

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 Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-95-10 and should be submitted within June 22, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35756; File No. SR-Phlx-95-02]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Additional Expirations for Cash/Spot German Mark Foreign Currency Options ("3D Options")

May 24, 1995.

On January 25, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("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 list series of cash/spot German mark foreign currency options ("3D Options") having up to 12 months to expiration. On February 24, 1995, the Exchange filed Amendment No. 1 to the proposed rule change.³ Notice of the proposed

rule change and Amendment No. 1 thereto appeared in the **Federal Register** on March 27, 1995.⁴ No comment letters were received on the proposed rule change, as amended. The Exchange subsequently filed Amendment No. 2 to the proposal on May 9, 1995.⁵ This order approves the Exchange's proposal, as amended.

On March 8, 1994, the Commission approved the listing and trading of 3D Options.⁶ 3D Options are issued by The Options Clearing Corporation and are European-style.⁷ These FCOs currently have one-week and two-week expirations and were originally designed to provide a hedging vehicle for: sophisticated retail customers, portfolio managers, and multi-national corporations which need to hedge their short term foreign currency exposure; and to banks which need to hedge the risks associated with trading in the forward and cash markets.

The Exchange represents that the users of 3D Options have particularly liked the U.S. dollar settlement feature and have indicated to the Exchange that they would like to be able to use an exchange-traded U.S. dollar settled FCO to hedge longer-term currency risks. As a result, in addition to the current one-week and two-week expiration series of 3D Options, the Phlx proposes to list series of 3D Options on the March, June, September, and December cycle and the two near-term months. Phlx Rules 1012(a)(ii) (B) and (C) are being amended to reflect these additional series of options.

The expiration date for these longer-term 3D Options will be the Monday

("FCOs"); and (3) specify the strike price intervals applicable to the longer-term 3D Options. See Letter from Michele Weisbaum, Associate General Counsel, Phlx, to Brad Ritter, Senior Counsel, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated February 24, 1995. Amendment No. 1 also clarified the proposal to allow spread margin between the 3D Options and the regular Deutsche mark FCO. This proposal, however, was later withdrawn in Amendment No. 2. See Amendment No. 2, *supra* note 5.

⁴ See Securities Exchange Act Release No. 35520 (March 21, 1995), 60 FR 15807.

⁵ In Amendment No. 2, the Exchange withdrew its request for spread margin treatment between the Exchange's German mark FCOs and the 3D Options. Additionally, the Exchange notified the Commission that it is terminating its agreement with one of the two outside vendors that it had contracted with to calculate the settlement value of the 3D Options. See Letter from Michele Weisbaum, Associate General Counsel, Phlx, to Brad Ritter, Senior Counsel, OMS, Division, Commission, dated May 8, 1995 ("Amendment No. 2").

⁶ See Securities Exchange Act Release No. 33732 (March 8, 1994), 59 FR 12023 (March 15, 1994) ("3D Approval Order").

⁷ A European-style option may only be exercised during a specified time period immediately prior to expiration of the option.

preceding the third Wednesday of each month. The Exchange will not list 3D Options with month-end expirations or series with more than 12 months to expiration.⁸

Currently, 3D Options are listed with the symbol XDA, XDB, XDC, XDD, or XDE depending on whether they will expire on the first, second, third, fourth, or fifth Monday of the month, respectively. Because the proposed longer-term 3D Options will expire on the Monday before the third Wednesday of each month, they will always expire on either the second or third Monday of the month. Accordingly, the longer-term 3D Options will be listed with the symbol XDB or XDC and will carry that symbol until expiration.

3D Options are currently listed in one-half point strike price intervals. The longer-term 3D Options listed for the three near term months will also be listed in one-half point strike price intervals. The 3D Options listed with six, nine, or twelve months to expiration will have one point strike price intervals.

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 requirements of Section 6(b)(5)⁹ in that the proposal 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. Specifically, the Commission believes that the proposal is designed to provide investors an additional means of hedging foreign currency portfolios and cash flows with longer-term market risk, thereby facilitating transactions in FCOs. The Commission believes that by allowing the Phlx to list these options with up to 12 months to expiration, investors will be provided with greater flexibility to tailor FCO positions to satisfy their investment objectives.¹⁰ In

⁸ The Exchange is also amending Phlx Rules 1000, 1012, 1014, 1057, and 1069 to change references from "cash/spot" FCOs to "3D" FCOs, as these options are more commonly referred to. The Exchange is also making some non-substantive changes to Rule 1012 for ease of reading.

⁹ 15 U.S.C. 78f(b)(5) (1988).

¹⁰ Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

⁹ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1994).

