

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).

("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Floor Procedure Advice ("Advice") F-8, "Failure to Comply with an Exchange Inquiry," to require PHLX members, member organizations, and associated persons to comply promptly with any request for information made by the Exchange in connection with any regulatory inquiry or examination relating to the Exchange's regulatory obligations. Advice F-8, as proposed, will apply to activities concerning equities,³ equity options, index options, and foreign currency options ("FCOs").⁴

The proposed rule change was published for comment in the **Federal Register** on February 7, 1995.⁵ No comments were received on the proposal.

Currently, Advice F-8 requires Exchange members,⁶ member organizations, and associated persons, 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 involving activities on the equity and option (including equity options, stock index options, and FCOs) trading floors. The PHLX proposes to amend Advice F-8 to: (1) Now also apply to activities on the equity trading floor, and (2) extend the requirements of Advice F-8 to include PHLX Examinations Department requests, as well as any requests made by the Exchange in connection with any other regulatory inquiry, investigation, or

examination relating to the Exchange's regulatory obligations.

The PHLX notes that the Advice, which is administered under the Exchange's minor rule violation enforcement and reporting plan ("minor rule plan"),⁷ was adopted in order to expedite the Exchange's investigation process by enabling the Exchange to summarily reprimand failures to respond to such requests for information.⁸

Advice F-8 will continue to contain a prompt compliance requirement relating to Exchange requests for information pursuant to the advice. Under the proposal, information requested by the Exchange's Examinations Department must be received within two business days from the date of the original request in order to satisfy the prompt compliance requirement of Advice F-8.⁹ For other Exchange requests made pursuant to Advice F-8, information must be received within 10 business days from the date of the original request in order to satisfy the prompt compliance requirement.

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.¹⁰

According to the PHLX, the modification of the fine schedule is designed to deter delays in compliance with Exchange requests for information by counting each repeat request as a separate occurrence. The proposal to reduce the fine for a first occurrence from \$500 to \$200 is designed to reflect

the potential for increased application of the fines.

The PHLX believes that extending the requirements of Advice F-8 to include Examinations Department and other regulatory requests should enhance the Exchange's ability to meet its regulatory obligations expeditiously. Accordingly, 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, to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirement of Section 6(b)(5)¹¹ that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. In addition, the Commission finds that the proposal is consistent with the requirement of Section 6(b)(1) of the Act that an exchange have the capacity to enforce compliance by its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.

The Commission believes, as it has stated in the past,¹² that in order to effect its supervisory and compliance role over members and member organizations, it is necessary for an exchange to have the ability to set timetables for the receipt of information, and the disciplinary authority to compel members to comply with such requests. By requiring Exchange members to comply promptly with Exchange requests for information in connection with any regulatory inquiry, investigation, or examination, the proposal protects investors and the public interest by facilitating the prompt resolution of Exchange investigations, examinations, and disciplinary proceedings. This, in turn, should enhance the quality, consistency, and fairness of the important Exchange oversight functions and enable the PHLX to better enforce compliance by its members with the Exchange's rules and the federal securities laws.

The Commission believes that it is reasonable for the Exchange to apply the

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19v-4 (1994).

³ On March 15, 1995, the PHLX amended its proposal to apply Advice F-8 to equities as well as options. See Letter from Edith Hallahan, Special Counsel, PHLX, to Michael Walinskas, Branch Chief, Office of Market Supervision, Division, Commission, dated March 14, 1995. ("Amendment No. 1"). Under Amendment No. 1, Equity Advice EM-1 will be renumbered as F-8.

⁴ See Letter from Gerald D. O'Connell, First Vice President Market Regulation and Trading Operations, PHLX, to Michael Walinskas, Branch Chief, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated January 30, 1995 ("January 30 Letter").

⁵ See Securities Exchange Act Release No. 35305 (January 31, 1995), 60 FR 7252 (February 7, 1995).

⁶ Advice F-8 also applies to FCO participants and participant organizations. See January 30 Letter, *supra* note 4. See also PHLX Rule 13, "Foreign Currency Options Participant," which provides that FCO participants are subject to the provisions of the Exchange's rules that are applicable to a member of the Exchange and states that each reference to a member of the Exchange in the PHLX's rules is deemed to pertain also to FCO participants.

⁷ The PHLX's minor 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.

