

restrictions will help further the national market system objective in Section 11A(a)(1)(C)(i) to assure the economically efficient executive of securities transactions, and in Section 11A(a)(1)(C)(ii) to assure fair competition between exchange markets and markets other than exchange markets.⁹

As discussed more fully in the NYSE Approval Order, the existence of off-board trading restrictions can no longer be justified in an age when advancing technology and expanding trading volume are introducing new competitive challenges for the U.S. securities markets, both at home and abroad. Off-board trading rules such as Rule 132 directly restrict a certain type of market center competition—competition between exchange markets and markets other than exchange markets. Their rescission today eliminates an inappropriate regulatory burden on competition that runs contrary to the objectives set forth in the Act.

Off-board trading restrictions have been justified on the basis that they promote the interaction of investors' orders without participation by a dealer—indeed an objective set forth in the Act.¹⁰ The Commission believes, however, that whatever beneficial effect off-board trading restrictions such as Rule 132 may have in enhancing the interaction of investor orders can no longer justify their anticompetitive nature. To the extent off-board trading rules enhance order interaction, they do so in an undesirable way—by attempting a direct restriction on competition. Such attempts are never wholly successful and typically only distort, rather than eliminate, competition and introduce unnecessary costs ultimately borne by investors.

The outcome of competition between market center should depend on which market centers are most able to serve investor interests by providing the highest quality trading services at the lowest possible prices; the Commission's regulatory task is removing unwarranted regulatory barriers to competition between market centers. As stated in the NYSE Approval Order, the rescission of off-board trading rules is "intended solely to free the forces of competition and allow investor interests to control the success or failure of individual market centers."¹¹ The

same rationale and motivation support the Commission's action today.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-Phlx-00-12) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 42898; File No. SR-Phlx-00-41]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Extending the Pilot Program Regarding Exchange Rule 98, Emergency Committee, Until August 21, 2000

June 5, 2000.

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 18, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Exchange. On April 20, 2000, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Exchange filed the proposed rule change, as amended, pursuant to Section 19(b)(3)(A) of the Act,⁴ and Rule 19b-4(f)(6) thereunder,⁵ which renders the proposed rule change

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.16b-4.

³ See April 19, 2000 letter from Richard S. Rudolph, Counsel, Exchange, to Rebekah Liu, Special Counsel, Division of Market Regulation, SEC ("Amendment No. 1"). In Amendment No. 1, the Exchange requested that the proposed rule change be filed under Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b-4(f)(6). The Exchange also requested that the Commission waive the 5-day notice of its intent to file the proposal, and requested that the Commission waive the 30-day period before the proposal becomes effective to permit the proposed rule change to become immediately effective.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

effective upon filing with the Commission. 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 is proposing to extend the pilot program relating to Exchange Rule 98, Emergency Committee, for an additional 120 days, or until August 21, 2000. No changes to the existing rule language are being proposed.

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, as amended, 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

On December 23, 1999, the Commission granted approval to amendments to Exchange Rule 98, Emergency Committee (the "Committee") on a 120-day pilot basis.⁶ In general, the Committee is authorized to determine the existence of, and take action with respect to, extraordinary market conditions or other emergencies at the Exchange. The amendments to Exchange Rule 98 updated the composition of the Committee to reflect the current governance structure of the Exchange,⁷ clarified that the Committee was authorized to act in the event of any emergency condition created by the Year 2000 date change, and deleted a provision referencing CENTRAMART, an equity order entry system which is no longer used on the Exchange. The Committee is now composed of five individuals: the Chairman of the Board of Governors; the On-Floor Vice Chairman of the Board of Governors;

⁶ See Exchange Act Release No. 42272 (December 23, 1999), 65 FR 153 (January 3, 2000) SR-Phlx-99-42).

⁷ The amendments replaced the President, which the Exchange no longer has, with the On-Floor Vice Chairman of the Board of Governors.

⁹ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ Section 11A(a)(1)(C)(v) of the Act.

¹¹ NYSE Approval Order at 30179.

and the Chairmen of the Floor Procedure Committee, the Options Committee, and the Foreign Currency Options Committee.

The Commission approved the amendments to Exchange Rule 98 on a pilot basis in order to allow the Exchange to examine the operation of the Committee to ensure that the Committee is not dominated by any one Exchange interest (e.g., On-Floor or Off-Floor interests). The Commission requested that the Exchange report back to the Commission on its views as to whether the Committee structure ensures that all Exchange interests are fairly represented by the Committee. The Exchange has requested that the pilot program be extended in order to provide it more time to examine the operation of the Committee and submit the requested information to the Commission.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with the provisions of Section 6(b)(5) of the Act⁸ which requires that the rules of an Exchange be designed to perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change, as amended, 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

The Exchange has neither solicited nor received written comments on the proposed rule change, as amended.

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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and Rule 19b-4(f)(6)¹⁰ thereunder because the 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 after the date of filing, or

such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the 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.

The Commission finds that it is appropriate to accelerate the effective date of the proposed rule change and to permit the proposed rule change to become immediately effective because the proposal simply extends a previously approved pilot program for an additional 120 days, or until August 21, 2000. By extending the pilot program, the Commission will enable the Committee to be in place and operational in the event of any extraordinary market conditions or emergencies at the Exchange, and will afford the Exchange the opportunity to respond to the Commission's request to provide information on whether the Committee is fairly representing all interests of the Exchange.¹¹

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, 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

with 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 the File No. SR-Phlx-00-41 and should be submitted by July 3, 2000.¹²

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

Margaret H. McFarland,
Deputy Secretary.

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UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of preliminary policy priorities for amendment cycle ending May 1, 2001. Request for comment.

SUMMARY: As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, and in accordance with Rule 5.2 of its Rules of Practice and Procedure, the Commission has preliminarily identified and hereby proposes certain priorities as the focus of its policy development work, including possible amendments to guidelines, policy statements, and commentary, for the amendment cycle ending May 1, 2001. The Commission invites comment on these proposed priority areas and on any other sentencing issues that it should address in the coming year.

DATES: Public comment should be received by the Commission not later than July 7, 2000.

ADDRESSES: Send comment to: United States Sentencing Commission, One Columbus Circle, NE, Suite 2-500, South Lobby, Washington, DC 20002-8002. Attn: Public Affairs.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502-4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission, an independent commission in the judicial branch of the United States Government, is empowered by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal courts. Section 994 also directs the Commission to review and revise periodically promulgated guidelines

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ For purposes only of accelerating the operative date of this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹² 17 CFR 200.30-3(a)(12).