

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>31</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45415; File No. SR-Phlx-2001-60]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Adopting Sanctioning Guidelines for the Exchange's Order Handling Rules

February 7, 2002.

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 May 31, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" 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 Exchange. On December 18, 2001, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</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 adopt sanctioning guidelines ("Guide") to assist the various individuals involved in the Exchange's enforcement process, including the Exchange's Business Conduct Committee ("BCC"), by recommending ranges of monetary sanctions to be applied to violations of certain Exchange rules and Option Floor Procedure Advices ("OFPAs"). The Guide covers certain offenses related to the trading of options on the Exchange

trading floor, with particular emphasis on options order handling rules.<sup>4</sup> The text of the proposed rule change is available at the Phlx's Office of the Secretary 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, the Exchange 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 Exchange 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

According to the Exchange, the Guide is proposed as an internal document to be used by the BCC, hearing panels, and the Board of Governors in determining appropriate sanctions to be imposed in formal disciplinary proceedings. The Exchange states that its enforcement staff may also refer to the Guide in negotiating settlements. The Exchange believes that the criteria outlined in the Guide are designed to promote consistency in sanctions, and to effectively enforce compliance with the Exchange's option order handling rules.<sup>5</sup>

<sup>4</sup> The Exchange filed this proposed rule change in accordance with the provisions of Section IV.B.i of the Commission's September 11, 2000 Order Instituting Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Exchange to adopt rules establishing, or modifying existing, sanctioning guidelines such that they are reasonably designed to effectively enforce compliance with options order handling rules. See Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3-10282 (the "Order"). In addition to filing this Guide, the Exchange has submitted another proposed rule change (SR-Phlx-2001-114) to adopt guidelines to be used in determining when it is appropriate to aggregate violations of the Exchange's options order handling rules.

<sup>5</sup> The Exchange submitted to the Commission a letter, for which it requested confidential treatment, proposing how its regulatory staff would aggregate violations of the order handling rules, where the violations are identified through the Exchange's automated surveillance system. See letter from Anne Exline Starr, First Vice President Regulatory Group, Phlx, to John McCarthy, Associate Director, Office of Compliance, Inspections and Examinations, Commission, and Deborah Lassman Flynn, Assistant Director, Division, Commission, dated January 30, 2002.

The Exchange has drafted the Guide with an introduction and matrices. The introduction explains the purpose and intent of the Guide and presents an overview of the Exchange's enforcement program, including a description of factors to be considered when sanctioning misconduct in disciplinary proceedings. The matrices cover the Exchange's options order handling rules. Each matrix outlines recommended monetary sanction ranges and specific factors for consideration when a particular options order handling rule has been violated. The matrices are also arranged by subject matter and trading floor participant (floor broker, registered options trader, specialist).<sup>6</sup>

The Exchange states that the Guide would cover only matters brought before its BCC, which has jurisdiction over disciplinary actions pursuant to Exchange By-law Article X, Sec. 10-11 and Exchange Rule 960.1. According to the Exchange, the Guide would not apply to violations charged under its minor rule violation enforcement and reporting plan, which consists of Exchange Rule 970 and the corresponding OFPA.<sup>7</sup>

###### (2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>9</sup> in particular, in that it is designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect the investors and the public interest, because it should provide an appropriate form of deterrence for violation of Exchange rules, particularly the options order handling rules.

In addition, the Exchange believes that the proposed rule change is

<sup>6</sup> Although the Guide is being filed as a proposed rule change pursuant to the Order, the Exchange does not intend to file amendments to the Guide with the Commission as proposed rule changes hereafter, because the Guide is a document for internal use only and proposes guidelines that are not binding.

<sup>7</sup> According to the Exchange, the OFPAs contain fine schedules to be applied when minor violations are detected. The Exchange states that the fine schedules associated with the OFPAs are administered pursuant to Exchange Rule 970, which codifies the Exchange's minor rule violation enforcement and reporting plan. Exchange Rule 19d-1(c)(1) requires the prompt reporting with the Commission of any final disciplinary action. However, the Exchange believes that minor rule violations not exceeding \$2,500 are not deemed final and therefore not subject to the same reporting requirements.

