

bank trading.² Moreover, over 91% of the activity in the Spanish peseta is against either the U.S. dollar (64%) or the German mark (27%).³ The Spanish peseta is not pegged to a rate of exchange *vis a vis* the U.S. dollar. Further, the United States has substantial trade relations with Spain.

The Exchange represents that the initial and maintenance customer margin levels for the Spanish peseta will initially be set at 4%, which would cover 96.54% of all seven day price movements over the last two years.⁴ Pursuant to Rule 1069(a)(1)(B), users would be able to trade customized FCO's between the Spanish peseta and any other approved foreign currency. Currency pairs between the Spanish peseta and the Australian dollar and between the Spanish peseta and the Canadian dollar have exhibited a correlation of less than .25 over the preceding two year period and will be placed in Tier II under Exchange Rule 722, thereby requiring 6% margin.⁵ All other currency pairs involving the peseta would be placed in Tier I (4% margin required) because their correlations have exceeded .25.⁶

The contract size for the Spanish peseta would be 5,000,000 pesetas.⁷ The premiums will be quoted in thousandths of a cent per unit for U.S. dollar/Spanish peseta contracts and the minimum premium would be \$0. (0000) 01 per unit which equals \$5.00. Exchange Rule 1069(j)(1)(A) will be added to provide that, because the Exchange does to have continuously quoted FCOs on the Spanish peseta, there will be no quote spread parameters applicable to customized FCOs on the Spanish peseta.⁸

Consistent with the Phlx's other approved foreign currencies, Exchange

Rule 1033 will be amended to specify the bid and offer rules for customized FCOs based on the Spanish peseta. Similarly, Rule 1034 will be amended to provide that the Exchange will determine the minimum fractional change applicable to Spanish peseta customized FCOs.⁹

The Exchange believes that the foregoing rule change proposal is consistent with Section 6 of the Act, in general, and with Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information, and facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by offering investors the ability to trade options on a major international currency in an auction market environment with all of the attendant protections as an alternative to trading it in the over-the-counter market.

(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 solicited or received with respect to the proposed rule change.

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

⁹ Specifically, the Exchange is proposing a minimum fractional change of \$0. (0000) 01 for Spanish peseta customized FCO's. Telephone conversation between Michele Weisbaum, Associate General Counsel, Phlx, and Brad Ritter, Senior Counsel, Office of Market Supervision, Division of Market Regulation, Commission, on May 4, 1995. The Commission notes that the Exchange may be required to submit a rule filing pursuant to Section 19(b) of the Act prior to altering this minimum fractional change level.

(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 in 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 Phlx. All submissions should refer to File No. SR-Phlx-95-21 and should be submitted by May 31, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35672; File No. SR-NYSE-95-16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Options Market Maker Exemption From the NASD Short Sale Bid Test for Certain Merger and Acquisition Securities

May 4, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on April 21, 1995, 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

¹⁰ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1) (1988).

² See BIS Central Bank Survey of Foreign Exchange Market Activity in April 1992 (March 1993).

³ *Id.*

⁴ The Commission notes that the margin level review currently applicable to customized FCOs on the Exchange's existing approved foreign currencies will also apply to customized FCOs involving the Spanish peseta. See Exchange Act Release No. 34925, *Supra* note 1.

⁵ *Id.*

⁶ *Id.*

⁷ Based on an exchange rate of 126.6 Spanish pesetas/U.S. dollars on April 5, 1995, as published in the Wall Street Journal, this would correspond to an opening position for a Spanish peseta customized FCO transaction (*i.e.*, 200 contracts) valued at approximately \$7,900,000.

⁸ Pursuant to Exchange Rule 1069(j)(1), quote spread parameters for customized strike FCOs on approved foreign currencies are twice those provided in Rule 1014(c). Because the Phlx does not list regular FCOs on the Spanish peseta (and will not be able to list regular FCOs on the peseta pursuant to this proposal), no quote spread parameters for the peseta are specified in Rule 1014(c).

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 NYSE proposes to amend its Rule 759A (Reporting Requirements Applicable to Short Sales in NASDAQ NMS Securities²). Rule 759A prohibits an Exchange options specialist or Competitive Options Trader ("COT") from relying on the options market making exemption from the short sale bid test of the Rules of Fair Practice of the NASD unless the transaction is an "exempt hedge transaction." The proposed rule change would expand the definition of "exempt hedge transaction" to include certain short sales of a company that is involved in a publicly-announced merger or acquisition ("M&A").

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

NYSE Rule 759A prohibits each exchange options specialist and COT from relying on the options market maker exemption of the NASD Rules of Fair Practice to effect short sales in Nasdaq NM securities at or below the best bid when the displayed bid is below the preceding best bid in, unless the short sale is an "exempt hedge transaction." The proposal would expand the definition of "exempt hedge transaction" to include certain short sales in the stock of a company that is a party (or a prospective party) to an M&A with the issuer of a Nasdaq NM security that underlies an Exchange-listed option. Specifically, with respect to an Exchange options specialist, the exemption would apply to short sales of a company that is a party to an M&A

with a company whose Nasdaq NM security underlies a specialty stock option; with respect to a COT, the exemption would apply to short sales of a company that is a party to an M&A with a company whose Nasdaq NM security underlies an Exchange-listed stock option.

For the exemption to apply, the options specialist or COT must initiate the short sale in order to effect a *bona fide* hedge of an existing or prospective position in an Exchange-listed stock option. A "prospective position" refers to a position that might be created as the result of specialist or COT has initiated prior to the hedge transaction.

The proposed rule change seeks to address the *bona fide* hedging needs of an options specialist or COT where a company enters into an M&A with a company whose Nasdaq NM security underlies an Exchange-listed option. Under those circumstances, the options specialist or COT may have no feasible alternative to hedge an options position on the Nasdaq NM security, given the risk arbitrage relationship that is likely to exist between the stock underlying the option and the stock of the other company involved in the merger or acquisition.

The Exchange believes that the proposed rule change is consistent with Section 6(b) under that Act in general, and furthers the objectives of section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest. The proposal seems to enhance the ability of options specialists and COTs to perform their market-making functions, thereby contributing to the depth and liquidity of the options market.

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

The NYSE believes that the proposed rule change will not impose any burden on competition.

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

Written comments on the proposed rule change 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 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. 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 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 File No. SR-NYSE-95-16 and should be submitted by May 31, 1995.

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

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35671; File No. SR-PHLX-94-61]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Floor Procedure Advice F-8, Failure to Comply With an Exchange Inquiry

May 4, 1995.

On November 21, 1994, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission

² Hereinafter referred to as Nasdaq National Market ("NM") securities.

³ 17 CFR 200.30-3(a)(12) (1994).