

Substitution that may be deemed prohibited by Section 17(a).

13. Applicants represent that the Substitution meets all of the requirements of Section 17(b) of the 1940 Act and that an order should be granted exempting the Substitution from the provisions of Section 17(a), to the extent requested.

Conclusion

For the reasons summarized above, Applicants submit that the proposed substitution is consistent with the protection of investors and the purposes fairly intended by the policy and the provisions for the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-2936 Filed 2-5-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of February 9, 1998.

An open meeting will be held on Tuesday, February 10, 1998, at 10:00 a.m. A closed meeting will be held on Tuesday, February 10, 1998, following the 10:00 a.m. open meeting.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Carey, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Tuesday, February 10, 1998, at 10:00 a.m., will be:

1. The Commission will hear oral argument on an appeal by L.C. Wegard & Co., Inc., a registered broker-dealer, and Leonard B. Greer, the firm's

president, from an administrative law judge's initial decision.

FOR FURTHER INFORMATION CONTACT: William S. Stern at (202) 942-0949.

2. The Commission will consider whether to issue a release adopting amendments to Regulation S. The amendments are designed to stop abusive practices in connection with offerings of equity securities purportedly made in reliance on Regulation S.

FOR FURTHER INFORMATION CONTACT: Felicia H. Kung, Division of Corporation Finance, at (202) 942-2990.

3. The Commission will consider whether to propose amendments to Rules 15c2-11 and 17a-4 under the Securities Exchange Act of 1934. The proposed amendments to Rule 15c2-11 would require all broker-dealers to: (a) obtain and review enhance information about the issuer when they first publish or resume publishing a quotation for a covered security; (b) document that review; (c) update the issuer information annually if they publish priced quotations; and (d) make the information available to other persons upon request. The proposed amendment to Rule 17a-4 would incorporate the record retention requirements currently contained in Rule 15c2-11.

FOR FURTHER INFORMATION CONTACT: Alan Reed, Division of Market Regulation, at (202) 942-0772.

4. The Commission will consider whether to propose amendments to Securities Act Form S-8, the streamlined form companies use to register sales of securities to their employees. The amendments would (a) restrict the use of the form for the sale of securities to consultants and advisors, and (b) allow the use of the form for the exercise of stock options by family members of employee optionees. The Commission also will consider proposing a corresponding amendment to Form S-3, as well as amendments to the executive compensation disclosure requirements to clarify reporting of transferred options. The purposes of the proposed changes are to eliminate the abuse of Form S-8 to register securities issued to consultants for capital-raising purposes, and to facilitate legitimate employee estate planning transactions and other intra-family transfers.

FOR FURTHER INFORMATION CONTACT: Anne M. Krauskopf at (202) 942-2900.

The subject matter of the closed meeting scheduled for Tuesday, February 10, 1998, following the 10:00 a.m. open meeting, will be:

Post argument discussion.

At times, changes in Commission priorities require alterations in the

scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: February 3, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98-3117 Filed 2-3-98; 4:00 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39604; File No. SR-CBOE-97-66]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Providing a Definition of Foreign Broker-Dealer

January 30, 1998.

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 December 17, 1997, the Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend Rules 7.4(a) and 8.51(a) and adopt new Rule 1.1(xx) to provide that a foreign broker-dealer is considered a broker-dealer for certain purposes under Exchange Rules.

The text of the proposed rule change is available at the Office of the Secretary, CBOE 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, CBOE 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 III below. The CBOE 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

The purpose of the proposed rule change is to amend certain rules of the Exchange applicable to the options transactions of broker-dealers so that they may apply consistently to all broker-dealers irrespective of the country in which they conduct their activities. This will assure that broker-dealers operating outside the United States do not enjoy a competitive advantage over their U.S. counterparts.

