

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44366; File No. SR-Phlx-2001-36]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. To Revise the Fine Schedule for Options Floor Procedure Advices

May 29, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder, notice is hereby given that on May 17, 2001, 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 Exchange. The Phlx amended the proposal on May 29, 2001.³ 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 proposes to amend the fine schedule applicable to Option Floor Procedure Advices ("Advices") such that there would be two fine schedules: a minor fine schedule and a major fine schedule.⁴ The minor fine schedule is proposed to be:

1st Occurrence—\$250.00

2nd Occurrence—\$500.00

3rd Occurrence—\$1,000.00

4th Occurrence and Thereafter—

Sanction is discretionary with Business Conduct Committee

For purposes of determining which fine schedule applies, the following Advices and portions of Advices are considered to be minor:

- A-1, Responsibility of Displaying Best Bids and Offers
- A-2, Types of Orders to be Accepted onto the Specialist's Book
- A-6, Cancel/Replacement Process
- A-7, Responsibility to Cancel
- A-12, Opening Rotations and SORT Procedures
- A-13, paragraph (b), Failure to Receive Approval to Disengage Auto-X
- A-14, Equity and Index Option Opening Parameters
- B-2, Crowd Courtesy
- B-3, Trading Requirements
- B-8, Use of Floor Brokers by an ROT While on the Floor
- B-12, PHLX ROTs and Specialists Entering Orders for Execution on Other Exchanges in Multiply Traded Options
- C-1, Ascertaining the Presence of ROTs in a Trading Crowd
- C-8, Option Specialist Evaluations
- F-1, Use of Identification Letters and Numbers
- F-3, Members' Requests for Sold Sale Designation
- F-4, Orders Executed as Spreads, Straddles, Combinations or Synthetics and Other Order Ticket Marking Requirements
- F-6, Option Quote Parameters
- F-15(b)(i), Minor Infractions of Position/Exercise Limits and Hedge Exemptions
- F-23, Clerks in the Crowd
- F-24(c)(iii), Signing-on/off the Wheel
- F-25, Fingerprinting Floor Personnel
- G-1, Index Option Exercise Advice Forms

The major fine schedule is proposed to be:

1st Occurrence—\$500.00

2nd Occurrence—\$1,000.00

3rd Occurrence—\$2,000.00

4th Occurrence and Thereafter—

Sanction is discretionary with Business Conduct Committee

For purposes of determining which fine schedule applies, the following Advices or portions of the Advices are considered to be major:

- A-13, paragraph (a), Auto Execution Engagement/Disengagement Responsibility
- B-1, Responsibility to Make Markets
- B-4, Phlx ROTs Entering Orders From On-Floor and Off-Floor for Execution on the Exchange
- B-5, Agency-Principal Restrictions
- B-6, Section B, Priority Of Options Orders for Equity and Index Options by Account Type
- C-2, Clocking Tickets for Time of Entry on the Floor
- C-3, Handling Orders of Phlx ROTs and Other Registered Options Market Makers

- C-4, Floor Brokers Handling Orders for Same Firm
- C-5, ROTs Acting as Floor Brokers
- C-7(b), Responsibility to Represent Orders to the Trading Crowd
- E-1, Required Staffing of Options Floor
- F-5, Changes or Corrections to Material Terms of a Matched Trade
- F-8, Failure to Comply with an Exchange Inquiry
- F-9, Dual Affiliations
- F-11, Splitting Orders
- F-12, Responsibility for Assigning Participation
- F-13, Supervisory Procedures Relating to ITSFEA
- F-15(a) and (b)(ii), Minor Infractions of Position/Exercise Limits and Hedge Exemptions
- F-19, Clearing Agents' Responsibility for Carrying Positions in Market Maker Accounts
- F-30, Options Trading Floor Training.

The Exchange proposes that violations of Advice C-9, Floor Brokers and Clerks Trading in their Customer Accounts, be immediately referred to the Business Conduct Committee to determine the appropriate sanction.

The Exchange also proposes to change all the fine schedules that currently operate on a one-year calendar basis to a two-year calendar basis.⁵ For example, a second violation of the same Advice that occurs within a 24-month period would be considered a second occurrence.

The text of the proposed rule change is available at the principal office of the Exchange 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 Phlx 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 Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

⁵ The following Advices are affected by the proposed change to a two-year calendar basis: A-1, A-7, A-12, A-13, A-14, B-2, B-3, B-5, B-6, C-1, C-2, C-5, C-7, C-8, E-1, F-1, F-3, F-4, F-6, F-11, F-12, F-15, F-24(c)(iii), F-25, and G-1.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See May 25, 2001 letter from Louise Corso, Vice President Director of Enforcement, Phlx, to Joseph P. Morra, Special Counsel, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, the Phlx added language to the proposal regarding Advice B-12, PHLX ROTs and Specialists Entering Orders for Execution on Other Exchanges in Multiply Traded Options, which was inadvertently omitted in the original filing.

