

National Association of Securities Dealers ("NASD") and NASAA,⁷ which is entitled "A Model Uniform Marketplace Exemption."

In the order approving the Exchange's Tier I listing standards, the Commission noted that the Exchange was adopting the MOU standards in an effort to provide issuers whose securities were designated as Tier I a greater opportunity to obtain blue sky exemptions.⁸ With the adoption of the MOU, the Exchange has received blue sky exemptions for its listed securities designated as Tier I from a number of states. When the Exchange adopted its two tiered listing standards, however, the Exchange did not include equity and index options as Tier I securities, and the Phlx MOU with NASAA did not designate such options as Tier I securities. The Exchange has explained that exclusion of options as Tier I securities was merely an oversight rather than an intentional exclusion because the Exchange's equity and debt security listing standards are provided in a separate rule from its option listing standards.⁹

The OCC, which is considered the issuer of all Phlx listed options, has the responsibility of registering these options. OCC has indicated to the Exchange that it must register Phlx listed options in numerous states in which the OCC would not otherwise be required to register if the options were able to take advantage of the blue sky exemptions accorded to the Phlx's Tier I securities. Thus, the Exchange proposes to include its equity options, index options and any other OCC issued, cleared and guaranteed products as Tier I securities for blue sky purposes. Under the proposal, options would still have to meet existing eligibility listing standards set forth in Phlx rules specifically for options.¹⁰ Further, the Phlx and NASAA have agreed that OCC issued options may qualify for designation as Tier I securities and are in the process of amending the Phlx MOU to reflect this change.¹¹

Discussion

The proposed rule change is consistent with Section 6 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, prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest.

The proposed rule change should facilitate transactions in securities and remove impediments to a free and open market by eliminating the need for OCC to register Phlx listed options in those states that currently grant a blue sky exemption to Phlx's Tier I securities. This rule change should help to eliminate some of the costs associated with listing options as well as making the process of listing options easier and quicker.

As discussed above, under the rule being approved herein, OCC cleared options will be designated as Tier I securities for blue sky purposes only. Accordingly, the rule change does not affect or change in any way the standards that must be met to initially, or continue to, list equity and index options or such other OCC issued options permitted under Phlx rules. In approving the Phlx's proposal, the Commission recognizes that the listing criteria set forth in Phlx Rules 803 through 805 for Tier I securities are for equity-type securities as opposed to options issued by the OCC. Nevertheless, because it is clear under Phlx's rule that listed options will still have to meet options listing criteria and that the Tier I designation for options is merely to eliminate the need to register such securities under certain state blue sky laws, we believe the change is appropriate and consistent with the Act.¹²

Finally, as noted above, in conjunction with this proposal, NASAA and Phlx have agreed that OCC issued options may be designated as Tier I securities for blue sky purposes,¹³ and NASAA has represented to the Commission that the Phlx MOU will be amended as soon as practical to reflect

this agreement.¹⁴ Accordingly, this rule change will not become operative until NASAA amends the Phlx MOU to permit OCC issued options to be designated as Tier I securities.¹⁵ This amendment would ensure that the MOU is consistent with Phlx rules designating OCC cleared options as Tier I securities, and that those states that grant Phlx a blue sky exemption based on the MOU will recognize such exemption for Phlx listed options. In addition, in its letter to the Commission, NASAA states that this approach is similar to the structure adopted in the MOU between the PSE and NASAA.¹⁶

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-Phlx-96-41 be, and hereby is, approved contingent upon NASAA's amendment of the Phlx MOU to permit OCC issued options to be designated as Tier I securities.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97-3916 Filed 2-14-97; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-38265; File No. SR-Phlx-96-23]

Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Options Specialist Evaluations.

February 11, 1997.

On July 1, 1996, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to modify its procedures for evaluating options specialists units. Notice of the proposal was published for comment and appeared in the Federal Register on September 12, 1996. The exchange subsequently filed Amendment No. 1 to the proposed rule change on December 2, 1996.³ No comment letters were

⁷ See Securities Act Release No. 6810 (Dec. 16, 1988), 53 FR 52550 (Dec. 28, 1988).

⁸ See *supra* note 6 n. 12.

⁹ See Rules Phlx 803 through 805 for equity and debt security listing standards; Phlx Rules 1009 and 1009A for listing applicable to options on equities and indexes respectively.

¹⁰ See *supra* note 9.

¹¹ See *supra* notes 3 and 5. As discussed above, NASAA plans to revise the Phlx MOU. The Commission notes that this approval order is contingent on the NASAA's formal amendment of the Phlx MOU to permit OCC issued options to be designated as Tier I securities.

¹² The Commission notes that Phlx's proposed rule is almost identical to the Pacific Stock Exchange's ("PSE") current rule designating PSE listed options as PSE Tier I securities for blue sky purposes.

¹³ See *Supra* note 3.

¹⁴ See *supra* notes 5 and 11.

¹⁵ *Id.*

¹⁶ See *supra* note 3.

