

general, 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 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 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 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CHX-97-15 and should be submitted by August 25, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38875; File No. SR-Phlx-97-18]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Telemarketing Practices by Members and Member Organizations

July 25, 1997.

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 June 30, 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 and II below, which Items have been prepared by the self-regulatory organization. On July 21, 1997, the Phlx submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Rule 762, Telemarketing, which is substantially similar to applicable provisions of the Federal Trade Commission rules adopted pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act").⁴

The proposal also amends Rule 605, Advertising, Market Letters, Research Reports and Sales Literature, requiring telemarketing scripts to be retained for three years and to make the rule

specifically applicable to foreign currency option participants and foreign currency option participants organizations as well as to members and member organizations.⁵

The text of the proposed rule change and Amendment No. 1 is available at the Office of the Secretary, Phlx, 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 self-regulatory organization 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 III below. The self-regulatory organization 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

Purpose

Under the Telemarketing Act, which became law in August 1994,⁶ the Federal Trade Commission adopted detailed regulations ("FTC Rules")⁷ to prohibit deceptive and abusive telemarketing acts and practices; the regulations became effective on December 31, 1995.⁸ The FTC Rules, among other things, (i) Require the maintenance of "do-not-call" lists and procedures, (ii) prohibit certain abusive, annoying, or harassing telemarketing calls, (iii) prohibit telemarketing calls before 8 a.m. or after 9 p.m., (iv) require a telemarketer to identify himself or herself, the company he or she works for, and the purposes of the call, and (v) require express written authorization or other verifiable authorization from the customer before the firm may use negotiable instruments called "demand drafts."⁹

⁵ According to the Exchange, it will issue an Information Circular advising the membership of the new telemarketing rules upon their approval, and clarifying that abusive, annoying or harassing telemarketing calls by members, foreign currency option participants, member organizations and foreign currency option participant organizations or their associated persons are violative of Phlx Rules 707 and 762.

⁶ See Telemarketing Act, *supra* note 4.

⁷ 16 CFR 310.

⁸ §§ 310.3-4 of FTC Rules.

⁹ *Id.* Pursuant to the Telemarketing Act, the FTC Rules do not apply to brokers, dealers, and other

Continued

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. § 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Michele R. Weisbaum, Vice President and Associate General Counsel, Phlx, to Deborah Flynn, Attorney, Division of Market Regulation, SEC, dated July 14, 1997 ("Amendment No. 1"). In Amendment No. 1, the Phlx replaced all references to "participant" and "participant organization" in the proposal with "foreign currency option participant" and "foreign currency option participant organization" to clarify the applicability of the proposed rule.

⁴ 15 U.S.C. §§ 6101-08.

Under the telemarketing Act, the SEC is required either to promulgate or to require the SROs to promulgate rules substantially similar to the FTC Rules, unless the SEC determines either that the rules are not necessary or appropriate for the protection of investors or the maintenance of orderly markets, or that existing federal securities laws or SEC rules already provide for such protection.¹⁰ The purpose of the proposed rule change is to add Phlx Rule 762 and to amend Phlx Rule 605 in response to the Commission's request that self-regulatory organizations ("SROs") promulgate rules substantially similar to applicable provisions of the FTC rules adopted pursuant to the Telemarketing Act.

Time Limitations and Disclosure: The proposed rule change adds Rule 762 to prohibit, under proposed paragraph (a)(1) to Rule 762, a member, foreign currency option participant, or person associated with a member or foreign currency option participant organization from making outbound telephone calls to a member of the public's residence for the purpose of soliciting the purchase of securities or related services at any time other than between 8 a.m.

securities industry professionals. Section 3(d)(2)(A) of the Telemarketing Act.

A "demand draft" is used to obtain funds from a customer's bank account without that person's signature on a negotiable instrument. The customer provides a potential payee with bank account identification information that permits the payee to create a piece of paper that will be processed like a check, including the words "signature on file" or "signature pre-approved" in the location where the customer's signature normally appears.

¹⁰ In response, the National Association of Securities Dealers ("NASD"), the Municipal Securities Rulemaking Board ("MSRB"), the New York Stock Exchange ("NYSE") and the American Stock Exchange ("Amex") have adopted rules to curb abusive telemarketing practices. See Securities Exchange Act Release Nos. 38009 (Dec. 2, 1996), 61 FR 65625 (Dec. 13, 1996) (order approving File No. SR-NASD-96-28); 38053 (Dec. 16, 1996), 61 FR 68078 (Dec. 26, 1996) (order approving File No. SR-MSRB-96-06); 38638 (May 14, 1997), 62 FR 27823 (May 21, 1997) (order approving File No. SR-NYSE-97-07); and 38724 (June 6, 1997), 62 FR 32390 (June 13, 1997) (order approving File No. SR-Amex-97-17).