CBOE Rules 7.4(a) and 8.51(a) currently distinguish between orders for broker-dealers and orders for non-broker-dealers. Under these rules, and certain rules governing the Exchange's automatic execution system (the Retail Automatic Execution System or "RAES") which incorporate Rule 7.4(a) by reference, only the market or limit orders of non-broker-dealer customers may be placed with an Order Book Official, or may utilize RAES, or may be eligible for a guaranteed minimum execution of ten contracts (or more, depending on the option class) on the floor of the Exchange.¹ The proposed rule change defines the term "broker-dealer," as used in these rules, to include a foreign broker-dealer. To accomplish this, the Exchange proposes to adopt the following definition of "foreign broker-dealer" for purposes of Rules 7.4(a) and 8.51(a):

"The term 'foreign broker-dealer' means any person or entity that is registered, authorized or licensed by a foreign governmental agency or foreign regulatory organization (or is required to be so registered, authorized or licensed) to perform the function of a broker or dealer in securities, or both. For purposes of this definition, the terms 'broker' and 'dealer' have the same meaning as provided in Section 3(a)(4) and 3(a)(5) of the Exchange Act, except that a 'broker' or 'dealer' may be a bank.²

¹ CBOE Rule 7.4(a) provides that "[n]o member shall place, or permit to be placed, an order with a Board Broker or Order Book Official for an account in which * * * any non-member broker-dealer has an interest." Rule 6.8, one of the rules governing RAES, limits its use to "[s]uch order * * * as defined in Rule 7.4(a) regarding placing of orders on the public customer book." Rule 8.51(a) provides that "[o]nly non-broker dealer customer orders shall be entitled to an execution" under that Rule.

² Sections 3(a)(4) and 3(a)(5) of the Act provide: "(4) The term 'broker' means any person engaged in the business of effecting transactions in securities for the account of other, but does not include a bank.

The Exchange believes that the proposed definition is sufficiently specific to ensure fair enforcement of the Rules to which it applies. It should not be difficult for the Exchange to determine whether a person or entity is registered by a foreign governmental agency or a foreign regulatory organization to perform specified functions, or is required to be so registered. As a member of the Intermarket Surveillance Group ("ISG"), CBOE may promptly obtain from ISG members and affiliates information on the accounts of persons or entities entering orders for execution on CBOE, including whether such orders have been entered for the account of a broker or dealer.³ The Exchange may also obtain this information from foreign exchanges or foreign regulatory authorities with which it has an effective surveillance sharing agreement or that are subject to a memorandum of understanding with the Commission that would require those entities to provide such information to the Exchange upon request.

The Pacific Exchange ("PCX") recently sought and received Commission approval for a rule change similar to the proposed rule change that is the subject of this filing.⁴ In its filing, the PCX noted that based upon its review of the applicable regulatory structures of various foreign jurisdictions, it believed that the proposed definition was sufficiently specific to cover the foreign equivalents of the U.S. brokers and dealers in a number of foreign jurisdictions, including Australia, Canada, the Czech Republic, France, Germany, Hong Kong, Hungary, Japan, Luxembourg, Mexico, the Netherlands, Poland, South Africa, South Korea, the Slovak Republic, Switzerland, and the United Kingdom.⁵

(5) The term 'dealer' means any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business."

³ ISG was created in February 1981 to design, develop and implement a coordinated intermarket surveillance system among securities markets in the United States. On July 14 1983, the exchanges participating in the ISG entered into an agreement to coordinate more effectively surveillance and investigative information sharing agreements in stock and options markets. In 1989, with the active participation of the SEC and Commodity Futures Trading Commission, the ISG created an "affiliate" category for futures exchanges and non-U.S. SROs. Currently, the ISG is comprised of nine members and 15 affiliates.

⁴ See, File No. SR-PSE-96-46 approved in Exchange Act Release No. 38420 (March 19, 1997), 62 FR 14488 (March 26, 1997).

⁵ Furthermore, on December 2, 1997, the Commission approved a proposed rule change filed

The Exchange also notes that the proposed definition of "foreign broker-dealer" contains objective criteria for its application and is narrower in scope than the definition of "foreign broker or dealer" specified in Rule 15a-6(b)(3) under the Act.⁶ In addition, the Exchange believes the proposed definition is substantially similar in form and substance to Rule 17a-7(c) under the Act (definition of nonresident brokers and dealers) and Sections 3(a)(50) and (52) of the Act (definitions of foreign securities authority and foreign regulatory authority).

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any 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. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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.,

by the Philadelphia Stock Exchange ("Phlx") to amend its definition of "foreign broker-dealer" along the same lines as the PCX. See, Exchange Act Release No. 39382 (December 2, 1997), 62 FR 64903 (December 9, 1997).

