

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43408; File No. SR-CSE-00-01]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments Nos. 1 and 2 by the Cincinnati Stock Exchange, Incorporated, Amending Its Rules To Accommodate the Implementation of Decimal Pricing**

October 3, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 2, 2000, The Cincinnati Stock Exchange, Incorporated (“CSE” OR “Exchange”), filed with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend its rules to permit quotations made in decimal increments in conjunction with the securities industry’s phased implementation of decimal pricing conventions. On August 7, 2000, the CSE amended the proposed rule change<sup>3</sup> by requesting that the Commission grant immediate effectiveness to the proposal pursuant to Section 19(b)(3)(A) of the Act.<sup>4</sup> On October 2, 2000, the Exchange again amended the proposed rule change<sup>5</sup> by making minor technical corrections to the proposed rule text amendments. The proposal, as amended, is described in Items I, II, and III below, which Items have been prepared by the CSE. Because the CSE filed the amended proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>6</sup> and Rule 19b-4(f)(6) thereunder,<sup>7</sup>

it has become effective upon filing with the Commission.<sup>8</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend its rules to provide for the implementation of decimal pricing. The CSE believes the proposed rule change conforms to the uniform industry approach to implementing decimal pricing contained in the joint submission to the Commission by the CSE and other interested parties dated July 24, 2000, and entitled “Decimals Implementation Plan for the Equities and Options Markets” (“Decimals Plan”). The text of the proposed rule change is set forth below. Proposed new language appears in *italic*; proposed deletions appear in brackets.

\* \* \* \* \*

**Chapter XI Trading Rules**

**Rule 11.3 Price Variations**

(a) Bids or offers in stocks traded on the Exchange at or above \$1.00 per share shall not be made at a smaller variation than 1/8 of \$1.00 per share; in stocks below \$1.00 but at or above 1/2 of \$1.00 per share, at a smaller variation than 1/16 of \$1.00; in stocks below 1/2 of \$1.00 per share, at a smaller variation than 1/32 of \$1.00 per share; and in bonds at a smaller variation than 1/8 of 1% of the principal amount, except in the case of a dually or multiply-traded security where the principal exchange shall have a different rule or when the Board of Trustees of the Exchange shall provide otherwise. (*Rule 11.3(a) will be eliminated upon completion of decimal conversion.*)

(b) *Bids or offers in stocks traded on the Exchange shall not be made at a smaller variation than \$.01 per share; and in bonds at a smaller variation than 1/8 of 1% of the principal amount.*

(c) *Notwithstanding (b) above, bids and offers in stocks not participating in the decimal pilot program and not converted to decimal pricing at or above \$1.00 per share must be made in fractions at a minimum variation of 1/16*

<sup>8</sup> In filing its Amendment No. 1, the Exchange requested that the Commission waive the requirement that the Exchange provide the Commission with written notice of its intent to make such filing, as well as a description of the proposal, at least five business days prior to the filing of the proposed rule change with the Commission. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii). The Commission agrees to waive such requirement of prior notice.

*per share. The minimum variation of .01 described in (b) above is applicable to stocks that have been converted to decimal pricing. (Rule 11.3(c) will be eliminated upon completion of decimal conversion.)*

\* \* \* \* \*

**Chapter XIV Intermarket Trading System Plan**

**Rule 14.3 Pre-Opening Application**

(b) \* \* \* The “applicable price changes” are:

Previous day’s closing price	Applicable price change (more than)
Network A: Under \$15 ..	1/8 point or for stocks trading in decimals .10
\$15 or over <sup>1</sup> [**].	1/4 point or for stocks trading in decimals .25
Network B: Under \$5 ....	1/8 point or for stocks trading in decimals .10
\$5 or over <sup>2</sup>	1/4 point or for stocks trading in decimals .25

<sup>1</sup> [\*\*] If the previous day’s consolidated closing price of [an] a Network A Eligible Security exceeded \$100 and the Security does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the “applicable price change” is [one point] one dollar.

<sup>2</sup> If the previous day’s consolidated closing price of a Network B Eligible Security exceeded \$75 and the Security is not a Portfolio Deposit Receipt, Index Fund Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the “applicable price change” is one dollar.

(c) A pre-opening notification shall—

(1) Be designated as a pre-opening notification (“IND”)

(2) Identify the Exchange (“C”), the inquiring specialist and the security (“XYZ”)

(3) Indicate the “applicable price range” by being formatted as a standardized pre-opening administrative message as follows:

IND C/XYZ [RANGE]

The price range shall not exceed the “applicable price range” shown below:

Consolidated closing price	Applicable price range \$
Network A: Under \$50	1/2 point or for stocks trading in decimals .50
\$50 or over <sup>3</sup> [***]	1 point or for stocks trading in decimals 1.00
Network B: Under \$10	1/2 point or, for stocks trading in decimals, .50

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Jeffrey T. Brown, Vice President, Regulation, and General Counsel, Exchange, to Joseph P. Morra, Senior Counsel, Division of Market Regulation, Commission, dated August 7, 2000 (“Amendment No. 1”).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> See letter from Jeffrey T. Brown, Vice President, Regulation, and General Counsel, Exchange, to Joseph P. Morra, Senior Counsel, Division of Market Regulation, Commission, dated September 22, 2000 (“Amendment No. 2”).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

Consolidated closing price	Applicable price range \$
\$10 or over <sup>4</sup>	1 point or, for stocks trading in decimals, 1.00

<sup>3</sup>[\*\*] If the previous day's closing price of [an] a Network A Eligible Security exceeded \$100 and the Security does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the "applicable price change" is [two points] two dollars.

