

and as to whom the member has an obligation to provide the information. The latter provision is designed to ensure that the rule would apply to requests from persons as to whom applicable legal standards require the disclosure of the information.

Paragraph (b)(2) of the proposed rule provides that a defending party shall not be liable for a defamation claim if the statement was true at the time that the statement was made. As noted above, Article V, Section 3 of the NASD By-Laws already requires that the member notify the NASD, and send a copy to the registered person, within 30 days if the member learns of facts or circumstances causing any information in the prior notice to become inaccurate or incomplete.

Paragraph (b)(3) of the proposed rule contains the basic legal standard found in federal and state court decisions that recognize a qualified immunity in various contexts. The courts do not, however, consistently define the burden of proof that a plaintiff must meet in order to show that a false statement was made knowingly or recklessly. Some decisions apply the "preponderance of the evidence" standard that most commonly applies to claims and defenses in civil litigation. Others apply a stricter "clear and convincing" standard. In some cases, decisions in the same jurisdiction conflict on this point. The NASD believes that, because no one standard is dominant, the standard applied should be the one that will reach best the goals to which the proposed rule is addressed. The NASD has determined that the "clear and convincing" standard provides a good balance, in that it provides some protection to member firms against defamation claims for statements they are required to provide, while still providing that members are liable for clear cases of abusive or malicious disclosure.

NTM 97-77 asked for comment as to whether NASD Regulation should seek to provide a mandatory pre-filing or arbitration procedure to resolve termination disputes prior to the 30-day period following termination in which the Form U-5 is required to be filed. Most of the comments addressing this issue suggested that such a procedure could not effectively resolve disputes within this time frame. NASD Regulation has determined that a mandatory procedure would raise too many difficult practical and timing issues to be useful, but will endeavor to provide mediators on an expedited basis when both parties are interested in resolving disputes at an early stage.

The proposed rule would apply for a pilot period of four years. Prior to the end of that period, the staff will review a sample of filings made during the period of the rule's effectiveness to attempt to gauge the nature and quality of disclosure that has been provided, in contract with forms filed prior to the pilot period.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rule must 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. The NASD believes that the proposed rule change will encourage fuller disclosure by member firms of any regulatory problems concerning a registered representative and thus provide more complete information to the investing public through the Public Disclosure Program and to other broker/dealers through the Central Registration Depository.

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

NASD Regulation 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, as amended.

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

The proposed rule change was published for comment in NASD Notice to Member 97-77 (November 1977). Fifty-three comments were received in response to the Notice.

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 self-regulatory organization consents, the Commission will:

- A. By order approve such proposed rule change, or
- B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning for 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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. 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 number SR-NASD-98-18 and should be submitted by May 19, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39903; File No. SR-NYSE-98-13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Trading of Bonds

April 22, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on April 15, 1998, the New York Stock Exchange, Inc. ("NYSE" 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 NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

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

The NYSE is proposing amendments to its rules and procedures governing the trading of bonds. The Exchange is deleting obsolete provisions of its bond trading rules, streamlining those rules, and consolidating the bond-trading rules in new Rule 86. In addition to adopting new Rule 86, the proposal includes amendments to the following Exchange rules: Rule 13; Rule 61; Rule 70; Rule 72; Rule 76; Rule 79A; and Rule 85.

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

In its filing with the Commission, the NYSE 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 NYSE 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 Exchange currently trades non-convertible bonds in its Automated Bond System® ("ABS") and convertible bonds on its bond Floor. Later this year, the Exchange will move all bond trading into ABS. Currently, various Exchange rules govern the trading of bonds, particularly Rule 85, governing the trading of "cabinet" securities. The proposed rule change will provide for uniform bond trading procedures and will consolidate those procedures in new Rule 86.² The rule change (i) will incorporate into new Rule 86 the same price/time priority matching procedures as Rule 85, (ii) will establish appropriate cross references to new Rule 86 in other NYSE rules and (iii) will eliminate the rules governing trading on the bond Floor, which will no longer be necessary.