¹⁷ 17 CFR 200.30-3(a)(12).

¹ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Letter from Michele R. Weisbaum, Vice President and Associate General Counsel, Phlx, to
Continued

received on the proposal. This order approves the Phlx proposal as amended.

I. Description of the Proposal

Since at least 1978, the Exchange has been evaluating its options specialists based on the same questionnaire in use today. Subjective series of questions answered by the floor brokers that have traded with the particular specialists over the last quarter. The results of the questionnaire are used by the Committee when making allocation and reallocation decisions regarding option specialist privileges. The Exchange has represented that the Committee's current review system is very complicated and needs to be simplified in order to be more effective. The evaluations are now scored on a scale of 1 through 10, and any unit with an overall score below 5 on the questionnaire in one quarter, a score of below 5 for three or more questions in one quarter, or a score below 5 on the same question for three consecutive quarters is deemed to have performed below minimum standards and is subject to review by the Committee.

The Phlx proposal, as amended, modifies the survey and revises the process by which the Committee uses the questionnaires to evaluate the specialists' performance.

1. Survey Modification

The survey is revised such as to request information that the Exchange believes would be more directly indicative of a specialist's performance. The new survey has 15 all-new questions. It would be answered every six months by floor brokers who would have traded at least a minimum number of times in the specialist's issues over the past six months.⁴ Only specialist units (not individual specialists) would now be graded as allocations are made to units, not individual specialists; however, separate evaluations will be conducted for each quarter or half turrett post at which a unit has a specialist operation. Thus, a large specialist unit which is spread out over the floor may receive two or three separate evaluation scores so that the Committee could focus on exactly where a problem may

be occurring. The same questionnaire will be used for equity option specialists, index option specialists⁵ and foreign currency option specialists.

Each question must be answered by giving the unit a score of 1 through 9 (very poor to excellent). Any question that is answered with a score of 4 or less must be accompanied by a written explanation. Floor brokers who submit negative comments about a particular specialist unit may, but are not required to, speak directly with a representative of the specialist unit in order to try to resolve any problems that may exist; Exchange staff may attend such a meeting. Floor brokers who do not complete and return the surveys will continue to be subject to fines pursuant to Options Floor Procedure Advice C-8.

The questions asked will cover a wide range of specialist responsibilities such as the degree of liquidity provided, the tightness of quotes, timeliness of quote updates, ability to fill small lot orders, timeliness of reports, ability to conduct opening rotations, maintenance of crowd control, and clerical staffing.

2. Evaluation Procedure

Under the proposed new language in Supplementary Material .02 to Rule 515, the Committee⁶ would review the survey as well as regulatory history, written complaints, timeliness of openings, trading data, and any other relevant information in order to determine if minimum performance standards have been met in areas such as quality of markets, observance of ethical standards, and administrative responsibilities. If a specialist unit is ranked by score in the bottom 10% of all units as a result of a semi-annual review, it will be presumed to have failed to meet the minimum performance standards.⁷ The Committee may also make such a presumption if the information on the survey or the other information reviewed by the Committee supports such a finding.

If the Committee makes such a presumption of failure to meet minimum performance standards, it may elect to hold an informal meeting with the specialist unit. If the unit refuses to meet without reasonable

justification, or if the evaluation scores are not improved, the Committee may proceed with a formal hearing in accordance with Rule 511(e). The Committee may only impose sanctions such as removal of specialist privileges in one or more options classes or a prohibition from new allocations as the result of a formal hearing. The hearing procedures set forth in Rule 511(e) will not change as a result of this rule proposal and decisions will still be subject to appeal to the Board of Governors as provided for under By-Law Article XI, Section 11-1.

II. 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, the requirements of Sections 6(b)(5) in that it is designed to prevent fraudulent, manipulative acts and practices and to promote just and equitable principles of trade, and to remove impediments to and protect the mechanism of a free and open market and to protect investors and the public interest.

The Commission believes that the adoption of a new, expanded survey is a more precise measurement of specialist units' performance and will serve to enhance the options specialists evaluation procedures; these evaluation procedures are designed to help the Exchange maintain the quality and integrity of its markets by setting minimum standards of specialist performance and providing a means to identify specialist units which fail to meet minimum performance standards. Specifically, the evaluation procedures should further the Phlx's ability to ensure liquid and continuous markets for options by permitting the Exchange to enforce more effectively the affirmative and negative obligations imposed on specialist units.

The Commission also believes that the Committee's consideration of the floor broker survey results in allocating options to specialist units should provide an incentive for improved specialist performance.

Moreover, the Commission finds the Phlx's program is substantially similar to those of the Chicago Board Options Exchange ("CBOE")⁸ and Pacific Stock Exchange ("PSE")⁹ which have been in operation for several years. In particular, the Commission believes that the purposes for conducting the questionnaires will not be compromised

Jon Kroeper, Esquire, Office of Market Supervision, Division of Market Regulation, SEC, dated November 27, 1996. Amendment No. 1 amends Rule 511 to clarify that the Allocation, Evaluation, and Securities Committee ("Committee") has the authority to hold a hearing in the event that a registrant has failed to fulfill minimum performance standards, and to allow the Committee to take action against a registrant who does not attend a scheduled informal meeting or hearing.

