

the meaning and administration of proposed Rule 9.20(b).

The proposed rule change was published for comment in Securities Exchange Act Release No. 37703 (Sept. 19, 1996), 61 FR 50527 (Sept. 26, 1996). No comments were received on the proposal.

I. Background

In 1994, an industry Task Force, comprised of representatives from industry regulatory and self-regulatory organizations, was formed to review broker-dealer telemarketing practices and compliance with the Telephone Consumer Protection Act of 1991 ("TCPA"), as well as with the FCC rules and regulations which implemented that law. The TCPA and FCC rules address telemarketing practices and the rights of telephone consumers. One of the requirements contained in this regulatory framework is that businesses, including broker-dealers, that make telephone solicitations to residential telephone subscribers institute written policies and have procedures in place for maintaining "do-not-call" lists.

II. Description of the Proposal

The proposed rule would require members and member organizations that engage in telephone solicitations to maintain a centralized list of persons who do not wish to receive telephone solicitations, and to refrain from making telephone solicitations to persons named on such list. The NYSE, NASD, the CBOE, and the AMEX also adopted similar rules.³ The proposal also would add a commentary to serve as a reminder that members and member organizations are subject to compliance with the relevant Federal Communications Commission ("FCC") and Commission Rules relating to telemarketing practices.

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).⁴ In particular, the Commission believes that the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to

promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public, by addressing the practices of Exchange members and member organizations who make telemarketing calls. The purpose of the proposal is to prevent members and member organizations from engaging in manipulative acts, such as persistently calling investors who have expressed a desire not to receive telephone solicitations. The Commission believes that by requiring members and member organizations to maintain centralized do-not-call lists, members of the public who have indicated a desire not to receive telemarketing calls will be protected against abusive telemarketing practices. The Commission also believes that the proposed commentary reminds members and member organizations that they are subject to the requirements of the rules of the FCC and the Commission relating to telemarketing practices and the rights of telephone consumers.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁵ that the proposed rule change (SR-PSE-96-32) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Jonathan G. Katz,

Secretary.

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[Release No. 34-37918; File No. SR-Philadep-96-17]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change To Appoint the Canadian Depository for Securities as a Correspondent Depository

November 1, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on October 17, 1996, 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 prepared primarily by Philadep.

On October 28, 1996, Philadep filed an amendment to the proposed rule change to amend its procedures and to attach as an exhibit to its original filing a copy of the correspondent depository agreement.² On October 31, 1996, Philadep filed an amendment to the proposed rule change to make certain technical changes.³ The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change through April 30, 1997.

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

The purpose of the proposed rule change is to allow Philadep to appoint The Canadian Depository for Securities Limited ("CDS") as Philadep's nonexclusive agent and custodian in receiving securities deposited by CDS-sponsored participants for delivery to Philadep. Currently, the West Canada Depository Trust Company ("WCDTC") serves as Philadep's correspondent depository.⁴ On November 1, 1996, CDS will assume the operations of WCDTC and the West Canada Clearing Corporation ("WCCC"), WCDTC's affiliated clearing corporation.

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 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. Philadep has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.⁵

² Letter from J. Keith Kessel, Compliance Officer, Philadep, to Jerry Carpenter, Assistant Director, Division of Market Regulation ("Division"), Commission (October 28, 1996).

³ Letter from J. Keith Kessel, Compliance Officer, Philadep, to Jerry Carpenter, Assistant Director, Division, Commission (October 31, 1996).

⁴ Securities Exchange Act Release No. 36782 (January 26, 1996), 61 FR 3956 [File No. SR-Philadep-96-01] (order granting accelerated approval on a temporary basis of a proposed rule change to appoint the WCDTC as a correspondent depository); Securities Exchange Act Release No. 37383 (June 28, 1996), 61 FR 35292 [File No. SR-Philadep-96-09] (order granting accelerated approval on a temporary basis through December 31, 1996 of a proposed rule change seeking permanent approval of the designation of the WCDTC as a correspondent depository).

⁵ The Commission has modified the text of the summaries prepared by Philadep.

³ See Securities Exchange Act Release Nos. 35821 (June 7, 1995), 60 FR 31337 (approving File No. SR-NYSE-95-11); 35831 (June 9, 1995), 60 FR 31527 (approving File No. SR-NASD-95-13); and 36588 (Dec. 13, 1995), 60 FR 56624 (approving File No. SR-CBOE-95-63); and 36748 (Jan. 19, 1996), 61 FR 2556 (approving File No. SR-AMEX-96-01).