The Commission has determined that the NASD Rule, the MSRB Rule, the NYSE Rule and the Amex Rule, together with the Exchange Act and the Investment Advisers Act of 1940, the rules thereunder, and the other rules of the SROs, satisfy the requirements of the Telemarketing Act, because the applicable provisions of such laws and rules are substantially similar to the FTC Rules except for those FTC Rules that involve areas already extensively regulated by existing securities laws or regulations or activities inapplicable to securities transactions. Securities Exchange Act Release No. 38480 (Apr. 7, 1997), 62 FR 18666 (Apr. 16, 1996). Accordingly, the Commission has determined that no additional rulemaking is required by it under the Telemarketing Act. *Id.* Notwithstanding this determination, the Commission still expects the remaining SROs to file similar proposals.

and 9 p.m. local time at the called person's location and to require, under proposed paragraph (a)(2) to Rule 762, such member, foreign currency option participant or person associated with a member or foreign currency option participant organization to promptly disclose to the called person in a clear and conspicuous manner the caller's identity and firm, the telephone number or address at which the caller may be contacted, and that the purpose of the call is to solicit the purchase of securities or related services.

Proposed paragraph (a)(3) to Rule 762 creates exemptions from the time-of-day and disclosure requirements of paragraphs (a)(1) and (a)(2) for telephone calls by any persons associated with a member or foreign currency option participant organization or other associated person acting at the direction of such persons for the purposes of maintaining and servicing existing customers assigned to or under the control of the associated persons, to certain categories of "existing customers." Proposed paragraph (a) also defines "existing customer" as a customer for whom the member or foreign currency option participant organization, or clearing broker or dealer on behalf of the member or foreign currency option participant organization, carries an account. Proposed subparagraph (a)(3)(i) exempts calls, by an associated person, to an existing customer who, within the preceding twelve months, has effected a securities transaction in, or made a deposit of funds or securities into, an account under the control of or assigned to the associated person at the time of the transaction or deposit. Proposed subparagraph (a)(3)(ii) exempts calls, by an associated person, to an existing customer who, at any time, has effected a securities transaction in, or made a deposit of funds or securities into an account under the control of or assigned to the associated person at the time of the transaction or deposit, as long as the customer's account has earned interest or dividend income during the preceding twelve months. Each of these exemptions also permits calls by other associated persons acting at the direction of an associated person who is assigned to or controlling the account. Proposed subparagraph (a)(3)(iii) exempts telephone calls to a broker or dealer. The proposed rule change also expressly clarifies that the scope of this rule is limited to the telemarketing calls described herein; the terms of the rule do not otherwise expressly or by implication impose on members or foreign currency options participants

any additional requirements with respect to the relationship between a member or foreign currency option participant and a customer or between a person associated with a member or foreign currency option participant organization and a customer.

Do-Not-Call List: Proposed paragraph (b) to Rule 762 requires each member or foreign currency option participant organization that engages in telephone solicitation to market its products and services to make and maintain a centralized do-not-call list of persons who do not wish to receive telephone solicitations from a member or foreign currency option participant organization or its associated persons.

Demand Draft Authorization and Recordkeeping: Proposed paragraph (c) to Rule 762 prohibits members and foreign currency option participants or persons associated with a member or a foreign currency option participant organization from obtaining from a customer or submitting for payment a check, draft, or other form of negotiable paper drawn on a customer's checking, savings, share, or similar account ("demand draft") without that person's express written authorization, which may include the customer's signature on the instrument, and to require the retention of such authorization for a period of three years. The proposal also states that this provision shall not, however, require maintenance of copies of negotiable instruments signed by customers.

Telemarketing Scripts: The proposed rule change also amends Phlx Rule 605 and its accompanying commentary and supplementary material to include "telemarketing scripts" within its rules governing the issuance of advertisements, market letters, research reports and sales literature. Therefore, telemarketing scripts will be required to be retained for a period of three years. The Exchange also proposes to amend parts .02, .08 and .10 to the Exchange's Supplementary Information Regarding Rule 605, relating to Disclosure, Claims for Research and Identification of Sources, to clarify the applicability of these guidelines to foreign currency option participants and foreign currency option participant organizations.

2. Statutory Basis

The Exchange believes that the basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)¹¹ that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the

¹¹ 15 U.S.C. § 78f(b)(5).

mechanism of a free and open market and, in general, to protect investors and the public interest.

