

uncompared trade so that it will be the opening price on the business day following the trade date. Currently, the basis is the lesser of either the opening price on the business day following the trade date or the price at which the uncompared trade was closed. After careful consideration and review of this proposal by Exchange members and member firms, the Exchange proposes this change in an effort to simplify and make uniform the administration of pricing uncompared trades.<sup>30</sup> The proposal also would require that notice of uncompared trades must be provided no later than the scheduled commencement of trading (unless a floor official directs otherwise). The Exchange believes that the current time requirement—15 minutes from the scheduled commencement of trading—is overly flexible.

#### *I. Reports of Open Exercise Positions*

The proposal would clarify and simplify PCX Rule 6.27, which currently requires member organizations to file certain reports on open positions with the Exchange. The proposed rule change would include the last sentence of PCX Rule 6.27, the text of commentary .01 to that rule, and eliminate commentaries .01, .02 and .03.<sup>31</sup> As amended, PCX Rule 6.27 would provide that the Exchange may require each member organization to file with the Exchange a report, as of the 15th of each month, of all open positions resulting from the exercise of options contracts in accounts carried by a member organization. It would then incorporate current Commentary .01 into the rule by adding that such reports, when required, must be filed no later than the second business day following the day as of which the report is made.

#### *J. Fast Markets*

The proposal would change PCX Rule 6.28 by redesignating OFPA G-9 as paragraph (b) of PCX Rule 6.28. Currently, OFPA G-9 lists procedures that become effective in a fast market situation. The Exchange proposes this change to simplify and consolidate rules

relating to fast market and unusual market conditions. In addition, the proposal adds as paragraph (b)(5) a cross-reference to the current requirement that market makers have under Rule 6.37(f) to trade a minimum of one contract based on quoted markets during fast markets. The proposal would specify in new paragraph (b)(6) that regular trading procedures will be resumed when two floor officials determine that the conditions supporting the fast market no longer exist. Finally, it would remove, as unnecessary, the current provision allowing floor officials to assign brokerage responsibilities for particular series to specific floor brokers in the trading crowd during fast markets.

### **III. Discussion**

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, with the requirements of Section 6(b).<sup>32</sup> The proposal would modify certain rules relating to options trading on the PCX by clarifying existing provisions, eliminating unnecessary provisions, and codifying current policies and procedures. By clarifying and updating its rules and obligations for market participants, the Commission believes the proposal is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and protect investors and the public interest.<sup>33</sup>

### **IV. Conclusion**

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act,<sup>34</sup> that the proposed rule change (SR-PCX-99-36), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>35</sup>

**Margaret H. McFarland,**

*Deputy Secretary*

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<sup>32</sup> 15 U.S.C. 78f(b).

<sup>33</sup> In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>34</sup> 15 U.S.C. 78s(b)(2).

<sup>35</sup> 17 CFR 200.30-3(a)(12).

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43292; File No. SR-Phlx-00-74]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Exchange's Liability in Connection With the Administration of Its Proprietary Indices**

September 14, 2000.

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 August 4, 2000, 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, II, and III below, which Items have been prepared by the Phlx. 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 Exchange proposes to amend Phlx Rule 1102A, Limitation of Exchange Liability, to add to the limitation of the Exchange's liability, in connection with its administration of Phlx proprietary indexes, negligent acts or omissions. Below is the text of the proposed rule change. Additions are italicized; deletions are in brackets.

#### **Rule 1102A Limitation of Exchange Liability**

Neither the Exchange, the Reporting Authority nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating the current index value or the closing index value resulting from any *negligent act or omission by the Exchange or any [an] act, condition or cause beyond the reasonable control of the Exchange, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; any error, omission or delay in the reports of transactions in one or more underlying securities; or any error, omission or delay in the reports of the current index value or the closing index value by the Exchange or the Reporting Authority.*

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>30</sup> Cf. CBOE Rule 6.61, Interp. & Policy .01.