<sup>4</sup> If the previous day's consolidated closing price of a Network B Eligible Security exceeded \$75 and the Security is not a Portfolio Deposit Receipt, Index Fund Share, or Trust Issued Receipt, or does not underlie and individual stock option contract listed and currently trading on a national securities exchange, the "applicable price change" is two dollars.

The price range also shall not straddle the previous day's closing price, although it may include it as an endpoint (e.g., a  $\frac{1}{8}$ - $\frac{5}{8}$  or for stocks trading in decimals 40.15-40.65 price range would be permissible if the previous day's consolidated closing price were  $\frac{1}{8}$  or  $\frac{5}{8}$  or for stocks trading in decimals 40.15 or 40.65, but not if the closing price were  $\frac{1}{4}$ ,  $\frac{3}{8}$ , or  $\frac{1}{2}$  or, for stocks trading in decimals, within the price range of 40.16-40.64).

\* \* \* \* \*

(g) If after sending a pre-opening notification, \* \* \*  
(1) Increase or Decrease in Applicable Price Range \* \* \*  
(2) Shift to within Applicable Price Change Parameter

(a) The inquiring specialist \* \* \*  
(b) Notwithstanding the preceding sentence, in situations where the price range in an initial or additional notification includes price variations equal to or less than the applicable price change parameters, the "cancellation" notification signifies that the anticipated opening price: (1) may or may not be outside of the price range specified in the pre-opening notification and (2) does not represent a change from the previous day's consolidated closing price of more than the applicable price change.<sup>5</sup>[\*]

<sup>5</sup>[\*] Example: CTA close at 30. Pre-Opening Notification sent with any one of the following price ranges: 30-30 $\frac{1}{2}$ ; 30 $\frac{1}{8}$ -30 $\frac{5}{8}$ ; or 30 $\frac{3}{4}$  or for stocks trading in decimals a price range of 30.10-30.60, etc. It is then determined that the stock will open at 30, 30 $\frac{1}{8}$ , or 30 $\frac{1}{4}$  or, for stocks trading in decimals, a price within the range of 30 to 30.25, the specialist need not re-indicate the stock pursuant to paragraph (2)(b).

\* \* \* \* \*

(m) Subject to paragraph (n), \* \* \*  
(1) Be designated as a pre-opening response ("RES")  
(2) Identify the Exchange ("C"), the specialist, and the security ("XYZ"), and

(3) Show the specialist's interest (if any), both as principal for his own account ("P") and as agent on orders left with him ("A"), at each price level within the price-range indicated in the pre-opening notification (e.g., 40 $\frac{3}{8}$  or, for stocks trading in decimals, 40.40), reflected on a netted share basis by being formatted as a standardized pre-opening administrative message as follows:

RES C/XYZ BUY {SELL} A-P 40 $\frac{3}{8}$  (or, for stocks trading in decimals, 40.40)

The response may also show market orders separately.

\* \* \* \* \*

## 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 CSE 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 CSE 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 Commission has ordered the securities exchanges and other interested parties to implement decimal pricing in their markets.<sup>9</sup> Pursuant to the Order, the Commission required the exchanges to submit proposed rule changes implementing a uniform decimals phase-in schedule. As described above, the Exchange is proposing to amend the following rules in conjunction with the securities industry's conversion of its markets to decimal pricing which will allow for minimum price variations of \$.01 per share in quotations for stocks that trade on the Exchange: Chapter XI, Trading Rules, Rule 11.3, Price Variations; and Chapter XIV, Intermarket Trading System Plan, Rule 14.3, Pre-Opening Application.

#### 2. Statutory Basis

The CSE believes that the proposal is consistent with the provisions of Section 6(b)(5)<sup>10</sup> of the Act which requires that an exchange have rules

<sup>9</sup> See Securities Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to 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.

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

The CSE 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

Written comments were neither solicited nor received in connection with the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and
- (iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> the Rule 19b-4(f)(6) thereunder.<sup>12</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>13</sup>

The CSE has requested that the Commission accelerate the operative date. The Commission believes that it is consistent with the protection of investors and the public interest and therefore finds good cause to designate the proposal to become immediately operative upon filing.<sup>14</sup> Acceleration of

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> The Commission will measure this sixty-day period from August 7, 2000, the date of Amendment No. 1, since Amendment No. 2, filed on October 2, 2000, made only minor corrections to the proposal as previously amended.

