

beneficial owners of record or is no longer investment grade rated by at least one nationally recognized rating service.<sup>1</sup>

The Exchange proposes to assign any municipal security it lists to a specialist<sup>2</sup> and to trade municipal securities in accordance with all PHLX regulations otherwise applicable to the trading of securities on the equities trading floor of the Exchange, except that pursuant to proposed PHLX Rule 132(d)(17) municipal securities shall be exempt from the provisions of the Exchange's off-board trading rule. Under proposed PHLX Rule 309, municipal securities will be compared, settled and cleared in accordance with the applicable regulations of the MSRB. The PHLX believes that Exchange listing of municipal securities will allow public investors to have an alternative to the over-the-counter market to trade municipal debt securities.

The PHLX states that the proposed rule change is based on Section 6(b)(5) of the Act in that it is designed to further promote the mechanism of a free and open market and 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 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 other period (i) as the Commission may designate up to 90 days of such date if it finds such longer

<sup>1</sup> Although the PHLX believes that proposed PHLX Rule 810(d) will apply primarily to municipal securities, it may also apply to the debt of issuers whose equities are not listed on the Exchange. Telephone conversation between Murray L. Ross, Secretary, PHLX, and Yvonne Fraticelli, Staff Attorney, Options Branch, Division of Market Regulation, Commission, on January 20, 1995.

<sup>2</sup> In this regard, the Exchange intends to require specialist units applying for appointment and registration in municipal securities to be in compliance with the Municipal Securities Rulemaking Board ("MSRB") G-3 regulations regarding municipal securities principals and representatives. The National Association of Securities Dealers ("NASD") has authority to enforce MSRB rules for listed municipal securities. The PHLX enforcement in this regard will not preempt or limit in any manner the NASD's authority to act in this area.

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 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. 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. 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-94-69 and should be submitted by February 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>3</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Release No. 34-35305; File No. SR-PHLX-94-61]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Floor Procedure Advice F-8, Failure To Comply With an Exchange Inquiry**

January 31, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 21, 1994, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission")

<sup>3</sup> 17 CFR 200.30-3(a)(12) (1994).

the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.<sup>1</sup> 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**

Currently, Advice F-8 requires Exchange members to comply promptly with any request for information made by the Exchange's Market Surveillance Department in connection with any investigation within the Exchange's disciplinary jurisdiction. The Exchange proposes to amend Advice F-8 to require members to comply with Exchange requests for information in connection with any regulatory inquiry, investigation, or examination relating to the Exchange's disciplinary jurisdiction or regulatory obligations. The PHLX also proposes to amend the Advice to require that information requested by the Exchange's Examinations Department be received within two business days from the date of the original request in order to satisfy the prompt compliance requirement of Advice F-8. Finally, the PHLX proposes to amend Advice F-8 to reduce the fine for a first violation of the Advice from \$500 to \$200, and to provide that each additional request for information not furnished within the allotted time period may be considered as a separate occurrence for purposes of the Advice's fine schedule.<sup>2</sup> The text of

<sup>1</sup> On November 30, 1994, the PHLX amended its proposal to clarify that the proposed two-day period for compliance with Exchange Examinations Department requests would apply, for example, to requests for books and records, rather than to requests for financial information, which are governed by PHLX Rule 703(e). See Letter from Edith Hallahan, Special Counsel, PHLX, to Michael Walinskas, Branch Chief, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated November 30, 1994 ("November 30 Letter"). On January 31, 1995, the PHLX amended its proposal to delete references to foreign currency option ("FCO") participants and participant organizations in Floor Procedure Advice ("Advice") F-8, "Failure to Comply with an Exchange Inquiry." See Letter from Edith Hallahan, Special Counsel, Regulatory Services, PHLX, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated January 30, 1995 ("January 30 Letter"). However, Advice F-8 continues to apply to FCO participants and participant organizations. Specifically, the PHLX notes in its January 30 Letter that PHLX Rule 13, "Foreign Currency Options Participant" provides that FCO participants are subject to the provisions of the Exchange's rules that are applicable to a member of the Exchange and each reference to a member of the Exchange in the PHLX's rules is deemed to pertain also to FCO participants.

<sup>2</sup> Under the Advice F-8's fine schedule, as amended, the Exchange will impose a fine of \$200 for the first occurrence, \$1,000 for the second occurrence, \$2,500 for the third occurrence, and a

the proposed rule change 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 IV 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

Currently, Advice F-8 requires cooperation with requests for information made by the Exchange's Market Surveillance Department and contains a fine schedule for violations. The Advice is administered under the Exchange's minor rule violation enforcement and reporting plan ("minor rule plan"),<sup>3</sup> which the PHLX also proposes to amend. Advice F-8 serves as an important tool in the Exchange's effort to conduct investigations expeditiously, requiring members to respond promptly to such requests. Prompt compliance with Market Surveillance requests is currently defined as ten business days. This Advice was adopted in order to expedite the Exchange's investigation process by enabling the Exchange to summarily reprimand any failure to respond to such requests.<sup>4</sup>

The PHLX proposes to extend the requirements of Advice F-8 to include Examinations Department requests, for which compliance will be required within two business days, as well as other regulatory inquiries. The purpose

sanction discretionary with the Exchange's Business Conduct Committee for the fourth and subsequent occurrences.

<sup>3</sup>The PHLX's minor rule plan, codified in PHLX Rule 970, contains floor procedure advices with accompanying fine schedules. Rule 19d-1(c)(2) under the Act authorizes national securities exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting; Rule 19d-1(c)(1) requires prompt filing with the Commission of any final disciplinary action. However, minor rule violations not exceeding \$2,500 are deemed not final, thereby permitting periodic, as opposed to immediate, reporting.

<sup>4</sup>See Securities Exchange Act Release No. 26899 (June 7, 1989), 54 FR 25526 (June 15, 1989) (order approving File No. SR-PHLX-89-20).

of this change is to facilitate the Exchange's ability to promptly collect regulatory information, with the deterrent of a preset fine schedule.

With respect to the fine schedule accompanying Advice F-8, the proposed language regarding separate occurrences is intended to deter delays in compliance with an Exchange request by counting a repeat request for information as a separate occurrence. If each successive request for the same information is treated as a separate occurrence and thus as a successive violation subject to the next highest fine, the Exchange believes that prompt compliance is encouraged. The PHLX also proposes to reduce the fine for a first occurrence from \$500 to \$200 to reflect the potential for increased application of such fines.

The Exchange believes that the proposed changes to Advice F-8 are consistent with the types of provisions currently included in the Exchange's minor rule plan. Moreover, extending the requirements of Advice F-8 regarding prompt compliance with Exchange inquiries to include Examinations Department and other regulatory requests should enhance the Exchange's ability to meet its regulatory obligations expeditiously. For example, under Advice F-8, as amended, a member will be required to comply with an Examinations Department request for books and records within two business days from the date of the original request.<sup>5</sup>

For the above reasons, the Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general and, in particular with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest, by bolstering the Exchange's ability to receive certain information from its members promptly.

### (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 received or requested.

<sup>5</sup>See November 30 Letter, *supra* note 1.

## 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 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, 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 at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. 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 number in the caption above and should be submitted by February 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>6</sup>17 CFR 200.30-3(a)(12) (1994).