

upon the execution guarantee requirement provided by the Phlx.

In the Pilot Approval Order, the Commission stated its belief that rules such as CBOE Rule 8.51(b)(3) and Phlx Rule 1015(a)(v) are inconsistent with the Quote Rule and cannot be used to relieve exchange members from their obligations under the Quote Rule.³⁹ The Commission noted that those provisions had been approved prior to the adoption of amendments to the Quote Rule that extended its application to the options market. Generally, the Quote Rule requires each responsible broker or dealer to "execute any order to buy or sell a subject security * * * at a price at least as favorable to such buyer or seller as the responsible broker's or dealer's published bid or offer * * * in any amount up to its published quotation size."⁴⁰ Further, the Quote Rule does not expressly provide an exception for multiple orders submitted by the same beneficial owner. And, in fact, the Quote Rule requires, subject to certain limitations, a responsible broker or dealer to execute any up to its published size.

At the same time, the Commission specifically solicited comment on whether it would be appropriate for the Commission to grant an exception from the requirement of the Quote Rule for multiple orders submitted by the same beneficial owner at approximately the same time. One commenter addressed this issue, arguing that without providing an exemption from the Quote Rule, options market makers would be subject to unacceptable levels of risk.⁴¹ In addition, CBOE submitted a letter to the Commission requesting exemptive relief from the requirements of the Quote Rule that, if granted, would relieve responsible brokers and dealers of their obligations under the Quote Rule in these circumstances.⁴² The Commission has determined not to grant an exemption from the requirements of the Quote Rule at this time. Accordingly, the CBOE and Phlx now propose to eliminate these provisions from their rules.⁴³

The Commission finds good cause, consistent with Section 19(b)(2) of the Exchange Act,⁴⁴ for granting the Exchanges' request for permanent approval of the Pilot Programs, as amended, prior to the thirtieth day after the day of publication of notice of filing

thereof in the **Federal Register**. The Commission notes that the Changes' Pilot Program expire on June 1, 2001. The Commission believes that granting accelerated approval to the proposed amendments will allow the Exchanges to permanently implement their rules in compliance with the Quote Rule without delay. In addition, the Commission notes that the Exchanges reported no complaints or problems with the operation of the rules during the 60-day pilot period. Finally, the Commission notes that the proposed amendments to the Pilot Programs generally include only non-substantive revisions and technical corrections to the Exchanges' rule text.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,⁴⁵ the Exchanges' proposed rule changes (File Nos. SR-Amex-2001-18, SR-CBOE-2001-15, SR-ISE-2001-07, SR-PCX-2001-18, and SR-Phlx-2001-37), as amended, are approved on a permanent basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴⁶

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44385; File No. SR-CBOE-2001-17]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Change the Voting Requirement for Approval of Membership Applications and to Clarify a Notice Requirement Relating to the Exercise of an Authorization To Sell a Membership

June 1, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 5, 2001, the Chicago Board Options Exchange, Incorporated ("CBOE" 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 CBOE. The CBOE

submitted an amendment to the proposed rule change on May 22, 2001.³ The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change, as amended, and to approve the proposal, as amended, on an accelerated basis.

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

The CBOE proposes to change the voting requirement for approval of CBOE membership applications and to clarify a notice requirement relating to the exercise of an Authorization to Sell a membership. Below is the text of the proposed rule change. New language is italicized, and deletions are bracketed.

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Chicago Board Options Exchange, Incorporated Rules

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Chapter III—Membership

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Application Procedures and Approval or Disapproval

Rule 3.9.

(a)–(j) Unchanged.

(k) [Approval of an application requires a vote of the majority of the members of the Membership Committee then in office.] Any applicant that is approved to be a member by the Membership Committee must be approved by the Membership Committee to perform in at least one of the recognized capacities of a member as stated in Rule 3.1(b). Written notice of the action of the Membership Committee, specifying in the case of disapproval of an application the grounds therefore, shall be provided to the applicant.

* * * * *

Sale and Transfer of Membership

Rule 3.14.

(a)–(c) Unchanged.