<sup>14</sup> The Decimals Plan provides for minimum price variations for equities and options of no less than

the operative date will ensure that the CSE is able to operate in accordance with the terms and conditions of the Decimals Plan. For these reasons, the Commission finds good cause to designate that the proposal become operative immediately upon filing.<sup>15</sup>

#### IV. 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 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to file number SR-CSE-00-01 and should be submitted by November 2, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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one cent. The Commission's June 8th Order requires the Participants to submit joint or individuals studies two months after Full Implementation (as defined in the Plan) regarding the impact of decimal pricing on system capacity, liquidity, and trading behavior, including an analysis of whether there should be a uniform minimum quoting increment. If a Participant wishes to move to quoting in an increment of less than one cent, the Participant should include in its study a full analysis of the potential impact of such trading on the Participant's market and the markets as a whole. Within thirty days after submitting the study, and absent Commission action, the Participants individually must submit for notice, comment, and Commission action, proposed rule changes under Section 19(b) of the Exchange Act to establish their individual choice of minimum increments by which equities or options are quoted on their respective markets.

<sup>15</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43406; File No. SR-Phlx-00-39]

### Self Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Disqualification of Governors

October 3, 2000.

#### I. Introduction

On April 14, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to the disqualification of governors. On August 16, 2000, the Phlx filed Amendment No. 1 to the proposals.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on July 13, 2000.<sup>4</sup> No comments were received on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

Phlx By-Law, Article IV, Section 4-8 describes the discussions and decisions in which members of the Phlx Board of Governors ("Board Members") must refrain from participation. The provision further specifies discussions and decisions that do not require Board Members to refrain from participation. The Exchange proposes to amend Phlx By-Law, Article IV, Section 4-8 to conform to the new Phlx 1999 Code of Conduct for Board Members and Committee Members ("1999 Code of Conduct"). The Phlx Code of Conduct, which was adopted in 1997 ("1997 Code of Conduct"), describes, among other things, the discussions and decisions in which Covered Persons must refrain from participation.<sup>5</sup> The Phlx Board of Governors revised the 1997 Code of Conduct in July 1999, modifying the

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission (August 16, 2000) ("Amendment No. 1"). Amendment No. 1 made a technical correction to the language of the proposed rule.

<sup>4</sup> Securities Exchange Act Release No. 43161 (August 16, 2000), 65 FR 51396 (August 23, 2000).

<sup>5</sup> Following the adoption of the 1997 Code of Conduct, the Exchange conformed the language in Phlx By-Law, Article IV, Section 4-8 to the language in the 1997 Code of Conduct. See Securities Exchange Act Release No. 39722 (March 4, 1998), 63 FR 12569 (March 13, 1998).

language regarding the disqualification of Covered Persons.

The Phlx's proposed rule change will amend its By-Law, Article IV, Section 4-8 to prohibit Covered Persons from participating in matters in which they or their immediate family have an interest.<sup>6</sup> The Exchange proposes to allow participation in matters where the Covered Person's interest arises solely from membership in the Exchange or a sub-class of membership, unless their impartiality might reasonably be questioned.<sup>7</sup>

#### III. Discussion

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 Section 6(b) of the Act.<sup>8</sup> Specifically, the Commission believes that the proposal is consistent with the requirements of Section 6(b)(3)<sup>9</sup> that the rules of an Exchange be designed to assure a fair representation of its members in the administration of the Exchange's affairs.<sup>10</sup> The Commission believes that the proposal will prohibit the discussion and determination of Exchange matters by Covered Persons or their immediate family who have an interest in the matter, unless that interest is impartial and arises solely from membership in the Exchange or a sub-class of membership. The proposal will also add to the Exchange's present framework of conflict of interest provisions.<sup>11</sup>

<sup>6</sup> The 1999 Code of Conduct and the proposed amendment to Phlx By-Law Article IV, Section 4-8 define "immediate family" as a spouse, a parent, a mother-in-law, a father-in-law, a brother, a sister, a child, any other person living with the individual or any person for whom the individual provides at least 50 percent of that person's financial support per year.

<sup>7</sup> The phrase "a sub-class of membership" refers to the various categories of Phlx membership. Examples of sub-classes include: equity members and options members; on-floor and off-floor members; and specialists and floor brokers on each floor. The Exchange represents that many decisions in Board and committee meetings, such as fees on equity floor transactions or requirements for arbitration in customer contracts, apply to only one or more of these sub-classes and not to others. The Exchange represents that it does not intend to disqualify persons from making decisions solely because they are part of a sub-class, such as market makers or off-floor members, which will be affected by the outcome of the decision.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(3).

<sup>10</sup> In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> See e.g., 1999 Code of Conduct (requiring Covered Persons to make prompt disclosure of any interest that could reasonably appear to violate the 1999 Code of Conduct (and Phlx By-Law Article X,