⁶ Rule 15a-6(b)(3) provides: "the term 'foreign broker or dealer' shall mean any non-U.S. resident person (including any U.S. persons engaged in business as a broker or dealer entirely outside the United States, except as otherwise permitted by this rule) that is not an office or branch of, or a natural person associated with, a registered broker or dealer, whose securities activities, if conducted in the United States, would be described by the definition of 'broker' or 'dealer' in sections 3(a)(4) or 3(a)(5) of the Act."

Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to file number SR-CBOE-97-66 and should be submitted by [insert date 21 days from the date of publication].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds the proposed rule change is consistent with Section 6(b) of the Act⁷ in general and furthers the objectives of Section 6(b)(5) in particular in that, by eliminating unintended differences in treatment between broker-dealers acting within the United States and those acting in other countries, it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, the CBOE's proposal is consistent with Section 11A of the Act because it will promote fair competition among brokers and dealers.⁸

In particular, with regard to the CBOE's rules governing the Exchange's automatic execution system that distinguish between broker-dealer orders and non-broker-dealer orders, the Commission finds it is fair to treat foreign broker-dealers in a manner similar to U.S. broker-dealers for purposes of such rules. Accordingly, all broker-dealers, whether U.S. registered or foreign will be prohibited from placing market or limit orders with an Order Book Official, utilizing RAES, or benefiting from guaranteed minimum executions.

As mentioned in the PCX's approval order, the Commission believes that the proposed definition of foreign broker-dealer provides an objective and verifiable standard that is capable of fair enforcement. In particular, the Exchange's surveillance staff should be able to confirm relatively quickly whether a person or entity is registered, authorized or licensed by a foreign governmental agency or foreign regulatory organization to perform the functions of a broker or dealer as defined in the Act.

The proposed rule change will make the CBOE's rules consistent with those of the PCX and Phlx. Because the PCX's nearly identical filing was approved

after being noticed for the applicable comment period, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-CBOE-97-66) is hereby approved on an accelerated basis.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-3010 Filed 2-5-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39608; File No. SR-Philadep-97-06]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding Certain Corporate Governance Changes

February 2, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 22, 1997, the Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been primarily prepared by Philadep. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested parties and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change involves amendments to Philadep's by-laws to reflect its current winding down of operations and to streamline its board of directors and committee structures.²

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 39444 (December 11, 1997), 62 FR 66703, (File Nos. SR-Philadep-97-04 and SR-SCCP-97-04) (order approving a proposed rule change relating to a decision by the Philadelphia Stock Exchange, Incorporated to withdraw from the securities depository business and to restructure and limit its clearance and settlement business).

More specifically, the proposed rule change involves amendments to Philadep's by-laws to require that nonparticipating directors compose at least fifty percent of the director positions on the board of directors.³

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Philadep included statements concerning the purpose of and the basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Philadep has prepared summaries, as set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.⁴

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change amends Philadep's by-laws to reflect its winding down of operations and to streamline its board of directors and committee structures.⁵ In addition, the proposed rule change amends Article IV of Philadep's by-laws to require that nonparticipating directors compose at least fifty percent of the director positions on the board of directors. The by-laws now define nonparticipants as (a) persons who are not officers, directors, or employees of participants and persons who have not been employed in any such capacity at any time within the prior three years and (b) persons who (i) do not have a consulting nor employment relationship with the Philadelphia Stock Exchange, Incorporated ("PHLX"), Stock Clearing

³ Pursuant to the Commission's administrative proceedings order entered against Philadep, Philadep is required to amend its by-laws to require that nonparticipating directors fill fifty percent of Philadep's board of directors. In the Matter of Stock Clearing Corporation of Philadelphia and Philadelphia Depository Trust Company, Respondents, Order Instituting Proceedings Pursuant to Sections 19(h) and 21C of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Administrative Proceeding File No. 3-9360, Securities Exchange Act Release No. 38918 (August 11, 1997).

⁴ The Commission has modified the text of the summaries prepared by Philadep.

⁵ These changes: (a) Require Philadep to call a special meeting of shareholders if the by-laws regarding composition of the board are to be amended, (b) limit the nominating committee to three persons selected by the chairman of the board, (c) allow the chairman, instead of the president, to call special meetings of shareholders and of the board, and (d) reduce the number of board committees to an audit committee, a finance committee, and a nominating committee.

⁷ 15 U.S.C. § 78f(b).

⁸ In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).