⁴ The Phlx does not propose to make changes to advices A-11; B-6, Sections C and D; and F-2. Changes to those Advices will be made in separate rule filings. No changes have been proposed for the Advices that relate to foreign currency options: B-7, F-16, F-17, F-18, F-20, and F-21. Finally, no change is proposed for Advice F-27 because the Phlx considers it to be more akin to a fee than a fine.

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

1. Purpose

The Phlx proposes to amend the fine schedule applicable to Advices such that there would be two fine schedules: a minor fine schedule and a major fine schedule. The fine schedules associated with these Advices are administered pursuant to Phlx Rule 970, which codifies the Exchange's minor rule violation enforcement and reporting plan ("Plan").⁶

This proposal would increase the fines above their current levels, delete "warnings" as a sanction for the first occurrence, and ease the burden of floor officials in administering fines by having only two fine schedules. For example, Advice B-6, Priority of Options Orders for Equity Options and Index Options by Account Type, misrepresenting a broker-dealer order in order to receive priority over a customer, the first violation of section B of this Advice currently only receives a warning. Under the proposal, the first violation would be subject to a fine of \$500. The Phlx believes that the Advices designated as major are particularly important to the maintenance of fair and orderly markets in options on the Exchange as well as for the protection of investors and the public interest. For example, the Phlx proposes that violations of Advice B-1, Responsibility to Make Markets, be considered a major violation because the ability of customers to receive certain execution guarantees may be compromised where floor traders fail to provide the liquidity required under Advice B-1.

In addition, certain fine schedules have not been updated for a long time, or at all. For example, Advice A-1, Responsibility of Displaying Best Bids and Offers, still applies the original fine schedule from when it was first adopted.⁷ The Exchange believes that the fine schedules should be updated to

better reflect the severity of the violations.

Certain Advices currently do not have a fine schedule because they do not contain a finable offense.⁸ These appear in the Advice handbook for ease of reference on the trading floor or merely contain explanatory (as opposed to obligatory) language. Certain other Advices require referral to the Business Conduct Committee for sanctions due to the severity of the violation.⁹ For these two types of Advices, the Phlx does not propose any modifications at this time.

The Exchange also proposes to increase the time period for relating back to prior violations for all fine schedules, such that those on a one-year running calendar basis shall be increased to a two-year running calendar basis.¹⁰ Some fine schedules operate on a three-year running calendar basis.¹¹ This proposed increase in the time period would subject violators to greater sanctions. The Phlx believes that imposing higher penalties for violations of an Advice which occur more than once during a two-year period is consistent with the existing framework of graduated fines and should increase the Exchange's ability to deter repeat offenders.

2. Statutory Basis

The Phlx believes the proposed rule change is consistent with Section 6 of the Act¹² in general, and furthers the objectives of Section 6(b)(5)¹³ in particular, in that it is designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest because it should provide an appropriate form of deterrence for violation of certain Advices. In addition, the Phlx believes that the proposed rule change is

⁸ See Advices A-3, A-4, B-9, B-10, D-1, D-2, F-7, F-10, and F-22.

⁹ See Advices A-5, A-9, A-10, B-3(b), B-11, C-7(a), C-9, F-14, F-24 (except (c)(iii)), F-28, and G-2.

¹⁰ A "two-year running calendar basis" means that a violation of an Advice that occurs within two years of the first violation of that Advice will be treated as a second occurrence, and any violation of an Advice within two years of the previous violation of that Advice will be subject to the next highest fine specified in the Advice. See Securities Exchange Act Release No. 41201 (March 22, 1999), 64 FR 15391 (March 31, 1999) (SR-Phlx-99-06). The terms "running" and "rolling" calendar basis are often used interchangeably. See, e.g., Securities Exchange Act Release No. 33130 (November 2, 1993), 58 FR 59502 (November 9, 1993) (SR-Phlx-93-28).

¹¹ See Advices A-2, B-1, B-4, B-8, C-4, F-2, F-5, F-8, F-9, F-13, F-19, F-23, and F-30.

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(5).

consistent with Section 6(b)(6) of the Act¹⁴ which requires that rules of the Exchange provide that its members be appropriately disciplined for violations of the Act as well as the rules and regulations thereunder; specifically, the proposal provides prompt, appropriate, and effective discipline for repeat violations of Advices.

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

The Phlx does not believe that the proposed rule change would 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 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 Exchange 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, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20529-0609. 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 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

¹⁴ 15 U.S.C. 78f(b)(6).

