

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).