A substantive change the Exchange is proposing involves the crossing of

bonds. Currently, Rule 85 requires that a member hold a proposed cross for a "reasonable" period of time before effecting the cross, and that the member announce the intention to effect the cross on the bond Floor. For the purposes of ABS, the Exchange has interpreted this as requiring a member to display a proposed cross in ABS for two minutes prior to effecting the trade. The Exchange's experience with these crossing procedures indicates that they no longer are needed. There are very few crosses in ABS (approximately two to four a day), and those that do take place are of small size (generally between two and nine bonds). Furthermore, most crosses involve instances where bond brokers receive matching buy and sell orders from two different correspondent firms within two minutes of each other. Also, members may cross orders of ten bonds and over off the Exchange, with the result being that the current rule places the Exchange at a competitive disadvantage to off-Exchange markets.

The final change to the bond trading rules moves the rules governing transactions at wide variations from Rule 79A.40 to new Rule 86(g). For non-convertible bonds, the Exchange is retaining the requirement that a Floor Official approve all sales made two points away from the last sale or more than 30 days after the last transaction. The Exchange is not proposing to apply those requirements to convertible bonds, since such bonds generally are priced in relation to the underlying equity security. However, new Rule 86(g) allows a Floor Governor to impose the same requirements on the trading of convertible bonds if market conditions warrant.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The proposed rule change does 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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 the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, 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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the File No. SR-NYSE-98-13 and should be submitted by May 19, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³

² New Rule 86 specifies that these bond trading procedures apply only to bonds "traded through ABS." The Exchange trades certain bonds, such as equity-linked securities, on its stock Floor. These securities are traded pursuant to NYSE equity-trading procedures and are not subject to Rule 86. See Securities Exchange Act Release No. 32650 (July 16, 1993) 58 FR 39586 (July 23, 1993).

³ 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39898; File No. SR-Philadep-98-01]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to an Increase in the Number of Directors

April 21, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 31, 1998, the Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange Commission ("Commission"), as amended on April 21, 1998, the proposed rule change as described in Items I and II below, which items have been prepared primarily by Philadep. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

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

The proposed rule change involves an amendment to Philadep's by-laws and articles of incorporation to increase the number of directors on board from between 5 and 9 to between 5 and 23 and to include the president of Philadep on its board.

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

In its filing with the Commission, Philadep 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. Philadep has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.²

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

The proposed rule change will amend Philadep's by-laws and articles of incorporation to increase the permitted size of the board from between 5 and 9 directors to between 5 and 23 directors and to include the president of Philadep on its board. According to Philadep, all other provisions of the by-laws prescribing the composition of the board will remain unchanged. According to Philadep, the rule change is desirable due to the interest of the Board of Governors of the Philadelphia Stock Exchange ("Phlx") to more fully participate in the operation and control of Philadep.

Philadep also believes that a larger board will provide greater diversity and add policy making expertise to the process. In addition, Philadep believes that a Philadep board comprised of members from Phlx will allow greater coordination in scheduling meetings involving members from both the boards.³

Philadep believes that the proposed rule change provides for the fair representation of shareholders and participants in the selection of Philadep's directors and in the administration of Philadep's affairs and therefore that it is consistent with Section 17A(b)(3)(C) of the Act and the rules and regulations thereunder applicable to Philadep.⁴

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

Philadep does not believe that the proposed rule change will impose any burden on competition.

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

Philadep has not solicited and does not intend to solicit comments on this proposed rule change. Philadep has not received any unsolicited written comments from participants or other interested parties.

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

Section 17A(b)(3)(C) provides that the rules of a clearing agency must provide for the fair representation of its

shareholders or members and participants in the selection of directors. The Commission believes that the increase in the size of Philadep's board is consistent with the Act's fair representation requirements because the resized board should allow the board to more accurately reflect the controlling interest of the Phlx and its Board of Governors while still providing for fair representation of Philadep's participants.

Philadep has required that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in order that this increase be implemented at the meeting of Phlx's board of directors scheduled for April 22, 1998. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice because such approval will allow the Phlx to increase Philadep's board size at its April 22, 1998, meeting.⁵

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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference 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 Philadep. All submissions should refer to File No. SR-Philadep-98-01 and should be submitted by May 19, 1998.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁶ that the

⁵ John Rudolph, Supervisory Trust Analyst, Board of Governors of the Federal Reserve Board, concurred with the Commission's granting of accelerated approval per a telephone conversation on April 21, 1998.

⁶ 15 U.S.C. 78s(b)(2).

³ Telephone conversation between Edith Hallahan, Counsel, Philadep, and Greg Dumark, Attorney, Division of Market Regulation, Commission (April 20, 1998).

⁴ 15 U.S.C. 78q-1(b)(3)(C).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by Philadep.