

Washington, D.C. 20549. 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-97-66 and should be submitted by [insert date 21 days from the date of publication].

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

The Commission finds the proposed rule change is consistent with Section 6(b) of the Act<sup>7</sup> in general and furthers the objectives of Section 6(b)(5) in particular in that, by eliminating unintended differences in treatment between broker-dealers acting within the United States and those acting in other countries, 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 a national market system, and, in general, to protect investors and the public interest. In addition, the CBOE's proposal is consistent with Section 11A of the Act because it will promote fair competition among brokers and dealers.<sup>8</sup>

In particular, with regard to the CBOE's rules governing the Exchange's automatic execution system that distinguish between broker-dealer orders and non-broker-dealer orders, the Commission finds it is fair to treat foreign broker-dealers in a manner similar to U.S. broker-dealers for purposes of such rules. Accordingly, all broker-dealers, whether U.S. registered or foreign will be prohibited from placing market or limit orders with an Order Book Official, utilizing RAES, or benefiting from guaranteed minimum executions.

As mentioned in the PCX's approval order, the Commission believes that the proposed definition of foreign broker-dealer provides an objective and verifiable standard that is capable of fair enforcement. In particular, the Exchange's surveillance staff should be able to confirm relatively quickly whether a person or entity is registered, authorized or licensed by a foreign governmental agency or foreign regulatory organization to perform the functions of a broker or dealer as defined in the Act.

The proposed rule change will make the CBOE's rules consistent with those of the PCX and Phlx. Because the PCX's nearly identical filing was approved

after being noticed for the applicable comment period, 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**.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-CBOE-97-66) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98-3010 Filed 2-5-98; 8:45 am]

BILLING CODE 8010-01-M

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39608; File No. SR-Philadep-97-06]

#### Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding Certain Corporate Governance Changes

February 2, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 22, 1997, the Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been primarily prepared by Philadep. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested parties and to grant accelerated approval of the proposed rule change.

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

The proposed rule change involves amendments to Philadep's by-laws to reflect its current winding down of operations and to streamline its board of directors and committee structures.<sup>2</sup>

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 39444 (December 11, 1997), 62 FR 66703, (File Nos. SR-Philadep-97-04 and SR-SCCP-97-04) (order approving a proposed rule change relating to a decision by the Philadelphia Stock Exchange, Incorporated to withdraw from the securities depository business and to restructure and limit its clearance and settlement business).

More specifically, the proposed rule change involves amendments to Philadep's by-laws to require that nonparticipant directors compose at least fifty percent of the director positions on the board of directors.<sup>3</sup>

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

In its filing with the Commission, Philadep included statements concerning the purpose of and the basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Philadep has prepared summaries, as set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>4</sup>

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

The proposed rule change amends Philadep's by-laws to reflect its winding down of operations and to streamline its board of directors and committee structures.<sup>5</sup> In addition, the proposed rule change amends Article IV of Philadep's by-laws to require that nonparticipant directors compose at least fifty percent of the director positions on the board of directors. The by-laws now define nonparticipants as (a) persons who are not officers, directors, or employees of participants and persons who have not been employed in any such capacity at any time within the prior three years and (b) persons who (i) do not have a consulting nor employment relationship with the Philadelphia Stock Exchange, Incorporated ("PHLX"), Stock Clearing

<sup>3</sup> Pursuant to the Commission's administrative proceedings order entered against Philadep, Philadep is required to amend its by-laws to require that nonparticipant directors fill fifty percent of Philadep's board of directors. In the Matter of Stock Clearing Corporation of Philadelphia and Philadelphia Depository Trust Company, Respondents, Order Instituting Proceedings Pursuant to Sections 19(h) and 21C of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Administrative Proceeding File No. 3-9360, Securities Exchange Act Release No. 38918 (August 11, 1997).

<sup>4</sup> The Commission has modified the text of the summaries prepared by Philadep.

<sup>5</sup> These changes: (a) Require Philadep to call a special meeting of shareholders if the by-laws regarding composition of the board are to be amended, (b) limit the nominating committee to three persons selected by the chairman of the board, (c) allow the chairman, instead of the president, to call special meetings of shareholders and of the board, and (d) reduce the number of board committees to an audit committee, a finance committee, and a nominating committee.

<sup>7</sup> 15 U.S.C. § 78f(b).

<sup>8</sup> In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Corporation of Philadelphia ("SCCP"), or Philadep, (ii) do not provide professional services to PHLX, SCCP, or Philadep, and (iii) have not had any such relationship nor have provided any such services at any time within the prior three years. The proposed rule change also reduces the number of directors that may serve at one time from not less than fifteen or more than seventeen to not less than five or more than nine.

Philadep believes the proposed rule change is consistent with Section 17A(b)(3)(F)<sup>6</sup> of the Act because the amendments to its by-laws reflect its winding down of operations. In particular, Philadep believes that the proposed governance changes, such as the change in the composition of the board of directors, will help protect investors and the public interest.

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

Philadep believes that the proposed rule change will not impose a burden on competition not contemplated under the Act.

*(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 with respect to the proposed rule change.

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

Section 17A(b)(3)(F)<sup>7</sup> of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and to protect investors and the public interest. The Commission believes that the change in the composition of Philadep's board of directors should help Philadep to better safeguard securities and funds and to better protect investors and the public interest. The requirement that nonparticipant directors compose at least fifty percent of the director positions on the board of directors will provide a more diverse governance structure for Philadep. If carefully selected, nonparticipant directors should bring diverse experience to the board and thus enable Philadep to better perform its self-regulatory obligations. In addition, the Commission believes

that the changes Philadep is making in connection with the termination of its depository business are being made in a manner that is consistent with Philadep's obligations under Section 17A of the Act.

Philadep has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. 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 because accelerated approval will allow Philadep to institute reforms called for in the settlement of its administrative proceedings in an expedient fashion.

**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. 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 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 Philadep. All submissions should refer to the File No. SR-Philadep-97-06 and should be submitted by February 27, 1998.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-Philadep-97-06) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

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

[FR Doc. 98-3009 Filed 2-5-98; 8:45 am]

BILLING CODE 8010-01-M

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-39609; File No. SR-SCCP-97-06]

**Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding Certain Corporate Governing Changes**

February 2, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 22, 1997, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been primarily prepared by SCCP. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested parties and to grant accelerated approval of the proposed rule change.

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

The proposed rule change involves amendments to SCCP's by-laws to reflect its current restructured securities clearing business and to streamline its board of directors and committee structures.<sup>2</sup> More specifically, the proposed rule change involves amendments to SCCP's by-laws to require that nonparticipant directors compose at least fifty percent of the director positions on the board of directors.<sup>3</sup>

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

<sup>2</sup> Securities Exchange Act Release No. 39444 (December 11, 1997), 62 FR 66703, (File Nos. SR-Philadep-97-04 and SR-SCCP-97-04) (order approving a proposed rule change relating to a decision by the Philadelphia Stock Exchange, Incorporated to withdraw from the securities depository business and to restructure and limit its clearance and settlement business).

<sup>3</sup> Pursuant to the Commission's administrative proceedings order entered against SCCP, SCCP is required to amend its by-laws to require that nonparticipant directors fill fifty percent of SCCP's board of directors. In the Matter of Stock Clearing Corporation of Philadelphia and Philadelphia Depository Trust Company, Respondents, Order Instituting Proceedings Pursuant to Sections 19(h) and 21C of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Administrative Proceeding File No. 3-9360, Securities Exchange Act Release No. 38918 (August 11, 1997).

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>8</sup> 17 CFR 200.30-3(a)(12).