³ In Amendment No. 1, the Exchange proposed to: (1) amend the procedure for the symbols that will be used for the proposed longer term 3D Options, (2) change the name of these options in Phlx's rules from "cash/spot" to "3D" foreign currency options

this regard, the Commission notes that the Phlx has stated that the longer-term 3D Options will meet the needs of investment managers who are seeking to protect portfolios against foreign exchange fluctuations but who do not wish to receive or deliver the underlying currency to achieve that goal. Similarly, the Exchange believes that corporate treasurers seeking balance sheet protection would also prefer paying or receiving U.S. dollars rather than exchanging German marks. Both of these potential users may have long-term concerns for which the one-week and two-week expiration 3D Options would not be an appropriate hedging vehicle. Finally, the Exchange believes that retail traders who may have a long-term market perspective will find the longer-term 3D Options attractive because they will not have to establish foreign bank credit lines or have to deal with the delivery or receipt of the underlying foreign currency at settlement.¹¹

Additionally, the Commission notes that except as modified herein, all of the representations made by the Exchange and all of the rules approved by the Commission in connection with the 3D Approval Order, including, but not limited to, aggregation with regular Deutsche mark FCOs for position and exercise limit purposes, extended trading hours on expiration Mondays, Exchange and bank holidays on which 3D Options will not expire, and automatic exercise of in-the-money 3D Options,¹² will also apply to the longer-term 3D Options listed pursuant to this approval.¹³

As a result, for the reasons stated above and in the 3D Approval Order,¹⁴

the Commission finds that the proposed rule change is consistent with the Act.

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 2 merely withdraws the Exchange's request for spread margin treatment between the Exchange's German mark FCOs and the 3D Options.¹⁵ Because the requested spread margin treatment would have been a liberalization of the Exchange's existing margin rules, withdrawing this request from the proposal does not raise any regulatory issues.

The Commission notes that the termination by the Phlx of its relationship with one of the vendors used to calculate the settlement value for the 3D Options is, in this case, a non-substantive change. In this regard, based on the representations by the Phlx describing the procedures used for calculating the settlement value, including the backup procedures to be used in the event of a complication, the Commission believes that the Phlx will be able to continue to comply with the procedures specified in the 3D Approval Order despite this change.¹⁶ Accordingly, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 2 to the Phlx's proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2. 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.¹⁶

All submissions should refer to the File No. SR-Phlx-95-02 and should be submitted by June 22, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-Phlx-95-02), as amended, is approved contingent upon the Exchange's submission to the Commission of adequate systems capacity representations.¹⁸

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35761; File No. SR-NASD-95-19]

Self-Regulatory Organizations: Notice of Filing of Proposed Rule change by National Association of Securities Dealers, Inc. Relating to Limited Partnership Rollup Transactions

May 24, 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 May 4, 1995 the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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 NASD is herewith filing a proposed rule change to add new paragraph 7 to Subsection (b)(2)(B)(vii)d. of Article III, Section 34 of the Rules of Fair Practice and to add new paragraph (vii) to Subsection (14)(D) to Part I of Schedule D to the By-Laws to exclude investment companies and business development companies from the definition of "limited partnership rollup transaction." The specific text of the rule change would apply to "a transaction involving only

¹¹ The Commission notes that prior to listing longer-term 3D Options the Exchange will be required to provide written representations that both the Exchange and the Options Price Reporting Authority have the necessary systems capacity to support these new series of options.

¹² See 3D Approval Order, *supra* note 6.

¹³ One additional modification herein is with regard to customer margin. In connection with the 3D Approval Order, the Phlx agreed to collect margin within two days following the date on which a customer enters into a cash/spot FCO position and to maintain customer margin at a level sufficient to produce at least a 97% confidence level in the volatility of the Deutsche mark in relation to the U.S. dollar for all two-day intervals during the two year period preceding the time of measurement. These margin provisions will apply to the longer-term 3D Options only when these options have two weeks or less to expiration. At all other times, the Exchange's customer margin procedures applicable to the Phlx's regular Deutsche mark FCOs will apply. Telephone conversation between Michele Weisbaum, Associate General Counsel, Phlx, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on May 23, 1995.

¹⁴ See 3D Approval Order, *supra* note 6.

¹⁵ See Amendment No. 2, *supra* note 5.

¹⁶ See 3D Approval Order, *supra* note 6. The Commission expects the Phlx to continue to notify the Commission prior to making any change in the procedures approved in the 3D Approval Order.

¹⁶ See 3D Approval Order, *supra* note 6. The Commission expects the Phlx to continue to notify the Commission prior to making any change in the procedures approved in the 3D Approval Order.

¹⁷ 15 U.S.C. 78s(b)(2) (1988).

¹⁸ See *supra* note 11.

¹⁹ 17 CFR 200.30-3(a)(12) (1994).