

definition of "good faith" margin requirements.

A new provision has been added (Section (f)(2)(L)) to incorporate the provisions currently contained in Regulation T regarding "exclusive designation" that allow a customer to designate which security position in an account is to be utilized to cover the required margin at the time an option order is entered; provided the member organization offers such a service.

Further, Section (f)(2)(M) has been added to incorporate those cash account transactions currently permitted under Regulation T and the debit put spread currently allowed pursuant to the Commission's no-action letter on "theoretical pricing."<sup>1</sup>

#### (2) Statutory Basis

The proposed rule change is consistent with the requirements of Section (6)(b)(5) of the Securities Exchange Act of 1934 (the "Act") which provides that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public. The proposed rule change is also consistent with the rules and regulations of the Board of Governors of the Federal Reserve System for the purpose of preventing the excessive use of credit for the purchase or carrying of securities, pursuant to Section 7(a) of the Act.

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

The Exchange believes that the proposed rule change will not impose 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

Comments were neither solicited nor 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 reason 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 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 submissions, 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, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the File No. SR-NYSE-97-01 and should be submitted by April 15, 1997.

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

**Jonathan G. Katz,**

Secretary.

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[Release No. 34-38416; File No. SR-PHLX-97-10]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to a Clarification of the Exemptions From the Exchange Examination Fee

March 18, 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 February 28, 1997, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange")

filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PHLX. 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

The PHLX, pursuant to Rule 19b-4 of the Act, proposes to amend one of the exemptions to its existing examination fee in order to clarify to which firms the fee is applicable. The text of the amendment to the fee schedule language is as follows (new text is italicized):

\* \* \* \* \*

#### Examination Fee—\$1,000 monthly

This fee is applicable to member/participant organizations for which the PHLX is the DEA. The following organizations are exempt: (1) inactive organizations; (2) organizations operating from the PHLX trading floor *which have demonstrated that at least 25% of their income as reflected on the most recently submitted FOCUS Report was derived from floor activities*; (3) organizations for any month where they incur transaction or clearing fees charged directly by the Exchange or by its registered clearing subsidiary, provided that the fees exceed the examination fee for that month; and (4) organizations affiliated with an organization exempt from this fee due to the second or third category. Affiliation includes an organization that is a wholly owned subsidiary of, or controlled by or under common control with, an "exempt" member or participant organization. An inactive organization is one which has no securities transaction revenue, as determined by semi-annual FOCUS reports, as long as the organization continues to have no such revenue each month.

### 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.

<sup>1</sup> Letter dated March 15, 1994 from Brandon Becker, Director, Division of Market Regulation addressed to Ms. Mary L. Bender (CBOE) and Mr. Timothy Hinkas (OCC).

<sup>1</sup> 15 U.S.C. § 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4 (1991).

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

The purpose of the proposed rule change is to amend the second exemption to the Exchange's \$1,000 per month examination fee.<sup>3</sup> This fee was initially adopted to recoup the costs of examining firms, for which the Exchange is the Designated Examining Authority ("DEA"), which contribute little if any revenue to the Exchange to offset the expense of conducting such examinations.<sup>4</sup> Because this fee was intended to pertain to a specific group of members and participants, a number of exemptions were carved out for firms which do generate enough revenue to the Exchange to offset examining costs or which are inactive. One of the exemptions, organizations operating from the PHLX trading floor, has proved to be too vague. The Exchange has found that a number of member or participant organizations which operate primarily or exclusively from off the floor, have entered into arrangements whereby they argue that they meet this exemption.<sup>5</sup> Specifically, a floorbroker or Registered Options Trader from another firm which does conduct business on the floor becomes dually affiliated with the off-floor member or participant organization and may or may not ever do any business for that firm on the floor. These firms have argued that this dual affiliation would qualify them as an organization operating from the PHLX trading floor since they now have an affiliated person

on the trading floor. Under this arrangement, these off-floor firms may still not generate revenue to offset the costs of examining them. The Exchange believes, however, that the description of the fee's exemption for firms operating from the trading floor may have been unintentionally vague enough to permit this interpretation and thus determined to add an objective measurement.

Under this new test, any organization which can demonstrate that it has derived at least 25% of its revenues in a calendar quarter from floor trading activity, will be deemed to have covered the cost of examining the firm and will then be exempt from the \$1,000 per month fee.

The proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(4), in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities in that it clarifies which firms are deemed to have paid their share of the cost of an examination by setting an objective income test.

*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 either solicited or received.

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

The foregoing rule change has become effective on February 28, 1997, pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and subparagraph (e)(2) of Rule 19b-4 thereunder,<sup>7</sup> because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of such proposed 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 Room. Copies of such filing will also be available for inspection and copying at the principal office at the PHLX. All submissions should refer to File No. SR-PHLX-97-10 and should be submitted by April 15, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Jonathan G. Katz,**  
Secretary.

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[Release No. 34-38415; File No. SR-Phlx-97-05]

**Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Reducing the Value of the Super Cap Index**

March 18, 1997.

On January 9, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to reduce the value of its Super Cap Index ("Index") option ("HFX") to one-half its present value by doubling the divisor used in calculating the Index. The Index is comprised of the top five options-eligible common stocks of U.S. companies traded on the New York Stock Exchange ("NYSE"), as measured by capitalization. The other contract

<sup>3</sup> See Securities Exchange Act Release No. 35091 (Dec. 12, 1994), 59 FR 65558 (Dec. 20, 1994).

<sup>4</sup> In the filing submitted by the Exchange to adopt this fee, the Exchange noted that many of these firms are located in other geographic regions, thus requiring increased staff time and travel expenses to conduct examinations. It was further noted, that many of these firms trade products not available on the PHLX, thus requiring additional time and money to train and prepare the examiners who conduct the exams. Securities Exchange Act Release No. 35091 (Dec. 12, 1994), 59 FR 65558 (Dec. 20, 1994).

<sup>5</sup> Currently 13 firms are subject to the examination fee out of approximately 140 firms for which the Exchange is the DEA. Seven of the 13 firms made colorable arguments that they were not subject to the examination fee under the previous interpretation and the Exchange took note of their argument. Therefore, during the time prior to filing this proposed rule change, those firms were not charged the examination fee. Accordingly, this is a new fee to that class of firms that are now subject to the fee by reason of the 25% revenue test. Letter from Michele R. Weisbaum, Vice President and General Counsel, PHLX to Karl Varner, Office of Market Supervision, Division of Market Regulation, SEC, dated March 13, 1997; Letter from Michele R. Weisbaum, Vice President and General Counsel, PHLX to Karl Varner, Office of Market Supervision, Division of Market Regulation, SEC, dated March 17, 1997.

<sup>6</sup> 15 U.S.C. § 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(e).

<sup>8</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.