⁴ Floor brokers surveyed will be chosen according to Exchange records. The number of trades may vary but will be predetermined by the Committee.

⁵ Currently, all of the specialist units that have been allocated index options are also equity option specialists; however, if a unit only traded index options, the survey would be equally applicable.

⁶ The Committee may conduct such reviews or it may delegate that responsibility to the Quality of Markets Subcommittee. Exchange Rule 509 is being amended to note this function as a specific responsibility of this subcommittee.

⁷ Under the current procedure, a specialist unit that receives an average score under 5.00 in any one quarter would be deemed to have performed below minimum standards.

⁸ CBOE Rule 8.60.

⁹ PSE Option Floor Procedure Advice B-13.

by distributing the questionnaires semi-annually instead of quarterly. The Commission notes that the CBOE and PSE also evaluate their trading crowds and market makers on a semi-annual basis.

Finally, the Commission believes that more stringent formalized specialist standards will further enhance the integrity of the options markets and contribute to investor confidence and protection.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. Amendment No. 1 made clarifying technical changes to the text of the rule, and did not propose new substantive provisions to the submitted rule change. Accordingly, the Commission believes that consistent with Sections 6(b)(5) and 19(b)(2) of the Act, good cause exists to accelerate approval of Amendment No. 1.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1. 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. 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-96-23 and should be submitted by March 11, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act¹⁰ that the proposed rule change (SR-Phlx-96-23), as amended, is approved.

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

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-3919 Filed 2-14-97; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice No. 2509]

Shipping Coordinating Committee, Subcommittee for the Prevention of Marine Pollution; Notice of Meeting

The Subcommittee for the Prevention of Marine Pollution (SPMP), a subcommittee of the Shipping Coordinating Committee, will conduct an open meeting on Tuesday, March 4, 1997, at 9:30 a.m. in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of this meeting will be to review the agenda items to be considered at the thirty-ninth session of the Marine Environment Protection Committee (MEPC 39) of the International Maritime Organization (IMO) to be held from March 10-14, 1997. Proposed U.S. positions on the agenda items for MEPC will be discussed.

The major items for discussion will be the following:

- a. Development of a draft protocol to amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, to include Annex VI (Air Pollution) regulations.
- b. Work relating to the human element.
- c. Harmful aquatic organisms in ballast water.
- d. Identification and protection of Special Areas and particularly sensitive sea areas.
- e. Implementation of the Oil Pollution Preparedness, Response, and Co-operation (OPRC) Convention and Oil Pollution Preparedness Response Conference resolution, including expansion of the OPRC Convention to include Hazardous Substances.

Members of the public may attend these meetings up to the seating capacity of the room.

For further information or documentation pertaining to the SPMP meeting, contact Ensign Lamont Bazemore, U.S. Coast Guard Headquarters (G-MSO-4), 2100 Second Street, SW. Washington, DC 20593-0001; Telephone: (202) 267-0713.

Dated: January 30, 1997.

Russell A. LaMantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 97-3831 Filed 2-14-97; 8:45 am]

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TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1492).

TIME AND DATE: 10 a.m. (CST), February 19, 1997.

PLACE: Beville Conference Center & Hotel, Room 267, 550 Sparkman Drive, Huntsville, Alabama.

STATUS: Open.

Agenda

Approval of minutes of meeting held on January 29, 1997.

New Business

C—Energy

C1. Approval for TVA Nuclear to enter into a labor and services contract with ABB Combustion Engineering, subject to final negotiation, to provide professional support and equipment, as needed, for ultrasonic and eddy current nondestructive examination services at TVA's nuclear plants.

C2. Approval for Transmission/Power Supply to enter into contracts with Mesa Associates, Inc., and Sargent & Lundy LLC, subject to final negotiation, to provide engineering and design services for TVA's generating plant switchyards, electrical transmission system, and power control communication facilities.

C3. Approval for Transmission/Power Supply to enter into a fixed unit-price requirements contract with Valmont Industries Inc., subject to final negotiation, to provide transmission steel poles and climbing steps.

E—Real Property Transactions

E1. Land Exchange by the U.S. Department of Agriculture, Forest Service, of approximately 14 acres of former TVA land on Watauga Lake in Carter County, Tennessee (Tract No. XTWAR-30), for 120 acres of private land of equal value.

E2. Modification of condition and covenant contained in a transfer instrument affecting approximately 44 acres of former TVA land on Guntersville Lake, Marshall County, Alabama (Tract No. XTGR-104), to allow the City of Scottsboro to license or lease the tract to private developers for construction and operation of recreational facilities.

Unclassified

F1. Filing of condemnation cases.

Information Items

1. Approval of an operating agreement for Integrated Hydroelectric Machine Condition Monitoring Consortium, LLC.