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

The Exchange believes that the proposed rule change will impose no 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.¹²

III. 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 Room. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Phlx-97-18 and should be submitted by August 25, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular,

with Section 6(b)(5) of the Act¹³ which requires, among other things, that the rules of the exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.¹⁴ The proposed rule change, as amended, is consistent with these objectives in that it imposes time restriction and disclosure requirements, with certain exceptions, and members' telemarketing calls, requires verifiable authorization from a customer for demand drafts, and prevents members from engaging in certain deceptive and abusive telemarketing acts and practices while allowing for legitimate telemarketing activities.

The Commission believes that the addition of Rule 762, prohibiting a member or foreign currency option participant or person associated with a member or foreign currency option participant organization from making outbound telephone calls to the residence of any person for the purpose of soliciting the purchase of securities or related services at any time other than between 8 a.m. and 9 p.m. local time at the called person's location, without the prior consent of the person, is appropriate. The Commission notes that, by restricting the times during which a member or foreign currency option participant or person associated with a member or foreign currency option participant organization may call a residence, the proposal furthers the interest of the public and provides for the protection of investors by preventing members and foreign currency option participant organizations from engaging in unacceptable practices, such as persistently calling members of the public at unreasonable hours of the day and night.

The Commission also believes that the addition of Rule 762, requiring a member or foreign currency option participant or person associated with a member or foreign currency option participant organization to promptly disclose to the called person in a clear and conspicuous manner the caller's identity and firm, telephone number or address at which the caller may be contacted, and that the purpose of the call is to solicit the purchase of securities or related services, is appropriate. By requiring the caller to identify himself or herself and the purpose of the call, Rule 762 assists in

the prevention of fraudulent and manipulative acts and practices by providing investors with information necessary to make an informed decision when purchasing securities. Moreover, by requiring the associated person to identify the firm for which he or she works and the telephone number or address at which the caller may be contacted, the Rule encourages responsible use of the telephone to market securities.

The Commission further believes that Rule 762, which creates exemptions from the time-of-day and disclosure requirements for telephone calls by associated persons, or other associated persons acting at the direction of such persons, to certain categories of "existing customers" is appropriate. The Commission believes it is appropriate to create an exemption for calls to customers with whom there are existing relationships in order to accommodate personal and timely contact with a broker who can be presumed to know when it is convenient for a customer to respond to telephone calls. Moreover, such an exemption also may be necessary to accommodate trading with customers in multiple time zones across the United States. The Commission, however, believes that the exemption from the time-of-day and disclosure requirements should be limited to calls to persons with whom the broker has a minimally active relationship. In this regard, the Commission believes that Rule 762 achieves an appropriate balance between providing protection for the public and the members' and foreign currency option participants' interests in competing for customers.

The Commission believes that Rule 762, requiring that each member or foreign currency option participant organization maintain a centralized do-not-call list of persons who do not wish to receive telephone solicitations from such member, foreign currency option participant organization or associated persons, is appropriate. By requiring members and foreign currency option participant organizations to maintain a do-not-call list, Rule 762 assists in the prevention of fraudulent and manipulative acts and practices, such as persistently calling investors who have expressed a desire to not receive telephone solicitations.

Moreover, the Commission believes that the provisions of Rule 762, requiring that a member, foreign currency option participant or person associated with a member or foreign currency option participant organization obtain from a customer, and maintain for three years, express written authorization when submitting for

¹² The Commission, however, received two comment letters on an NASD proposal (SR-NASD-96-28), which is substantially similar. See Letter from Brad N. Bernstein, Assistant Vice President and Senior Attorney, Merrill Lynch, to Jonathan G. Katz, Secretary, SEC, dated Aug. 19, 1996 ("Merrill Lynch Letter"), and Letter from Frances M. Stadler, Associate Counsel, Investment Company Institute ("ICI"), to Jonathan G. Katz, Secretary, SEC, dated Aug. 21, 1996 ("ICI Letter").

For a discussion of the letters and responses thereto, see Securities Exchange Act Release No. 38009 (Dec. 2, 1996) (approving File No. SR-NASD-96-28).

¹³ 15 U.S.C. § 78f(b)(5).

¹⁴ In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

payment a check, draft, or other form of negotiable paper drawn on a customer's checking, savings, share or similar account, is appropriate. The Commission notes that requiring a member, foreign currency option participant or person associated with a member or foreign currency option participant organization to obtain express written authorization from a customer in the above-mentioned circumstances assists in the prevention of fraudulent and manipulative acts in that it reduces the opportunity for a member, foreign currency option participant or person associated with a member or foreign currency option participant organization to misappropriate customers' funds. In addition, the Commission believes that by requiring a member, foreign currency option participant or person associated with a member or foreign currency option participant organization to retain the authorization for three years, Rule 762 protects investors and the public interest in that it provides interested parties with the ability to acquire information necessary to ensure that valid authorization was obtained for the transfer of a customer's funds for the purchase of a security.