<sup>31</sup> Commentary .02 provides: "An open exercise position shall include any position with respect to which the Options Clearing Corporation has assigned an exercise notice to the member organization and the member organization has not delivered the shares of the underlying stock in accordance with the Rules of the Options Clearing Corporation and these Rules." Commentary .03 provides: "All such reports shall be delivered to the Department of Member Organizations of the Exchange." The Exchange does not believe that a specific department needs to be identified in this rule and, in any event, member firms are currently on notice that such reports must be filed with the Department of Options Surveillance.

## 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

The purpose of the proposed rule change is to expand the limitation of the Exchange's liability in connection with its administration of Phlx proprietary indices. The Exchange currently lists and trades options on a number of proprietary indices, and new indices continue to be developed from time to time.<sup>3</sup> There is a great deal of work involved in the daily calculation and dissemination of these indices. While much of such work is automated, manual input is still required. Thus, the potential for human error exists which exposes the Exchange to a risk of liability. Potential human errors include inputting a symbol or index value incorrectly or missing a corporate action that has an effect on the index.

Currently Phlx Rule 1102A disclaims Exchange liability for damages caused by errors, omissions or delays in the calculation or dissemination of any index value resulting from any conduct beyond the reasonable control of the Exchange. This includes an act of God, a power failure, or any error, omission or delay in the reported price of the underlying security. However, these disclaimer provisions are arguably ambiguous with respect to whether the Exchange remains potentially liable for damages caused by any human error or omission by an Exchange employee in connection with the performance of the Exchange's index responsibilities. The proposed amendment to Phlx Rule 1102A would make clear that the Exchange disclaims liability for

negligent conduct, in addition to conduct beyond the Exchange's reasonable control, currently covered by Phlx Rule 1102A. Other exchanges, including the American Stock Exchange ("Amex"),<sup>4</sup> disclaim liability for negligent conduct in connection with their index operations. Further, the Exchange acknowledges that Phlx Rule 1102A cannot be relied upon by the Exchange to limit its liability to non-members or for any intentional or negligent violation of federal securities laws.

#### 2. Statutory Basis

For these reasons, the proposed rule change is consistent with Section 8 of the Act in general, and with section 6(b)(5)<sup>5</sup> of the Act specifically, in that it is designed to perfect the mechanisms of a free and open market and a national market system, to promote just and equitable principles of trade, and to protect investors and the public interest, by defining the scope of the Exchange's liability, thereby, putting investors on notice that the Exchange is not liable for negligent conduct in connection with its administration of Phlx proprietary indices, in addition to conduct beyond the Exchange's reasonable control, currently covered by Rule 1102A.

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

The Phlx does not believe that the proposed rule change will impose any 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 solicited or received with respect to the proposed rule change.

## 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 self-regulatory organization consists, 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

The Commission invites interested persons 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 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 Phlx. All submissions should refer to File No. SR-Phlx-00-74 and should be submitted by October 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

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

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## SOCIAL SECURITY ADMINISTRATION

### Ticket to Work and Work Incentives Advisory Panel Meeting

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice of meeting cancellation.

**DATES:** September 26-27, 9 a.m.-5 p.m.

**ADDRESSES:** Embassy Suites Hotel, 1900 Diagonal Road, Alexandria VA 22314, 703-684-5900.

**SUPPLEMENTARY INFORMATION:** *Meeting Cancelled:* In accordance with section 10(a)(2) of the Federal Advisory Committee Act, SSA announced a meeting of the Ticket to Work and Work Incentives Advisory Panel (the Panel).

The Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA), Public Law 106-170, establishes the Panel to advise the Commissioner of Social Security, the President and the Congress on issues related to work incentives programs, planning and assistance for individuals

<sup>3</sup> The Exchange's proprietary indices currently include: Computer Box Maker Index (BMX), Phlx Oil Service Index (OSX), Gold-Silver Index (XAU), National Over-the-Counter Index (XOC), Phlx Forest and Paper Products Sector Index (FPP), Over-the-Counter Prime Index (OTC), Utility Index (UTY), Semiconductor Index (SOX), TheStreet.com Internet Sector Index (DOT) and Wireless Telecom Sector Index (YLS).

<sup>4</sup> See Amex Rule 902C.

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

<sup>6</sup> 17 CFR 200.30-3(a)(12).