⁴ 15 U.S.C. § 78s(b).

⁵ 15 U.S.C. § 78f(b)(2).

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1) (1988).

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

The purpose of the proposed rule change is to allow Philadep to authorize CDS to act as a nonexclusive agent and custodian for Philadep in receiving securities deposited by certain CDS-sponsored participants for credit to their respective subaccounts in CDS's omnibus account at Phkladep. The custodial arrangement will be effectuated by contracts executed between Philadep and CDS, and CDS will become a participant of Philadep pursuant to Philadep's rules and procedures.

At or before 12:45 p.m. (Eastern Standard Time) on any business day Philadep is open, CDS will notify Philadep by facsimile transmission or through Philadep's Automated Deposit System of initiated and pending instructions to Canadian transfer agents to transfer various Canadian securities held by CDS into Philadep's nominee name. Philadep will credit CDS's account(s) for Canadian issues at the time of this notification. Philadep will credit CDS's account(s) for incoming deposits of U.S. issues (received by CDS and designated for physical delivery and deposit to its Philadep account) at the time of their physical receipt by Philadep. Philadep has the functionality whereby CDS can enter certificate details into Philadep's Automated Deposit System in order to reduce the processing time upon receipt of U.S. issues. As a result Philadep is able to grant CDS credit upon receipt of the U.S. securities.

With regard to Canadian issues, CDS will instruct Canadian transfer agents to reregister the issues in Philadep's nominee name and to deliver them to CDS as agent and custodian of Philadep. With respect to acting as Philadep's agent for interfacing with Canadian transfer agents, CDS has more direct knowledge of and familiarity with Canadian transfer agents. CDS has a Canadian address and is expected to obtain receipt of certificates faster than Philadep would obtain receipt through the international postal system. Earlier receipt of certificates means earlier certainty with respect to the value and validity of deposited certificates. This is a benefit to Philadep because the earlier Philadep receives notice of defects in a certificate, the sooner it can reverse the credit to the CDS account and the better it can limit the risk that the securities will have been transferred out of the account before the reversal of the credit can take place.

For Canadian issues returning to CDS from the Canadian transfer agent, CDS will safeguard the deposited securities and will hold them with deposit tickets attached and segregated from other securities held by CDS until forwarded to Philadep by licensed air courier or by other carrier agreed upon by the parties. Securities held overnight will be deposited in CDS's value. If CDS fails to deliver these securities to Philadep, Philadep will institute certificate replacement procedures. For fails to deliver resulting from settled CNS transactions, Philadep will short CDS's CNS account with Stock Clearing Corporation of Philadelphia ("SCCP"), Philadep's affiliated clearing corporation. SCCP will mark to market all short positions and collect marks daily.

If the deposited securities are U.S. securities, CDS will forward the securities directly to Philadep on the day the securities were reported to Philadep. Securities will be shipped to Philadep by licensed air courier or by other carrier agreed upon by the parties.

CDS and Philadep have agreed that securities placed within the custody and control of CDS on behalf of Philadep will not be subject to any right, charge, security interest, lien, or claim of any kind in favor of CDS or any person claiming through CDS. CDS and Philadep have further agreed that CDS will have no legal or equitable right, title, or interest in or to such securities, including, but not limited to, any right, title, or interest in or to any principal or interest coupons, redemption proceeds, payments, or payable amounts relating to any securities. In addition, CDS will maintain adequate insurance coverage with respect to any securities which are in custody on behalf of Philadep. Furthermore, CDS will make a participants fund contribution of \$1 million, which is in excess of the minimum amount required under the applicable participants fund formula, and CDS will maintain a letter of credit in the amount of \$5 million (Canadian) issued to Philadep securing CDS's guaranty obligations.

Philadep believes the proposed rule change is consistent with the requirements of Section 17A of Act and the rules and regulations thereunder because the rule proposal fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and further assures the safeguarding of securities and funds which are in the custody or control of Philadep or for which it is responsible.

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

Philadep does not believe that the proposed rule change will impact or impose a burden on competition.

(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. Philadep will notify the Commission of any written comments received by Philadep.

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

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.⁶ The Commission believes that Philadep's designation of CDS as Philadep's non-exclusive agent and custodian in receiving securities deposited by CDS-sponsored participants for delivery to Philadep is consistent with Philadep's obligations under Section 17A(b)(3)(F) because the proposed rule change should help foster cooperation and coordination between the U.S. and Canadian clearance and settlement systems by facilitating a link between Philadep and CDS.