⁶ Securities Exchange Act Rule 19d-1(c)(1), 17 CFR 19d-1(c)(1), requires any self-regulatory organization for which the Commission is the appropriate regulatory agency that takes any final disciplinary action with respect to any person to promptly file a notice thereof with the Commission. However, minor rule violations not exceeding \$2,500 are not deemed final and therefore not subject to the same reporting requirements.

⁷ See Securities Exchange Act Release No. 23296 (June 4, 1986) 51 FR 21430 (June 12, 1986) (SR-Phlx-86-11). See also Securities Exchange Act Release No. 43126 (Aug. 7, 2000), 65 FR 49621 (Aug. 14, 2000) (SR-Phlx-00-34).

the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-2001-36 and should be submitted by June 26, 2001.

For the Commission, By the Division of Market Regulation, pursuant to delegated authority.¹⁵

Jonathan G. Kaz,
Secretary.

[FR Doc. 01-14028 Filed 6-4-01; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3341, Amdt. #1]

State of Minnesota

In accordance with a notice received from the Federal Emergency Management Agency, dated May 29, 2001, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on March 23, 2001 and continuing through May 29, 2001. The above-numbered Declaration is also amended to include Aitkin, Big Stone, Carlton, Clay, Dakota, Kanabec, Lac qui Parle, Mille Lacs, Morrison, Mower, Norman, Olmstead, Otter Trail, Pine, Polk, Ramsey, Redwood, Renville, Rice, Sibley, Stearns, Swift, Todd, Traverse, Wilkin and Wright Counties in the State of Minnesota as disaster areas caused by flooding and severe winter storms, flooding and tornadoes occurring between March 23, 2001 and May 29, 2001.

In addition, applications for economic injury loans from small businesses located in Becker, Brown, Carver, Cass, Clearwater, Cottonwood, Crow Wing, Hennepin, Isanti, LeSueur, Mahnomen, Marshall, McLeod, Meeker, Murray, Nicollet, Pennington, Red Lake, Scott and Wadena Counties in the State of Minnesota; Mitchell and Howard Counties in the State of Iowa; Cass, Grand Forks, Richland and Traill Counties in the State of North Dakota; and Grant and Roberts Counties in the State of South Dakota may be filed until the specified date at the previously designated location. Any counties contiguous to the above named primary counties and not listed here have been previously declared.

The number assigned for economic injury in the State of North Dakota is 9L7700.

All other information remains the same, *i.e.*, the deadline for filing

applications for physical damage is July 15, 2001 and for economic injury the deadline is February 15, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: May 30, 2001.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 01-14111 Filed 6-4-01; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board, Public Meeting

The U.S. Small Business Administration National Small Business Development Center Advisory Board will hold a public meeting on Sunday, June 17, 2001, from 9:00 a.m. to 5:00 p.m. PST. at the Doubletree Hotel Seattle Airport, Seattle, Washington, Cascade Room 1 to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration or others present. Anyone wishing to make an oral presentation to the Board must contact Ellen Thrasher, in writing by letter or fax no later than June 6, 2001 in order to be included on the agenda. For further information, please write or call Ellen Thrasher, Designated Federal Officer U. S. Small Business Administration, 409 Third Street, SW, Fourth Floor, Washington, DC 20416. Telephone number (202) 205-6817, FAX (202) 205-7727.

Nancyellen Gentile,

Committee Management Officer.

[FR Doc. 01-14095 Filed 6-4-01; 8:45 am]

BILLING CODE 8025-01-U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending May 25, 2001

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST-2001-9725.

Date Filed: May 21, 2001.

Parties: Members of the International Air Transport Association.

Subject: PTC31 SOUTH 0106 dated May 18, 2001. Expedited South Pacific

Resolutions r1-r4. Intended effective date: August 1, 2001.

Andrea M. Jenkins,

Federal Register Liaison.

[FR Doc. 01-14100 Filed 6-4-01; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending May 25, 2001

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST-2001-9737.

Date Filed: May 22, 2001.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 12, 2001.

Description: Application of Vensecar Internacional C.A. pursuant to 49 U.S.C. 41302 and 14 CFR Parts 211 and 302 (subpart B), requesting a foreign air carrier permit, authorizing it to engage in scheduled foreign air transportation of property and mail between a point or points in Venezuela, on the one hand, and Miami, Florida, on the other hand, via the Netherlands West Indies, Jamaica and Cuba, as permitted by the U.S.-Venezuela Bilateral Air Transport Services Agreement.

Andrea M. Jenkins,

Federal Register Liaison.

[FR Doc. 01-14099 Filed 6-4-01; 8:45 am]

BILLING CODE 4910-62-P

¹⁵ 17 CFR 200.30-3(a)(12).