⁸ See Securities Exchange Act Release No. 26899 (June 7, 1989), 54 FR 25526 (June 15, 1989) (order approving File No. SR-PHLX-89-20).

⁹ The two-business day requirement applies, for example, to requests for books and records. See Letter from Edith Hallahan, Special Counsel, PHLX, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated November 30, 1994.

¹⁰ 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 sanction discretionary with the Exchange's Business Conduct Committee ("BCC") for the fourth and subsequent occurrences.

¹¹ 15 U.S.C. 78f(b)(5) (1988).

¹² See Securities Exchange Act Release Nos. 27151 (August 18, 1989), 54 FR 35972 (August 30, 1989) (order approving File No. SR-PHLX-89-20); and 25763 (May 27, 1988), 53 FR 20925 (June 7, 1988) (order approving File No. SR-NYSE-87-10).

revised F-8 prompt compliance requirement to matters involving equities, equity options, index options, and FCOs, and to extend the prompt compliance requirement to information requests made by the Exchange in connection with any regulatory inquiry, investigation, or examination in order to expedite the Exchange's investigations and to provide consistent treatment for all Exchange requests for information. In addition, the Commission believes that including Advice F-8 in the Exchange's minor rule plan will enable the PHLX to impose immediate sanctions for failures to respond to Exchange requests for information, thereby encouraging timely compliance with the provisions of Advice F-8.¹³ Moreover, the Commission believes that it is appropriate to include Advice F-8 in the Exchange's minor rule plan because failures to respond to Exchange requests for information are objective in nature and are easily verifiable, and thus lend themselves to the use of expedited proceedings.

The Commission believes it is reasonable for the PHLX to require members to provide information within two business days for Examinations Department requests, and within 10 business days for all other Exchange requests for information. In this regard, the Commission notes that Examinations Department requests will be made in connection with books and records which members must maintain on an ongoing basis and which should be readily available. In contrast, other information requests made by the Exchange may involve events which occurred in the past and for which information may not be readily available.¹⁴

The Commission believes that it is reasonable for the PHLX 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. The Commission believes that this provision should help to deter delays in compliance with Exchange requests for information and result in appropriate discipline, which should further ensure the protection of investors and the public interest.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to make the treatment of equities under Advice F-8 consistent with the treatment of equity options, index options, and FCOs. The Commission notes that the portion of the proposal applicable to equity options, index options, and FCOs was subject to the full notice and comment period and that no comments were received on that portion of the proposal. Since Amendment No. 1 makes the treatment of equities under Advice F-8 consistent with the treatment of options, Amendment No. 1 raises no new regulatory issues. Accordingly, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 1 on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. 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 Section, 450 Fifth Street, N.W., Washington, D.C. 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 May 31, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (File No. SR-PHLX-94-61) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-35678; International Series Release No. 809; File No. SR-Phlx-95-20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Trading of Customized Foreign Currency Options on the Italian Lira

May 4, 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 April 5, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" 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 Phlx. 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

The Phlx, pursuant to Rule 19b-4 of the Act, proposes to trade customized foreign currency options ("FCOs") on the Italian lira. The text of the proposed rule change is available at the Office of the Secretary, the 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 Phlx 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 Phlx has prepared summaries, set forth in sections (A) (B), and (C) below, of the most significant aspects of such statements.

¹⁵ 15 U.S.C. 78s(b)(2) (1982).

¹⁶ 17 CFR 200.30-3(a)(12) (1994).

¹³ Under the PHLX's minor rule plan, the Exchange may impose a fine not to exceed \$2,500 for violations of Advices in lieu of commencing a disciplinary proceeding. In any action taken under the minor rule plan, the PHLX must serve the person against whom a fine is imposed with a written statement setting forth (1) the Advice(s) alleged to have been violated; (2) the act or omission constituting each violation; (3) the fine imposed for each violation; and (4) the date by which the determination becomes final and the fine becomes due and payable to the Exchange, or when the determination must be contested. Any person against whom a fine is imposed pursuant to the minor rule plan may contest the Exchange's determination by filing an answer with the Exchange department taking the action, when the matter will be referred to the Exchange's BCC for their consideration.

¹⁴ For example, the Exchange's Market Surveillance Department may request information in connection with a particular trade or trades or a customer complaint about the handling of an order.