listed securities designated as Tier I from a number of states. When the Exchange adopted its two tiered listing standards, however, the Exchange did not include equity and index options as Tier I securities, and the Phlx MOU with NASAA did not designate such options as Tier I securities. The Exchange has explained that exclusion of options as Tier I securities was merely an oversight rather than an intentional exclusion because the Exchange's equity and debt security listing standards are provided in a separate rule from its option listing standards.<sup>9</sup>

The OCC, which is considered the issuer of all Phlx listed options, has the responsibility of registering these options. OCC has indicated to the Exchange that it must register Phlx listed options in numerous states in which the OCC would not otherwise be required to register if the options were able to take advantage of the blue sky exemptions accorded to the Phlx's Tier I securities. Thus, the Exchange proposes to include its equity options, index options and any other OCC issued, cleared and guaranteed products as Tier I securities for blue sky purposes. Under the proposal, options would still have to meet existing eligibility listing standards set forth in Phlx rules specifically for options.<sup>10</sup> Further, the Phlx and NASAA have agreed that OCC issued options may qualify for designation as Tier I securities and are in the process of amending the Phlx MOU to reflect this change.<sup>11</sup>

## Discussion

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, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest.

The proposed rule change should facilitate transactions in securities and remove impediments to a free and open market by eliminating the need for OCC to register Phlx listed options in those states that currently grant a blue sky exemption to Phlx's Tier I securities. This rule change should help to eliminate some of the costs associated with listing options as well as making the process of listing options easier and quicker.

As discussed above, under the rule being approved herein, OCC cleared options will be designated as Tier I securities for blue sky purposes only. Accordingly, the rule change does not affect or change in any way the standards that must be met to initially, or continue to, list equity and index options or such other OCC issued options permitted under Phlx rules. In approving the Phlx's proposal, the Commission recognizes that the listing criteria set forth in Phlx Rules 803 through 805 for Tier I securities are for equity-type securities as opposed to options issued by the OCC. Nevertheless, because it is clear under Phlx's rule that listed options will still have to meet options listing criteria and that the Tier I designation for options is merely to eliminate the need to register such securities under certain state blue sky laws, we believe the change is appropriate and consistent with the Act.<sup>12</sup>

Finally, as noted above, in conjunction with this proposal, NASAA and Phlx have agreed that OCC issued options may be designated as Tier I securities for blue sky purposes,<sup>13</sup> and NASAA has represented to the Commission that the Phlx MOU will be amended as soon as practical to reflect

this agreement.<sup>14</sup> Accordingly, this rule change will not become operative until NASAA amends the Phlx MOU to permit OCC issued options to be designated as Tier I securities.<sup>15</sup> This amendment would ensure that the MOU is consistent with Phlx rules designating OCC cleared options as Tier I securities, and that those states that grant Phlx a blue sky exemption based on the MOU will recognize such exemption for Phlx listed options. In addition, in its letter to the Commission, NASAA states that this approach is similar to the structure adopted in the MOU between the PSE and NASAA.<sup>16</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-Phlx-96-41 be, and hereby is, approved contingent upon NASAA's amendment of the Phlx MOU to permit OCC issued options to be designated as Tier I securities.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

Margaret H. McFarland,  
Deputy Secretary.

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[Release No. 34-38265; File No. SR-Phlx-96-23]

## Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Options Specialist Evaluations.

February 11, 1997.

On July 1, 1996, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to modify its procedures for evaluating options specialists units. Notice of the proposal was published for comment and appeared in the Federal Register on September 12, 1996. The exchange subsequently filed Amendment No. 1 to the proposed rule change on December 2, 1996.<sup>3</sup> No comment letters were

<sup>7</sup> See Securities Act Release No. 6810 (Dec. 16, 1988), 53 FR 52550 (Dec. 28, 1988).

<sup>8</sup> See *supra* note 6 n. 12.

<sup>9</sup> See Rules Phlx 803 through 805 for equity and debt security listing standards; Phlx Rules 1009 and 1009A for listing applicable to options on equities and indexes respectively.

<sup>10</sup> See *supra* note 9.

<sup>11</sup> See *supra* notes 3 and 5. As discussed above, NASAA plans to revise the Phlx MOU. The Commission notes that this approval order is contingent on the NASAA's formal amendment of the Phlx MOU to permit OCC issued options to be designated as Tier I securities.

<sup>12</sup> The Commission notes that Phlx's proposed rule is almost identical to the Pacific Stock Exchange's ("PSE") current rule designating PSE listed options as PSE Tier I securities for blue sky purposes.

<sup>13</sup> See *Supra* note 3.

<sup>14</sup> See *supra* notes 5 and 11.

<sup>15</sup> *Id.*

<sup>16</sup> See *supra* note 3.

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

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

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

<sup>3</sup> Letter from Michele R. Weisbaum, Vice President and Associate General Counsel, Phlx, to  
Continued