

applicable; and (iii) modifying references to SEC Rules 15c3-1 and 15c3-3 to reflect SEC amendments to those rules.

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

The NASD believes that the proposed Suitability Interpretation contained in the proposed rule change, as amended, is consistent with the intent of the Act as amended by the Government Securities Amendments.⁶² The proposed Suitability Interpretation expands the suitability rule contained under Article III, Section 2(a) of the Rules of Fair Practice to all securities transactions, including transactions in exempted securities, except for municipals. While the proposed Suitability Interpretation acknowledges that a member's relationships with institutional customers may be different from the normal member/retail customer relationship, it does not unfairly discriminate against such institutional customers. The proposed rule change applies the suitability rule under Article III, Section 2 of the Rules of Fair Practice to both retail and institutional customers in connection with all securities transactions, other than municipals. The proposed Suitability Interpretation provides members with an appropriate analysis of their suitability obligations to institutional customers based on the institutional customer's capability to evaluate investment risk independently and the extent to which the customer is exercising independent judgement in evaluating the member's recommendation.⁶³

On the basis of the foregoing, the NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were solicited or received as to Amendment No. 3 to the proposed rule change.

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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. 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-95-39 and should be submitted by April 22, 1996.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-6765 Filed 3-20-96; 8:45 am]

BILLING CODE 8010-01-P

[Release No. 34-36976; File no. SR-Phlx-96-07]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., To Adopt a Market Index Option Hedge

Exemption March 14, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 13, 1996, 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 self-regulatory organization.³ The

¹ 15 U.S.C. § 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1994).

³ On February 26, 1996, the Phlx filed an amendment to the rule proposal. See letter from Gerald D. O'Connell, First Vice President, Market Regulation and Trading Operations, Phlx, to Michael Walinskas, Branch Chief, Office of Market Supervision, Division of Market Regulation, Commission, dated February 26, 1996 ("Amendment No. 1"). Amendment No. 1 made several minor changes to the rule proposal in order to make it correspond to the final draft of the narrow-based (industry) index option hedge exemption that was recently approved for the Phlx

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 Phlx, pursuant to Rule 19b-4 of the Act, proposes to amend Commentary .01 to Phlx Rule 1001A to establish a hedge exemption from broad-based (market) index option position limits.

Specifically, the Phlx proposes to exempt from position and exercise limits⁴ any position in a market index option that is hedged by share positions in at least 20 stocks, or securities convertible into such stock, in four industry groups comprising the index, of which no one component security accounts for more than 15% of the value of the portfolio hedging the index option position. Under the proposal, no position in a market index option may exceed two-times⁵ the broad-based index option position specified in Phlx Rule 1001A(a).⁶ In addition, the underlying value of the option position may not exceed the value of the underlying portfolio employed as the hedge. The proposed exemption would be available to public customers, as well as to firm and proprietary traders.

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

by the Commission. See Securities Exchange Act Release No. 36858 (February 16, 1996), 61 FR 7295 (February 27, 1996) (File No. SR-Phlx-95-45).

⁴ Position limits impose a ceiling on the number of option contracts which an investor or group of investors acting in concert may hold or write in each class of options on the same side of the market (i.e., aggregating long calls and short puts or long puts and short calls). Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class of options within five consecutive business days.

⁵ For instance, if the position limit for a market index option is 25,000 contracts, an additional 50,000 contracts under this proposal would be permitted, for a total of 75,000 contracts.

⁶ Under Phlx Rule 1001A(a), the Value Line Composite Index ("VLE"), the U.S. Top 100 Index ("TPX"), and the National Over-the-Counter Index ("XOC") each have a position limit of 25,000 contracts, of which no more than 15,000 contracts can be in the nearest expiration month. The Phlx notes that the Big Cap Index ("MKT") is no longer listed on the Exchange.

⁶² The Association received one comment letter that argued that the proposed Suitability Interpretation distinguished between institutional and retail customers and, therefore, was contrary to the intent of the Government Securities Amendments. See Comment Letter No. 3, supra note 5.

