

available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. 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-95-77 and should be submitted by February 16, 1996.

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

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-36747; File No. SR-PHLX-95-87]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Advice F-15 and the Expanded Equity Option Hedge Exemption

January 19, 1996.

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 7, 1995, 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 self-regulatory organization. The Commission is approving this proposal on an accelerated basis.

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

The PHLX proposes to amend paragraph (b) of Floor Procedure Advice ("Advice") F-15, "Minor Infractions of Position/Exercise Limits and Hedge Exemptions," to indicate that the maximum allowable position for each option contract "hedged" by 100 shares of stock or securities convertible into the stock will be three times, instead of twice, the standard position and exercise limit of the option.¹ The proposed amendment to Advice F-15 will make Advice F-15 consistent with

¹ Position limits impose a ceiling on the aggregate number of option contracts on the same side of the market that an investor, or group of investors acting in concert, may hold or write. Exercise limits impose a ceiling on the aggregate long positions in option contracts that an investor, or group of investors acting in concert, can or will have exercised within five consecutive business days.

a proposal approved previously by the Commission which expands the maximum allowable hedge exemption for equity options to three times the standard limit of the option.²

The text of the proposal is available at the Office of the Secretary, the PHLX, 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 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 IV 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

Recently, the Commission approved proposals by various options exchanges, including the PHLX, to create two additional tiers of equity option position and exercise limits and to expand the equity option hedge exemption from two times to three times the applicable position limit for the option.³ The PHLX's equity option hedge exemption, which is contained in Commentary .07 to PHLX Rule 1001, "Position Limits," was adopted originally on a pilot basis, and recently was permanently approved by the Commission.⁴ The equity hedge exemption applies where each option contract is "hedged" by 100 shares of stock or securities convertible into such stock, (in the case of an adjusted option, the number of shares at option), as follows: (1) long call and short stock; (2) short call and long stock; (3) long put and long stock; and (4) short put and short stock.

Advice F-15 was adopted in 1993.⁵ Paragraph (a) of Advice F-15 provides

² See Securities Exchange Act Release No. 36409 (October 23, 1996), 60 FR 55399 (October 31, 1995) (order approving File Nos. SR-NYSE-95-31; SR-PSE-95-25; SR-Amex-95-42; and SR-PHLX-95-71) ("Hedge Exemption Order"). See also Securities Exchange Act Release No. 36371 (October 13, 1995), 60 FR 54269 (October 20, 1995) (order approving File No. SR-CBOE-95-42).

³ *Id.*

⁴ See Securities Exchange Act Release No. 35738 (May 18, 1995), 60 FR 27573 (May 24, 1995) (order approving File Nos. SR-Amex-95-13; SR-CBOE-95-13; SR-NYSE-95-04; SR-PSE-95-05; and SR-PHLX-95-10).

⁵ Securities Exchange Act Release No. 32423 (June 7, 1993), 58 FR 32976 (June 14, 1993) (order approving File No. SR-PHLX-92-21).

for a fine for violations of the Exchange's position and exercise limits which do not exceed the position and exercise limits by more than 5%. Paragraph (b) of Advice F-15 governs the equity option hedge exemption, with paragraph (b)(1) requiring the filing of a hedge exemption report and paragraph (b)(ii) providing for a fine if an option position is not reduced when the stock side to a hedge exemption is decreased.

The PHLX proposes to amend Advice F-15(b) to reflect the recent expansion of the equity option hedge exemption,⁶ which was inadvertently omitted from the PHLX's proposal to expand the equity option hedge exemption. Specifically, the PHLX proposes to amend Advice F-15 to provide that the equity hedge exemption permits positions up to three times the applicable equity option position limit, rather than two times the applicable equity option position limit.

The PHLX notes that because Advice F-15 contains a fine schedule which is administered pursuant to the PHLX's minor rule violation enforcement and reporting plan ("Minor Rule Plan"),⁷ the proposal necessarily amends the Exchange's Minor Rule Plan. Since the equity option hedge exemption has already been expanded to three times the position limit,⁸ the PHLX believes that the proposal does not raise new regulatory issues; rather, the Exchange believes that the proposal enhances investors' hedging abilities by correcting Advice F-15 to correspond to PHLX Rule 1001, as amended by the Hedge Exemption Order.

The PHLX believes that increasing the maximum levels of the automatic hedge exemption should provide greater depth and liquidity, and, hence, greater protection to investors against market declines. Because the proposal codifies the expanded exemption in Advice F-

⁶ See Hedge Exemption Order, *supra* note 2.