The Commission believes that the amendment to Rule 605, requiring the retention of telemarketing scripts for a period of three years is appropriate. By requiring the retention of telemarketing scripts for three years, Rule 605 assists in the prevention of fraudulent and manipulative acts and practices and provides for the protection of the public in that interested parties will have the ability to acquire copies of the scripts used to solicit the purchase of securities to ensure that members, foreign currency option participant organizations and associated persons are not engaged in unacceptable telemarketing practices. Finally, the Commission believes that the proposed rule achieves a reasonable balance between the Commission's interest in preventing members from engaging in deceptive and abusive telemarketing acts and the members' and foreign currency option participant organizations' interests in conducting legitimate telemarketing practices.

The Commission notes that the Exchange proposes to amend parts .02, .08 and .10 to its Supplementary Information Regarding Rule 605, relating to Disclosure, Claims for Research and Identification of Sources, to clarify the applicability of these guidelines to foreign currency option participants and foreign currency option participant organizations. The Commission believes that the

Exchange's proposal to clarify that its guidelines apply to foreign currency option participants and foreign currency option participant organizations is reasonable.

The Commission finds good cause for approving the proposed rule change, including Amendment No. 1, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The proposal is identical to the NASD and MSRB rules, which were published for comment and, subsequently, approved by the Commission. The approval of the Phlx's rules provides a consistent standard across the industry. In that regard, the Commission believes that granting accelerated approval to the proposed rule change is appropriate and consistent with Section 6 of the Act.¹⁵

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change (SR-Phlx-97-18), including Amendment No. 1, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38881; File No. SR-Phlx-97-21]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc., Relating to Wheel Removal and Assignment Areas

July 28, 1997.

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 April 25, 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 and II below, which Items have been prepared by the self-regulatory organizations. On July 1, 1997, the Phlx submitted Amendment

No. 1 to the proposed rule change.³ On July 24, 1997, the Phlx submitted Amendment No. 2 to the proposal.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Floor Procedure Advice ("Advice") F-24, AUTO-X Contra-Party Participation (the "Wheel"), to: (1) Establish a procedure for the removal of Registered Options Traders ("ROT's") from the Wheel; and (2) extend the Wheel assignment area in certain circumstances. The Wheel is an automated mechanism for assigning floor traders (i.e. specialists and ROTs), on a rotating basis, as contra-side participants to AUTO-X orders. AUTO-X is the automatic execution feature of the Exchange's Automated Options Market ("AUTOM") system,⁵ which provides customers with automatic executions of eligible equity option and index option orders at displayed markets.

Currently, an ROT must be actively making markets to be on the Wheel, and an ROT must be present in his Wheel assignment area to participate in Wheel executions. The Exchange proposes to amend Advice F-24 to state that ROTs must sign-off the Wheel when leaving the Wheel assignment area for more than a brief interval, which means 5 minutes or less, or in matters of a dispute, the amount of time it takes to call in a Floor Official and inform him/her of the issue at hand.⁶ If an ROT does

³ See Letter from Edith Hallahan, Director and Special Counsel, Regulatory Services, Phlx, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation ("Division"), SEC, dated June 25, 1997 ("Amendment No. 1"). In Amendment No. 1, the Phlx amended the proposal by: (1) Requiring the approval of the Options Committee, rather than two Floor Officials, to extend the Wheel assignment area beyond two contiguous quarter turrets; (2) deleting the requirement that a trade occur while a trader was away from the Wheel for more than a brief interval before the trader would be subject to removal and fines; and (3) clarifying several aspects of the proposal.

⁴ See Letter from Philip H. Becker, Senior Vice President and Chief Regulatory Officer, Phlx, to Michael Walinskas, Senior Special Counsel, Division, SEC, dated July 22, 1997 ("Amendment No. 2"). In Amendment No. 2, the Phlx replaced the word "crowd" with the phrase "Wheel assignment area" in the text of the rule to clarify that the proposal requires the trader to be present in the Wheel assignment area, but not necessarily the trading crowd.

⁵ AUTOM is an electronic order routing and delivery system for options orders.

⁶ In Amendment No. 1, the Phlx clarified that a brief interval may exceed 5 minutes where an ROT

¹⁵ 15 U.S.C. § 78f.

¹⁶ 15 U.S.C. § 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.