⁶³ See H.R. 103-225, 103rd Cong., 1st Sess. (September 23, 1993).

Phlx 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

The Phlx is proposing to adopt a broad-based index option hedge exemption under which broad-based index option positions hedged in accordance with the proposal would be entitled to exceed existing position limits by up to two-times above the limit. The purpose of the proposal is to establish a provision parallel to the hedge exemption for equity options⁷ as well as the broad-based index option hedge exemptions that are in place on other option exchanges.⁸

In order to qualify for the exemption, the market index option position must be hedged by share positions in at least 20 stocks, or securities convertible into such stock,⁹ in four industry groups comprising the index, of which no one component security accounts for more than 15% of the value of the portfolio hedging the index option position. Under the proposal, no position in a market index option may exceed two-times the broad-based index option position specified in Phlx Rule 1001A(a). In addition, the underlying value of the option position may not exceed the value of the underlying portfolio employed as the hedge.¹⁰ In

addition, under the proposal, exercise limits will continue to correspond to position limits, so that investors may exercise the number of contracts set forth as the position limit, as well as those contracts exempted by this proposal, during five consecutive business days.¹¹

The Phlx notes that broad-based index option hedge exemptions are in place on other options exchanges. Generally, these index option hedge exemptions allow public customers to apply for position limit exemptions in broad-based index options that are hedged with exchange-approved qualified stock portfolios. A qualified portfolio is comparison of net long or short positions in at least 20 common stocks or securities readily convertible into such common stock, none of which accounts for more than 15% of the value of the portfolio.

The Phlx notes that the Chicago Board Options Exchange, Inc. ("CBOE"), in CBOE Rule 24.4, provides a broad-based index option hedge exemption for public customers holding positions in broad-based index options other than a.m.-settled, European-style Standard and Poor's ("S&P") 500 Index options, and Quarterly Index Expirations ("QIXs") and Capped-Style QIXs ("Q-CAPS") on the S&P 500 Index. Under Interpretation and Policy .01 to CBOE Rule 24.4, exempted positions may not exceed 75,000 contracts (two-times above the regular position limit),¹² except as otherwise provided in CBOE Rule 24.4, Interpretation and Policies .02 and .03, and except that exempted combined positions in options based on the S&P/Barra Value Index and the S&P/Barra Growth Index may not exceed 65,000 same-side of the market options contracts.¹³

by the index value and the multiplier; this value cannot exceed the value of the underlying portfolio.

¹¹ See Phlx Rule 1002A.

¹² Under CBOE Rule 24.4(a), the position limit for broad-based index options, other than Russell 2000 Index options and S&P/Barra Growth Index and S&P/Barra Value Index options, is 25,000 contracts on the same-side of the market. CBOE Rule 24.4(b), (c), and (d) contain separate position limit provisions for a.m.-settled, European-style option contracts on the S&P 500 Index, and QIXs and Q-CAPS on the S&P 500 Index, QIXs and Q-CAPS on the S&P 100 Index, and QIXs on the Russell 2000 index.

¹³ CBOE Rule 24.4, Interpretation and Policy .02 provides a hedge exemption for certain positions in a.m.-settled, European-style S&P 500 Index options, and QIXs and Q-CAPS on the S&P 500 Index. Specifically, Interpretation and Policy .02(d) provides that a customer's exempted position may not exceed 150,000 same-side of the market contracts in a.m.-settled S&P 500 Index options, and QIXs and Q-CAPS on the S&P 500 Index. Interpretation and Policy .02(b) states that a money manager may not hold in its aggregated accounts more than 250,000 exempted same-side of the

Similarly, Commentary .01 to the American Stock Exchange, Inc.'s ("Amex") Rule 904C provides a broad-based index option position limit exemption for public customers who satisfy the criteria established by AMEX.¹⁴

In light of the Exchange's experience with the equity option hedge exemption, as well as its review of the rules of the other options exchanges, the Phlx believes that a similar hedge exemption for its market index options is appropriate. The Phlx also believes that the proposed conditions for granting such an exemption are reasonable and in line with prior Commission-approved provisions.