On January 26, 1996, the Commission granted approval to Philadep's proposal that it be allowed to appoint WCDTC as its nonexclusive agent and custodian in receiving certain securities deposits.⁷ In connection with this proposed rule filing to allow Philadep to appoint CDS as its nonexclusive agent and custodian in order to allow CDS to continue the correspondent depository activities of WCDTC, Philadep has requested that the Commission grant Philadep the latitude to modify the extra financial protections that are currently being applied to the WCDTC account (*i.e.*, \$1 million participants fund deposit and \$5 million (Canadian) in a letter of credit). Philadep contends that a decrease in the financial protections Philadep receives from CDS is justified given (1) Philadep's belief that the short selling activity in the account may decrease when CDS assumes the operations of WCDTC and WCCC; (2) that SCCP filed a proposed rule change with the Commission to modify the participant's fund formula to account for short selling activity; (3) Philadep's belief that CDS is

⁶ 15 U.S.C. 78q-1(b)(3)(F) (1988).

⁷ *Supra*, note 4.

better capitalized than WCDTC and WCCC; and (4) Philadep's belief that CDS has comprehensive and formalized risk management controls. However, Philadep has not provided the Commission with any supporting documentation regarding its assertion that there will be a reduction in short selling activity, that CDS is better capitalized than WCDTC and WCCC, or that CDS has comprehensive and formalized risk management controls. Additionally, the Commission is currently reviewing SSCP's proposed rule change to modify its participants fund formula and has not granted its approval to the proposal.⁸ Therefore, it is the Commission's position that the extra financial protections that are currently being applied to the WCDTC account (*i.e.*, \$1 million participants fund deposit and \$5 million (Canadian) in a letter of credit) should remain in place at the same levels.

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 immediately appoint CDS as its nonexclusive agent and custodian thus allowing CDS to continue the correspondent depository activities currently being performed by WCDTC. Effective November 1, 1996, CDS will assume the operations of WCDTC and WCCC. The staff of the Board of Governors of the Federal Reserve System have concurred with the Commission's granting of accelerated approval.⁹

On June 28, 1996, the Commission extended the temporary approval of Philadep's custodial arrangement with WCDTC until December 31, 1996, so that Philadep and the Commission could further monitor, review, and analyze this custodial arrangement.¹⁰ Accordingly, the Commission is granting temporary approval of the proposed rule change through April 30, 1997, so that the Commission can continue to monitor and analyze the development of CDS as Philadep's nonexclusive agent and custodian. During this period, Philadep will monitor the nonexclusive agent and

custodian arrangement between Philadep and CDS to ensure that proper risk management procedures are in place. In this regard, the Commission requests that Philadep continue to file monthly reports analyzing activity in CDS's omnibus account and subaccounts. Therefore, the Commission is temporarily approving the proposed rule change through April 30, 1997.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, 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, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of Philadep. All submissions should refer to file number SR-Philadep-96-17 and should be submitted by November 29, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-Philadep-96-17) be, and hereby is, approved through April 30, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹¹

Jonathan G. Katz,

Secretary.

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[Release No. 34-37914; File No. SR-Phlx-96-41]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Designating Options as Tier I Securities

November 1, 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 October 11, 1996, 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 self-regulatory organization. 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, pursuant to Rule 19b-4 of the Act, proposes to include equity options, index options and other option like products issued, cleared and guaranteed by the Options Clearing Corporation ("OCC") as Tier I securities under Exchange Rule 803.

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

1. Purpose

The purpose of the proposed rule change is to amend Exchange Rule 803 to include equity options, index options and other OCC issued products as Tier I securities in order to allow these options to take advantage of the blue sky exemptions afforded the Phlx's Tier I securities.

In 1994, the Exchange received approval to adopt a two tier listing criteria program for equity and debt securities.¹ The Exchange originally adopted its Tier I listing standards in conjunction with the signing of a Memorandum of Understanding ("MOU") with the North American Securities Administrators Association

⁸ File No. SR-SCCP-96-08.

⁹ Telephone conversation between John Rudolph, Supervisory Trust Analyst, Board of Governors of the Federal Reserve Board, and Chris Concannon, Staff Attorney, Division, Commission (October 31, 1996).

¹⁰ *Supra*, note 4.

¹¹ 17 CFR 200.30-3(a)(12) (1996).

¹ See Securities Exchange Act Release No. 34235 (June 17, 1994), 59 FR 32736 (June 24, 1994).