⁷ The PHLX's Minor Rule Plan, codified in PHLX Rule 970, "Floor Procedure Advices: Violations, Penalties, and Procedures," contains Advices with accompanying fine schedules. Pursuant to paragraph (c)(1) of Rule 19d-1 under the Act, a self-regulatory organization ("SRO") is required to file promptly with the Commission notice of any "final" disciplinary action taken by the SRO. Pursuant to paragraph (c)(2) of Rule 19d-1, any disciplinary action taken by the SRO for violation of an SRO rule that has been designated a minor rule violation pursuant to the plan shall not be considered "final" for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding \$2500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies. By deeming unadjudicated minor violations as not final, the Commission permits the SRO to report violations on a periodic (quarterly), as opposed to immediate, basis.

⁸ See Hedge Exemption Order, *supra* note 2.

15, the PHLX believes that the proposal is consistent with Section 6(b) of the Act, in general, and, in particular, with Section 6(b)(5) in that 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 protect investors and the public interest by incorporating the new, broader equity hedge exemption in to the Exchange's Minor Rule Plan.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose an 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. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act in order to promptly correct Advice F-15 to reflect the expanded equity option hedge exemption approved in the Hedge Exemption Order and to clarify the application of the Minor Rule Plan to the exemption.

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, the requirements of Section 6(b)(5) in that it is designed to protect investors and the public interest and to facilitate transactions in securities.⁹ Exchange Rule 1001, Commentary .07 and Advice F-15(b) set forth an exemption from equity option position and exercise limits for equity options hedge by 100 shares of stock or securities convertible into the stock. In the Hedge Exemption Order, the Commission approved a proposal to amend PHLX Rule 1001, Commentary .07, to expand the maximum allowable hedged position for equity options to three times the standard position and exercise limit of the option. However, a corresponding amendment to Advice F-15(b) was inadvertently omitted from the PHLX's proposal to amend PHLX Rule 1001, Commentary .07.

The Commission believes that the proposal protects investors and the

public interest by making Advice F-15(b) consistent with PHLX Rule 1001, Commentary .07, as amended by the Hedge Exemption Order, thereby clarifying the Exchange's rules and eliminating potential confusion. Specifically, the proposal amends Advice F-15(b) to indicate that the maximum allowable position for each option contract hedge by 100 shares of stock or securities convertible into the stock, will be three times, instead of twice, the standard position and exercise limit of the option.

As the Commission found in the Hedge Exemption Order, the Commission believes that the proposal to expand the hedge exemption is an appropriate method to accommodate the needs of options market participants. By increasing the hedge exemption, the Commission continues to believe that large hedge funds and institutional accounts will be provided with the means necessary to adequately hedge their stock holdings without adding risk to the options market. Based on the PHLX's experience, the Commission believes, as it concluded in the Hedge Exemption Order, that the increased equity option hedge exemption should result in little or no additional risk to the marketplace.¹⁰

In addition, the Commission believes that it is appropriate to continue to administer Advice F-15, as amended, pursuant to the PHLX's Minor Rule Plan. Under the proposal, violations of the hedge exemption continue to be objective in nature and easily verifiable; therefore, the enforcement of the expanded hedge exemption should not entail the complicated factual and interpretive inquiries associated with more sophisticated disciplinary actions. Accordingly, the Commission believes that violations of the equity option hedge exemption continue to lend themselves to the use of the PHLX's Minor Rule Plan and the fines provided for in Advice F-15.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. The Commission believes that the proposal clarifies the PHLX's rules by making Advice F-15(b) consistent with PHLX Rule 1001, Commentary .07. In addition,

¹⁰The Commission notes that to the extent the potential for manipulation increases because of the expanded hedge exemption, the Commission believes that the PHLX's surveillance programs will be adequate to detect as well as to deter attempted manipulative activity. The Commission will, of course, continue to monitor the PHLX's surveillance programs to ensure that problems do not arise.

the proposal does not raise any new regulatory issues since the Commission previously approved an identical amendment to PHLX Rule 1001, Commentary .07. Accordingly, the Commission believes that granting accelerated approval of the proposed rule change is appropriate and consistent with Sections 6(b)(5) and 19(b)(2) of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 16, 1996.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-PHLX-95-87) is approved.

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

Margaret H. McFarland,
Deputy Secretary.

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¹¹ 15 U.S.C. § 78s(b)(2) (1982).

¹² 17 CFR 200.30-3(a)(12) (1995).

⁹ 15 U.S.C. § 78f(b)(5) (1988 & Supp. V 1993).