According to the Phlx, trading volume for index options has markedly increased. In 1994, volume increased two-fold over 1993, from 1,119,147 contracts to 2,456,685. In 1995, volume remained steady with over 2,783,043 contracts traded. The Phlx attributes the recent growth in trading and open interest to institutional trading, which, according to the Phlx, is typically hedged by baskets of the underlying stocks.

The Phlx proposes to exempt positions in broad-based options in a manner which balances the hedging needs of index options traders with the Exchange's obligation to maintain a fair and orderly market. The Phlx believes that a hedge exemption up to 75,000 contracts for broad-based index options would considerably enhance the attractiveness of these products for institutional traders, who would, in turn, trade more of the product in a hedged manner and thereby provide stabilizing liquidity in both the index options and the underlying securities.¹⁵

In 1989, the Commission approved a Phlx proposed hedge exemption for Utility Index options ("UTY"), on a pilot basis.¹⁶ Although the UTY hedge

market option contracts or, in a single account, more than 135,000 exempted same-side of the market option contracts.

¹⁴ In addition, Amex Rule 904C, Commentary .02 provides a facilitation exemption for Institutional Index and MidCap Index options up to 100,000 and 75,000 contracts, respectively.

¹⁵ In support of this contention, the Phlx believes that the hedge exemption for S&P 100 Index ("OEX") options, which permits positions up to 75,000 contracts (two times above the regular position limit), serves as a significant liquidity provider for that product.

¹⁶ Specifically, the UTY hedge exemption provision exempted any position taken by a public customer in UTY options that was hedged by at least 10 UTY component stocks, of which no one component stock could account for more than 15% of the stock portfolio hedging the UTY position. See Securities Exchange Act Release No. 27486 (November 30, 1989), 54 FR 50675 (December 8, 1989) (order approving File No. SR-Phlx-89-27).

Continued

⁷ See Phlx Rule 1001, Commentary .07. See also Securities Exchange Act Release No. 35738 (May 18, 1995), 60 FR 27573 (May 24, 1995) (order approving permanent hedge exemption pilot programs) (File Nos. SR-Phlx-95-10, SR-Amex-95-13, SR-CBOE-95-13, SR-NYSE-95-04, and SR-PSE-95-05).

⁸ See *infra* notes 12-14 and accompanying text.

⁹ The Exchange permits the use of convertible securities in its equity option hedge exemption. See Securities Exchange Act Release No. 32174 (April 20, 1993), 58 FR 25687 (April 27, 1993) (order approving File No. SR-Phlx-92-22). Similarly, other options exchanges permit the use of convertible securities with respect to broad-based index option hedge exemptions.

¹⁰ The value of the underlying portfolio is determined as follows: (1) the total market value of the net stock position; less (2) the value of: (a) any offsetting calls and puts in the respective index option; (b) any offsetting positions in related stock index futures or options; and (c) any economically equivalent positions.

The values of offsetting positions are determined by multiplying the number of opposite-side-of-the-market (offsetting) calls, puts, or futures contracts by the index value and by the index multiplier. Then, the value is subtracted from the market value of the portfolio. This number must be compared with the underlying value of the option position in excess of the position limit being hedged/exempted, which is calculated by multiplying the number of option contracts for which the exemption is sought

exemption pilot program applied only to customers, the Phlx believes that it is appropriate and necessary to expand the availability of the exemption beyond public customers. The Phlx believes that significant increases in the depth and liquidity of the market for these index options could result from permitting firm and proprietary traders to be eligible for the exemption. According to the Phlx, because customers rely, for the most part, on a limited number of proprietary traders to facilitate large-sized orders, not including such traders in the exemption effectively reduces the benefit of the exemption to customers. While large-sized positions in market index options are most commonly initiated by institutional trades hedging stock portfolios on behalf of public customers, the Phlx believes that proprietary traders should be afforded the same exemption so that they may fulfill their role as facilitators.

