For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42346; File No. SR–Phlx–99–57]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Permanent Approval of the Elimination of Position and Exercise Limits for FLEX Equity Options

January 18, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 4, 2000, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II 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

Phlx requests permanent approval for the elimination of position and exercise limits[3] on Flexible Exchange Options on equity securities (''FLEX equity options'').

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 III 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

1. Purpose

The Phlx requests permanent approval of the pilot program eliminating position and exercise limits on FLEX equity options. FLEX equity options at the Phlx have been trading since January 1998.[4] The Commission approved the elimination of position and exercise limits on FLEX equity options, on a two-year pilot basis, concurrently with the approval of the trading of FLEX equity options.[5]

In addition to eliminating position and exercise limits, the pilot program required that a member or member organization (other than a Specialist or Registered Options Trader) report to the Exchange information for each account that maintains a position on the same side of the market in excess of the position limit established pursuant to the applicable exchange rule for Non-FLEX Equity options of the same class. The report included information regarding the FLEX Equity option position, positions in any related instrument, the purpose or strategy for the position, and the collateral used by the account.[6]

Furthermore, the Commission, in its order approving the pilot program, required the Exchange to submit a report containing a description of: (i) the types of strategies used by FLEX Equity options market participants and whether FLEX Equity options are being used in lieu of existing standardized equity options; (ii) the type of market participants using FLEX Equity option both before and during the pilot program, including how the utilization of FLEX Equity options has changed; (iii) the average size of FLEX Equity option contracts both before and during the pilot program, the size of the largest FLEX Equity option contract on any given day both before and during the pilot program, and the size of the largest FLEX Equity option held by any single customer/member both before and during the pilot program; and (iv) any impact on the prices of underlying stocks during the establishment or unwinding of FLEX positions that are greater than three times the standard position limit. Phlx filed its report, which will be discussed below, on July 15, 1999.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[7] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

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

The proposed rule change will impose no 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. 20549–0609. 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 Room, located at the above address. Copies of such filing will also be available for inspection and copying at

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Position limits impose a ceiling on the number of option contracts in each class on the same side of the market (*i.e.,* aggregating long calls and short puts or long puts and short calls) that can be held or written by an investor or group of investors acting in concert. Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

[4] Securities Exchange Act Release No. 39549 (January 14, 1998), 63 FR 3601 (January 23, 1998) (approving SR–Phlx–96–38).

[5] The Commission notes that it recently approved identical proposed rule changes from the American Stock Exchange, Chicago Board Options Exchange and the Pacific Exchange. *See* Securities Exchange Act Release No. 42223 (December 10, 1999), 64 FR 71158 (December 30, 1999) (approving SR–Amex–99–40, SR–PCX–99–41, and SR–CBOE–99–59).

[6] The Exchange also required that an updated report be filed when a change in the options position occurred or when a significant change in the hedge of that position occurred.

[7] 15 U.S.C. 78f(b)(5).

the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–99–57 and should be submitted by February 15, 2000.

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

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, with the requirements of Sections 6 and 11A of the Act.[8] Specifically, the Commission believes that the rule proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also believes that the proposed rule change is consistent with Section 11A of the Act in that the permanent elimination of position and exercise limits for FLEX Equity options allows the Exchange to better compete with the growing over-the-counter (''OTC'') market in customized equity options, thereby encouraging fair competition among brokers and dealers and exchange markets. The attributes of the Exchange's options markets versus a OTC market include, but are not limited to, a centralized market center, an auction market with posted transparent market quotations and transaction reporting, parameters and procedures for clearance and settlement, and the guarantee of The Options Clearing Corporation (''OCC'') for all contracts traded on the Exchange.

The Commission has generally taken a gradual, evolutionary approach toward expansion of position and exercise limits. Given that the current pilot program has run for the past two years without incident, the Commission believes that it is appropriate to approve the pilot on a permanent basis, First, the FLEX Equity options market is characterized by large, sophisticated institutional investors (or extremely high net worth individuals), who have both the experience and ability to engage in negotiated, customized transactions. For example, with a required minimum size of 250 contracts (or the number of contracts having $1 million of underlying equivalent value) to open a transaction in a new series,[9] FLEX Equity options are designed to appeal to institutional investors, and it is unlikely that many retail investors would be able to engage in options transactions at that size. Second, all of the Exchange's other current rules and provisions governing FLEX Equity options remain applicable.[10] Third, the OCC will serve as the counter-party guarantor in every exchange-traded transaction. Fourth, the proposed elimination of position and exercise limits for FLEX Equity options could potentially expand the depth and liquidity of the FLEX equity market without significantly increasing concerns regarding intermarket manipulations or disruptions of the options or the underlying securities. Fifth, the enhanced reporting requirements should help the Exchange to monitor accounts under risk and to take any appropriate action. Finally, the Exchange's surveillance program will be applicable to the trading of FLEX Equity options and should detect and deter trading abuses arising from the elimination of position and exercise limits.