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>31</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 Linda S. Christie, Counsel, Phlx, to Deborah Lassman Flynn, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 17, 2001 ("Amendment No. 1"). In Amendment No. 1, the Exchange amended Phlx Rule 960.10(a) to incorporate the Exchange's Enforcement Sanction Guide by reference into the Exchange's rules. The proposed new language requires the Exchange's BCC to refer to the Enforcement Sanction Guide for factors to be considered and appropriate sanctions when imposing disciplinary sanctions for violations of the Exchange's option order handling rules.

consistent with Section 6(b)(6)<sup>10</sup> of the Act, which requires that the rules of an exchange provide that its members be appropriately disciplined for violations of the Act as well as the rules and regulations thereunder. In this regard, the Exchange states that it has developed an enforcement program by which members, member organizations and associated persons are appropriately disciplined for violations of the Exchange rules and the federal securities laws. According to the Exchange, the proposed Guide will serve as an additional tool to effect the equitable administration of disciplinary proceedings. Therefore, the Exchange believes that the proposal should facilitate prompt, appropriate and effective discipline for violations of Exchange rules, particularly the options order handling rules.

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

The Exchange 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*

No written comments were either solicited or received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. 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 the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 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 Exchange. All submissions should refer to File No. SR-Phlx-2001-60 and should be submitted by March 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

**[Summary Notice No. PE-2002-10]**

#### **Petitions for Exemption; Dispositions of Petitions Issued**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**FOR FURTHER INFORMATION CONTACT:** Sandy Buchanan-Sumter (202) 267-7271, Denise Emrick (202) 267-5174, Forest Rawls (202) 267-8033, or Vanessa Wilkins (202) 267-8029, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, D.C., on February 8, 2002.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

#### **Dispositions of Petitions**

*Docket No.:* FAA-2001-8744.

*Petitioner:* Evergreen International Airlines, Inc.

*Section of 14 CFR Affected:* 14 CFR 91.315, 119.5(g), and 119.21(a)

*Description of Relief Sought/*

*Disposition:* To permit Evergreen Air Venture Museum to operate its Boeing B-17G for the purpose of carrying passengers for compensation or hire on local flights for educational and historical purposes. *Grant, 01/25/2002, Exemption No. 6632C*

*Docket No.:* FAA-2001-11089.

*Petitioner:* The Collings Foundation.

*Section of 14 CFR Affected:* 14 CFR 91.315, 91.319(a), 119.5(g), and 119.21(a).

*Description of Relief Sought/*

*Disposition:* To permit the Collings Foundation to operate its Boeing B-17, which is certificated in the limited category, and its Consolidated B-24, which is certificated in the experimental category, for the purpose of carrying passengers on local flights for compensation or hire. *Grant, 01/25/2002, Exemption No. 6540E*

*Docket No.:* FAA-2001-10384.

*Petitioner:* Weary Warriors Squadron.

*Section of 14 CFR Affected:* 14 CFR 91.315, 119.5(g), and 119.21(a)

*Description of Relief Sought/*

*Disposition:* To permit Weary Warriors Squadron to operate its North American B-25 for the purpose of carrying passengers for compensation or hire on local flights for educational and historical purposes. *Grant, 01/25/2002, Exemption No. 6786C*

*Docket No.:* FAA-2001-10876.

*Petitioner:* Experimental Aircraft Association, Inc.

*Section of 14 CFR Affected:* 14 CFR 91.315, 119.5(g), and 119.21(a)

*Description of Relief Sought/*

*Disposition:* To permit EAA to operate its Boeing B-17 for the purpose of carrying passengers for compensation or hire on local flights for educational and historical purposes. *Grant, 01/25/2002, Exemption No. 6541D*

*Docket No.:* FAA-2000-8468.

*Petitioner:* Yankee Air Force, Inc.

*Section of 14 CFR Affected:* 14 CFR 91.315, 119.5(g), and 119.21(a).

*Description of Relief Sought/*

*Disposition:* To permit Yankee Air Force to operate its Boeing B-17 for the purpose of carrying passengers for

<sup>10</sup> 15 U.S.C. 78f(b)(6).

<sup>11</sup> 17 CFR 200.30-3(a)(12).