The Phlx also believes that the hedge exemption is necessary to better meet the needs of investors who use Phlx market index options for investment and hedging purposes. According to the Phlx, many institutional traders and portfolio managers deal in dollar amounts much greater than that permissible under current position limit levels and have expressed that Exchange position limits hamper their ability to fully utilize such index options. As a result, the Phlx believes that many index options are ineffective for such traders, who often turn to futures instruments where ample relief is already available.¹⁷ Thus, the Phlx believes that the proposed hedge exemption should alleviate the situation where investors with substantial hedging needs are discouraged from participating in the options market due to existing position limits.

The Phlx believes that the proposed broad-based index option hedge exemption should not increase the potential for disruption or manipulation in the markets for the stocks underlying each index. The Phlx notes that this is because the proposal incorporates several surveillance safeguards, which the Phlx will employ to monitor the use of this exemption. Specifically, the Exchange will require that a form be filed by member firms and their

customers who seek exemptions, in lieu of granting an automatic exemption. Moreover, the hedge exemption form must be kept current, with information updated as warranted. Any information concerning the dollar value and composition of the stock portfolio,¹⁸ or its equivalent, the current hedged and aggregate options positions, and any stock index futures positions must be promptly provided to the Exchange. In addition, the Exchange's Market Surveillance Department will monitor trading activity in Phlx traded index options and the stocks underlying those indexes to detect potential frontrunning and manipulation abuses, as well as review such trading to ensure that the closing of positions subject to the exemption are conducted in a fair and orderly manner. On a daily basis, the Exchange's Market Surveillance Department will also monitor each option contract to ensure that it is hedged by the equivalent dollar amount of component securities.

The Phlx also notes that the proposal contains several specific safeguards. First, the hedge must consist of a previously established position in at least 20 of the stocks underlying the index, none of which may constitute more than 15% of the hedge portfolio, and must include stocks from at least four separate industry groups.¹⁹ Thus, not only does the basket of stocks comprising the hedge resemble the underlying index, but it also ensures that unwinding such positions will be spread out among a wide and disparate group of stocks.

Second, the proposal provides a ceiling on the maximum size of the options position by providing the positions established under the proposal may not exceed two-times the limits set forth in Exchange Rule 1001A(a).²⁰ In

addition, the Exchange may determine to grant a position limit exemption for less than the maximum of two-times above the limit.

Third, both the options and stock positions must be initiated and liquidated in an orderly manner. This means that a reduction of the options position must occur at or before the corresponding reduction in the stock portfolio position. Moreover, initiating or liquidating positions should not be conducted in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes or with a view toward taking advantage of any differential in price between a group of securities and an overlying stock position. The Exchange's Market Surveillance Department must be notified in writing for approval in advance of initiating or liquidating any such position as well as of any material change in the portfolio or futures positions which materially affects the unhedged value of the qualified portfolio.

Fourth, any securities that are used as a hedge pursuant to the rule may not also be used to hedge other option positions.

Fifth, the portfolio must be previously established and the options must be carried in an account with an Exchange member.

Sixth, if any member or member organization carrying an account which has received an exemption pursuant to this rule has reason to believe that as a result of an opening transaction, the position telescoping provisions of the rule, or the execution of a clearing member trade assignment agreement transaction ("CMTA"),²¹ that its customer, acting alone or in concert with others, directly or indirectly, violates this position limit exemption, then the member or member organization has violated this rule. Violation of any of these provisions, absent reasonable justification or excuse, will result in withdrawal of the hedge exemption and subsequent denial of an application for a hedge exemption.

Lastly, the value of the market index option position cannot exceed the dollar value of the underlying portfolio. The purpose of this requirement is to further ensure that sock transactions are not used to manipulate the market in a manner benefitting the option position.

This provision was approved for a one-year pilot program, which expired on November 30, 1990.

¹⁷ The Commission has recognized that under the rules promulgated by the Commodity Futures Trading Commission ("CFTC"), futures positions that are deemed to be bona fide hedging transactions are exempt from position limit rules. See Securities Exchange Act Release No. 25739 (May 24, 1988), 53 FR 20204 (June 2, 1988) (order approving File No. SR-CBOE-87-25).