As described above, the Exchange has adopted important safeguards that will allow it to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if necessary. The Exchange requires each member or member organization (other than a Specialist, a Registered Options Trader, a Market Maker, or a Designated Primary Market Maker) that maintains a position on the same-side of the market in excess of the position limit level established pursuant to the applicable Exchange rule [11] for Non-FLEX Equity options of the same class to report information to the exchange regarding the FLEX Equity option position, positions in any related instrument, the purpose or strategy for the position, and the collateral used by the account. By monitoring accounts in excess of the Non-FLEX Equity option position limit in this manner, the Exchange should be provided with the information necessary to determine whether to impose additional margin and/or whether to assess capital charges upon a member organization carrying the account. In addition, this information should allow the Exchange to determine whether a large position could have an undue effect on the underlying market and to take the appropriate action.

The Commission believes that it is reasonable to treat FLEX Equity options differently than regular standardized options. FLEX options compete directly with OTC options. The Commission believes that it would be beneficial to attract OTC activity back to a more transparent market with a clearinghouse guarantee. Hence, a liberalization of position limits for FLEX Equity options is a measured deregulatory means to enable the Exchange to compete with the OTC market while preserving important oversight safeguards.

As noted above, the Exchange was required to submit a report assessing the effects of the pilot program. This information was required to allow the Commission to valuate the consequences of the program and to determine whether permanent approval was appropriate. The Commission has reviewed Phlx's report. Although the Commission cannot entirely rule out the potential for future adverse effects on the securities markets for the FLEX Equity options or component securities underlying FLEX Equity options, the report supports permanent approval of the pilot because such effects and abuses have not occurred over the two year pilot period.

In the report, the Exchange indicates that there were no instances of any unusual market effects developing out of FLEX trades. Through 1998, there were a total of 189 trades, 47 transacted by institutions and 142 undertaken by retail customers. The average institutional trade size was 772 contracts with the largest trade involving 8,000 contracts. Retail investor trades averaged 120 contracts with the largest trade involving 1,760 contracts. [12] During 1998, four firms executed trades on behalf of a total of 15 retail customers. Based on the above, the Exchange concludes that that elimination of position and exercise limits for FLEX Equity options did not have any impact on the prices of the underlying stocks during the establishment or unwinding of FLEX Equity positions.

Finally, given the size and sophisticated nature of the FLEX Equity options market, the reporting and margin requirements, and the fact that the pilot program has run the past two years without incident, the Commission

[8] *See* 15 U.S.C. 78f(b) and 78k–1. In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* at 78c(f).

[9] *See* Phlx Rule 1079(a)(8)(A)(ii).

[10] *See* Phlx Rule 1079.

[11] *See* Phlx Rule 1001.

[12] The Commission notes that the minimum value size for an opening transaction (other than FLEX quotes responsive to a FLEX request for quotes) in any FLEX series in which there is no open interest at the time the request for quotes is submitted is the lesser of 250 contracts or the number of contracts overlying $1 million in the underlying securities. However, the minimum value size for a transaction in any currently-opened FLEX series is 100 contracts in the case of opening transactions for FLEX Equity options and 25 contracts in the case of closing transactions in FLEX Equity options. *See* Phlx Rule 1079(a)(8)(A)(ii) and (a)(8)(B)(i).

believes that eliminating position and exercise limits for FLEX Equity options on a permanent basis does not substantially increase manipulative concerns. The Commission continues to believe that the enhanced market surveillance of large positions should help the Exchange to take the appropriate action in order to avoid any manipulation or market risk concerns. The Commission expects the Exchange to take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in FLEX options and the underlying stocks, should any unanticipated adverse market effects develop. In summary, because of the special nature of the FLEX Equity markets, the Commission believes that the Exchange's proposals should be approved on a permanent basis. In permanently approving the proposals, the Commission believes that the distinctions between the FLEX Equity options market and the standardized equity options market, as described above, warrant the different regulatory applications of position and exercise limits under the Act.