(d) Authorizations to Sell. The owner of a transferable membership may voluntarily grant to another Exchange member an Authorization to Sell the membership. Authorizations to Sell shall be subject to the following provisions:

³ See letter from Arthur B. Reinstein, Deputy General Counsel, CBOE, to Sonia Patton, Attorney, Division of Market Regulation, Commission, dated May 22, 2001 ("Amendment No. 1"). Amendment No. 1 designated the proposed rule change for submission to the Commission under Section 19(b)(2) of the Act instead of under Section 19(b)(3)(A) of the Act.

³⁹ See Pilot Approval Order, *supra* note 12.

⁴⁰ 17 CFR 240.11Ac1-1(c)(2) (emphasis added).

⁴¹ See Phlx Letter, *supra* note 13.

⁴² See *supra* note 30.

⁴³ See CBOE Amendment No. 2 and Phlx Amendment No. 5.

⁴⁴ 15 U.S.C. 78s(b)(2).

⁴⁵ 15 U.S.C. 78s(b)(2).

⁴⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(i) An Authorization to Sell shall be effective only if it has been executed on a form prescribed by the Exchange and filed with the Membership Department.

(ii) A membership owner may not grant an Authorization to Sell a particular membership to more than one member.

(iii) The grantee of an Authorization to Sell shall have all of the authority granted under the Constitution and Rules relating to the sale of the membership that would otherwise be vested in the membership owner, including the sole authority to determine whether and when to submit an offer to sell the membership in accordance with the provisions of paragraph (a) of this Rule.

Notwithstanding the foregoing, *unless the following notice requirement is waived as described below*, a grantee of an Authorization to Sell must (A) notify the membership owner in writing at least 3 business days prior to exercising the grantee's right to sell the membership of any decision by the grantee to exercise that right and (B) provide the Membership Department with written verification in a form and manner prescribed by the Exchange that the required notice has been provided to the membership owner. *The membership owner may waive the foregoing notice requirement in a form and manner prescribed by the Exchange.*

* * * * *

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 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

1. Purpose

The proposed rule change would (i) change the voting requirement for approval of CBOE membership applications by CBOE's Membership Committee to the same voting requirement that applies to other CBOE committee decisions and (ii) clarify that a membership owner that grants to

another member an Authorization to Sell the membership may waive the requirement that the grantee of the Authorization to Sell provide at least 3 business days notice to the membership owner prior to exercising the grantee's right to sell the membership.

With respect to the proposed voting requirement change, CBOE Rule 3.9(k) currently requires a vote of the majority of the members of CBOE's Membership Committee then in office to approve a membership application. However, CBOE Rule 2.1(b) provides that, except as provided in CBOE's Constitution, CBOE's Rules, or by resolution of CBOE's Board of Directors, the vote of a majority of the members of a committee present at a meeting at which a quorum is present will be the act of the committee. The voting requirement set forth in CBOE Rule 2.1(b) is generally applicable to other CBOE committees and even to votes of the Membership Committee regarding issues other than whether to approve a membership application. In order to make the Membership Committee voting requirement for the approval of membership applications consistent with the voting requirement for other CBOE committee decisions, the Exchange is proposing to delete the special voting requirement for membership applications currently contained in CBOE Rule 3.9(k). By virtue of this deletion, the voting requirement contained in CBOE Rule 2.1(b) would apply to the approval of membership applications.

With respect to waiving the notice requirement that must be satisfied in order to exercise an Authorization to Sell a membership, CBOE Rule 3.14(d) currently permits an owner of a transferable membership to voluntarily grant to another member an Authorization to Sell the membership. The grantee of an Authorization to Sell is vested with all of the authority provided for under the Exchange's Constitution and Rules relating to the sale of the membership. The grantee of an Authorization to Sell also has the right upon the sale of the membership to submit claims against the membership owner pursuant to CBOE Rule 3.15(b), to be satisfied out of the proceeds of the sale of the membership, that are related to the membership owner's Exchange business activities. CBOE Rule 3.14(d)(iii) requires a grantee of an Authorization to Sell a membership (i) to notify the membership owner in writing at least 3 business days prior to exercising the grantee's right to sell the membership of any decision by the grantee to exercise that right, and (ii) to provide the