¹⁸ The Phlx notes that as the dollar value of the hedging portfolio fluctuates, the number of exempt contracts may need to be adjusted.

¹⁹ To determine the share amount of each component required to hedge an exempt option position: index value \times index multiplier \times component's weighting = dollar amount of component. That amount divided by price = number of shares of component. Conversely, to determine how many options can be purchased based on a certain portfolio, divide the dollar amount of the basket by the index value \times the index multiplier.

²⁰ The Exchange notes that it is adopting the language "two times above the limit" to signify "in addition to" the current position limit. For instance, where the position limit is 25,000 contracts, an additional 50,000 hedged contracts would be permissible. This language parallels a recent change by another exchange. See Securities Exchange Act Release No. 36609 (December 20, 1995), 60 FR 67002 (December 27, 1995) (notice of File No. SR-CBOE-95-68). This exemption, however, may be used in addition to any other position limit exemption that is available under the Exchange's rules.

²¹ A CMTA agreement is an agreement between a Phlx Options Clearing Corporation ("OCC") member and a non-Phlx OCC member which enables the non-Phlx OCC member to have trades executed on its behalf on the Exchange by the Phlx member.

2. Statutory Basis

The Phlx believes that the proposed market index hedge exemption should increase the depth and liquidity of the broad-based index options market and allow more effective hedging with underlying stock portfolios without increasing the potential for market manipulation or disruption, consistent with the purposes of position limits. For the same reasons, the Exchange believes that exercise limits should correspond to the position limit exemption granted by the proposal. Accordingly, the Phlx believes that the proposed rule change is consistent with Section 6(b) of the Act in general, and with Section 6(b)(5) in particular,²² in that it is designed to promote just and equitable principles of trade, and, by promoting liquidity in the index options marketplace, will serve to protect investors and the public interest.

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 solicited or received with respect to the proposed rule change.

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

Within 35 days of the 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 Phlx consents, the Commission will:

A. by order approve the 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 at 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 the Phlx. All submissions should refer to File No. SR-Phlx-96-07 and should be submitted by April 11, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²³

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-6764 Filed 3-20-96; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice No. 2358]

Advisory Committee on International Communications and Information Policy; Public Meeting

The Department of State is holding the fourth meeting of its Advisory Committee on International Communications and Information Policy. The Committee was reestablished on August 11, 1994, in order to provide a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communication services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country interests.

The 24-person committee was appointed by Ambassador Vonya B. McCann, United States Coordinator for International Communications and Information Policy, U.S. Department of State, and serves under the Chairmanship of Ed Black, President, Computer & Communications Industry Association.

The purpose of this meeting will be to follow-up on the recent creation of working groups on various issues that

will help chart the future direction and work plan of the committee. The members will look at the substantive issues on which the committee should focus, as well as specific countries and regions of interest to the committee.

The committee will follow the procedures prescribed by the Federal Advisory Committee Act (FACA). Meetings will be open to the public unless a determination is made in accordance with the FACA Section 10(d), 5 U.S.C. 552b(c) (1) and (4) that a meeting or a portion of the meeting should be closed to the public.

This meeting will be held on Friday, April 12, 1996, from 9:30 a.m.-12 noon in Room 1107 of the Main Building of the U.S. Department of State, located at 2201 "C" Street, NW., Washington, DC 20520. While the meeting is open to the public, admittance to the State Department Building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, company, social security number, and date of birth to Shirlett Brewer at (202) 647-5233 or by fax at (202) 647-5957. All attendees must use the "C" Street entrance. One of the following valid ID's will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID.

For further information, contact the Executive Secretary of the committee, at (202) 647-5385.

Dated: March 12, 1996.

Timothy C. Finton,

Executive Secretary, Advisory Committee for International Communications and Information Policy.

[FR Doc. 96-6753 Filed 3-20-96; 8:45 am]

BILLING CODE 4710-45-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 USC Chapter 35).

DATES: March 15, 1996.

²² 15 U.S.C. § 78f(b)(5) (1988).

²³ 17 CFR 200.30-3(a)(12) (1994).