

minor rule violation enforcement and reporting plan ("Plan") containing the requirements for notification established in Phlx Rule 610, Notification of Changes in Business Operations. On September 20, 2001, the Phlx amended the proposal.³

The proposed rule change, as amended, was published for comment in the **Federal Register** on October 1, 2001.⁴ The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁵ and, in particular, the requirements of section 6 of the Act⁶ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act⁷ because it will help prevent fraudulent and manipulative acts and practices, as well as promote just and equitable principles of trade. The Commission finds the proposal is consistent with section 6(b)(6) of the Act,⁸ because the proposal provides a mechanism for the appropriate discipline for violations of certain rules and regulations.

In addition, the Commission finds the proposal is consistent with section 6(b)(7) of the Act⁹ because the proposal provides a fair procedure for the disciplining of members and persons associated with members. The Commission also finds the proposal is consistent with section 6(b)(8) of the Act,¹⁰ in that it furthers the statutory goal of providing a fair procedure for disciplining the Phlx's members and associated persons. Finally, the Commission finds the proposal is consistent with Securities Exchange Act Rule 19d-1(c)(2)¹¹ that governs minor rule violation plans.

In approving this proposal, the Commission in no way minimizes the importance of compliance with these rules, and all other rules subject to the imposition of fines under the Plan. The Commission believes that the violation of any self-regulatory organization's

rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations, the Plan provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the Phlx will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under the Plan, on a case by case basis, or if a violation requires formal disciplinary action.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹² that the proposed rule change (SR-PHLX-2001-68), as amended, be, and it hereby 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. 34-45093; File No. SR-Phlx-2001-99]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Conform Rule 2001(b)(2)(viii) to the Seventeenth Amendment of the Intermarket Trading System Plan

November 21, 2001.

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 October 30, 2001, 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 Phlx. The Exchange filed this proposal under section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders

the proposal effective upon filing with the Commission. 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 Phlx proposes to amend subsection (b)(2)(viii) of Exchange Rule 2001 (Intermarket Trading System) to provide for a 30-second commitment period to trade for orders received through the Intermarket Trading System ("ITS"), consistent with the 17th Amendment to the Intermarket Trading System Plan ("ITS Plan" or "Plan").⁵ The text of the proposal is below. Additions are in *italics*; deletions are in *brackets*.

Rule 2001. Intermarket Trading System

(a) Unchanged.

(b) Provisions of the Plan-By subscribing to and submitting the ITS Plan for filing with the Securities and Exchange Commission, the Exchange has agreed to comply to the best of its ability, and, absent reasonable justification or excuse, to enforce compliance by its members, with the provisions of the ITS Plan. In this connection, the following shall apply:

Intermarket Trading System ("ITS")

(1) Unchanged

(2) Any "commitment to trade", which is transmitted by a member to another participating market center through ITS, shall be firm and irrevocable for the period of time following transmission as is chosen by the sender of the commitment. All such commitments to trade shall, at a minimum:

(i)-(vii) Unchanged

(viii) specify the time period during which the commitment shall be irrevocable, but if the time period is not specified in the commitment, the longer of the [two] *three* options available under the Plan shall be assumed by ITS.

(3)-(6) Unchanged.

intention to file this proposal on September 20, 2001.

⁵ See Securities Exchange Act Release No. 44903 (October 3, 2001), 66 FR 52159 (October 12, 2001) ("ITS Plan Amendment No. 17"). The ITS is a National Market System plan, which was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. See Securities Exchange Act Release No. 18536 (March 4, 1982), 47 FR 10658 (March 11, 1982) (noticing the restated ITS Plan) and Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983) (adopting the restated ITS Plan).

³ The amendment completely replaced and superseded the original proposal.

⁴ See Securities Exchange Act Release No. 44844 (September 25, 2001), 66 FR 49994.

⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78f(b)(6).

⁹ 15 U.S.C. 78f(b)(7).

¹⁰ 15 U.S.C. 78f(b)(8).

¹¹ 17 CFR 240.19d-1(c)(2).

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

¹⁴ 15 U.S.C. 78s(b)(1).

¹⁵ 17 CFR 240.19b-4.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ CFR 240.19b-4(f)(6). The Phlx requested that the Commission waive the 30-day operative delay. The Phlx provided the Commission with notice of its

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 conform Phlx Rule 2001(b)(2)(viii) to ITS Plan Amendment No. 17.⁶

Presently, Phlx Rule 2001 provides that a commitment to trade shall, at a minimum, specify the length of the period in which that commitment is irrevocable, and if such information is not specified, the lesser of the two options available would apply. The two time-periods available currently are one and two minutes.

Among other things, ITS Plan Amendment No. 17 provides for the addition of a third option—a 30-second commitment period.⁷ The 30-second option would be available, once installed by the Securities Industry Automation Corporation ("SIAC") and implemented by the Exchange, on a six-month pilot basis.⁸

Accordingly, the Exchange proposes to amend Phlx Rule 2001, which provides for trading through ITS, by replacing the current language in subsection (b)(2)(viii), which states that there are "two" irrevocable time-period options, with the word "three," thereby mirroring ITS Plan Amendment No. 17.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,⁹ in general, and furthers the objectives of section 6(b)(5),¹⁰ in particular, because it should promote just and equitable principles of

trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, 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 will impose any inappropriate 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 either solicited or received.

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not 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 that 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, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6)¹² thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Phlx seeks to have the proposed rule change become operative immediately.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative as of October 30, 2001.¹³

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such 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.

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 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-2001-99 and should be submitted by December 21, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45086; File No. SR-Phlx-2001-96]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Exchange's Options Maintenance Standards

November 19, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

¹⁴ 17 CFR 200.30-3(a)(12).

⁶ See *supra* note 5.

⁷ See ITS Plan Amendment No. 17, *supra* note 5.

⁸ The Exchange will implement the six-month pilot on November 30, 2001. See telephone conversation between Edith Hallahan, Deputy General Counsel, Phlx, and Jennifer Lewis, Attorney, Division of Market Regulation, Commission, on November 16, 2001.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).