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**. Specifically, the Commission believes that because permanent approval of the proposal will allow the pilot program to continue uninterrupted based on the same terms and conditions of the original pilot, it is consistent with the protection of investors and the public interest to approve the proposed rule changes on an accelerated basis. Furthermore, as noted above, the Commission recently approved identical proposed rule changes from the American Stock Exchange, Chicago Board Options Exchange and the Pacific Exchange.[13] A full 21-day comment period was provided for those proposals and no comments were received. Accordingly, the Commission believes it is consistent with Section 6(b)(5) and Section 19(b)(2) of the Act to grant accelerated approval to the proposed rule change.[14]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–Phlx–99–57) 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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[13] *See supra* note 5.

[14] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 3207]

Bureau of Oceans, International Environmental and Scientific Affairs; Public Meeting to Discuss Preparations for Negotiations on an Annex to the United States-Canada Air Quality Agreement to Address the Transboundary Problem of Ground-Level Ozone

SUMMARY: The United States government, through an interagency working group chaired by the U.S. Department of State, is seeking authority to negotiate an annex to the United States-Canada Air Quality Agreement of 1991. The proposed annex would seek to address transboundary ground-level ozone air quality problems by establishing commitments to reduce emissions of major constituents of air pollution. In preparation for the proposed negotiations, the United States will establish a negotiating team consisting of representatives of the U.S. Department of State, the U.S. Environmental Protection Agency, and other interested U.S. government agencies. In addition, three representatives of interested party groups (one each from industry/mining/labor, U.S. states, and environmental groups) will be invited to participate on the U.S. delegation to the talks. The first negotiating session is expected to take place in Ottawa, Canada, in February 2000. The U.S. Department of State will host a public meeting in advance of this session to outline issues likely to arise in the context of the negotiations, to invite public comment, and to invite interested parties to collaborate on selecting their group's representative on the U.S. delegation. The public meeting will take place on Friday, February 4, 2000, from 9:00 a.m. to 11:00 a.m. in Room 1107 of the U.S. Department of State, 2201 C Street NW, Washington, D.C. To expedite their entrance into the building, attendees should provide to Eunice Mourning of the Office of Environmental Policy, U.S. Department of State (tel. 202–647–9266, fax 202–647–5947) their name, organization, date of birth and Social Security number by close of business on Wednesday, February 2, 2000. Attendees should enter the C Street entrance and bring picture identification with them. For further information, please contact Ms. Cornelia Weierbach, U.S. Department of State, Office of Environmental Policy (OES/ENV), Room 4325, 2201 C Street NW, Washington DC 20520. Phone 202–647–4548, fax 202–647–5947, e-mail weierbachcm@state.gov.

SUPPLEMENTARY INFORMATION:

Air Quality Cooperation With Canada

The United States and Canada committed themselves to addressing transboundary air pollution issues in the 1991 United States-Canada Air Quality Agreement. Since that Agreement entered into force, work has focused on achieving reductions in emissions of the two major acid rain pollutants: sulfur dioxide (SO_2) and nitrogen oxides (NO_X). Both parties have recorded excellent progress in complying with the SO_2 and NO_X emission reduction goals in the Agreement. Cooperative efforts on transboundary air pollution issues have led to the recognition that the U.S. and Canada have substantial common interests in the mitigation of ground-level ozone and particulate matter pollution.

In April 1997, President Clinton met with Canadian Prime Minister Chretien to discuss, among other issues, bilateral transboundary pollution control initiatives. At that time, the U.S. Environmental Protection Agency (EPA) Administrator and the Canadian Minister of the Environment signed the Program to Develop a Joint Plan of Action for Addressing Transboundary Air Pollution. The focus of this initiative was on ground-level ozone and particulate matter. In June 1998, these officials endorsed a report from the U.S.-Canada Air Quality Committee in which the Committee undertook to deliver, by April 1999, recommendations on the negotiation of an ozone annex to the U.S.-Canada Air Quality Agreement. On April 6, 1999, the Committee recommended the negotiation of an ozone annex to the U.S.-Canada Air Quality Agreement. Both the Administrator and the Minister agreed with this recommendation.

U.S. Domestic Framework for Controlling Ground-Level Ozone and Related Precursors

The United States has a strong regulatory program under the Clean Air Act (the Act) to reduce significantly emissions of ozone forming pollutants—NO_X and volatile organic compounds