Membership Department with written verification in a form and manner prescribed by the Exchange that the required notice has been provided to the membership owner. However, a membership owner may wish to waive this notice requirement if the grantee of the Authorization to Sell is exercising the grantee's right to sell the membership and the membership owner believes a higher sale price will be obtained if the membership is sold right away instead of three business days later. Because this notice requirement is for the sole benefit of the membership owner, the Exchange believes that it is fairly and reasonably implied that the membership owner may waive this notice requirement.

The Exchange is now proposing to amend CBOE Rule 3.14(d)(iii) to make explicit that the membership owner may waive the foregoing notice requirement in a form and manner prescribed by the Exchange. The Exchange believes that this codification would benefit members and would help to ensure that members are aware of the ability to waive the notice requirement.

2. Statutory Basis

The CBOE believes the proposed rule change is consistent with Section 6(b) of the Act⁴ in general, and furthers the objectives of Section 6(b)(5)⁵ in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest by improving the Exchange's approval process for membership applicants and by clarifying the Exchange's membership rules.

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

The CBOE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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, as amended, is consistent with

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., 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 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 CBOE. All submissions should refer to file number SR-CBOE-17 and should be submitted by June 29, 2001.

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

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the act and the rules and regulations thereunder applicable to a national securities exchange⁶ and, in particular, the requirements of Section 6(b)(5) of the Act.⁷ Specifically, the Commission finds that the proposed rule change will make the Exchange's approval process for membership applications consistent with the Exchange's generally applicable committee voting process. In addition, the Commission believes that clarifying that membership owners are permitted to waive the notice requirement relating to the exercise of an Authorization to Sell a membership will help ensure that members are aware of this right.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after date of publication of the notice of filing thereof in the **Federal Register** pursuant to Section 19(b)(2) of the Act.⁸ Accelerated approval will permit the Exchange to use its generally applicable committee voting process in approving membership applications, and will put membership owners on notice of their right to waive the notice requirement relating to Authorizations to Sell, without undue delay. Accordingly the Commission finds that it is consistent

with Section 6(b)(5) of the Act⁹ to approve the proposal on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-CBOE-2001-17), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44382; File No. SR-Phlx-2001-55]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Short Sales

June 1, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 16, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items the Phlx has prepared. 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 proposes to amend Phlx Rule 455, Short Sales, by adding new Supplementary Material .01. The text of the proposed rule change is below, with new language in italics.

Rule 455. Short Sales

(a)-(d) No change.

Supplementary Material

.01 This Rule 455 shall not prohibit any transaction or transactions which the Commission, upon written request or upon its motion, exempts, either unconditionally or on specified terms and conditions.

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.

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

1. Purpose

Rule 10a-1 under the Act³ addresses short selling. Subsection (f) of Rule 10a-1 provides that Rule 10a-1 shall not prohibit any transaction or transactions that the Commission, upon written request or upon its own motion, exempts, either unconditionally or on specified terms and conditions.

Phlx Rule 455 also addresses short selling. proposed Supplementary Material .01 of Phlx Rule 455 would track the language of Rule 10a-1(f) to clarify that nothing in Phlx Rule 455 prohibits any transaction or transactions that the Commission has exempted from Rule 10a-1 pursuant to Rule 10a-1(f).

2. Statutory Basis

The Phlx believes the proposed rule change is consistent with the provisions of Section 6(b) of the Act⁴ and furthers the objectives of Section 6(b)(5) of the Act⁵ in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade by clarifying and describing clearly in the Phlx's rules that nothing in Phlx Rule 455 prohibits any transaction or transactions which the Commission, upon written request or upon its own motion, has exempted pursuant to Rule 10a-1(f).

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not

⁶In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.10a-1. See also Securities Exchange Act Release No. 42037 (October 20, 1999), 64 FR 57996 (October 28, 1999) (Concept Release on Short Sales).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).