change prior to the thirtieth day after publication in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether the Amendment No. 2 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 CBOE. All submissions should refer to File No. SR–CBOE–2001–63 and should be submitted by April 15, 2002.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CBOE–2001–63), as amended, is approved, and Amendment No. 2 is approved on an accelerated basis.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7040 Filed 3–22–02; 8:45 am]

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[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45591; File No. SR–MSRB–2002–01]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change Relating to Rule G–17 on Disclosure of Material Facts

March 18, 2002.

On January 25, 2002, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change relating to Rule G–17, on disclosure of material facts.

The Commission published the proposed rule change for comment in the **Federal Register** on February 12, 2002.[3] The Commission received no comment letters relating to the forgoing proposed rule change. This order approves the proposal.

I. Description of the Proposed Rule Change

The proposed rule change provides an interpretation of the duty to deal fairly set forth in Rule G–17. The MSRB's proposed this interpretation to set forth an expanded explanation of what Rule G–17's obligation to ''disclose all material facts'' means in today's innovative market. The MSRB believes that technological changes necessitate interpretive guidance for the application of certain rules. Alternative trading systems present the most graphic example of changing dealer/customer relationships and the consequent need for regulatory change, but these relationship obligations are not necessarily limited to electronic trading venues.

As part of a dealer's obligation to deal fairly, the MSRB has consistently interpreted that Rule G–17 creates affirmative disclosure obligations for brokers, dealers and municipal securities dealers (collectively, ''dealers''). The MSRB has stated that a dealer's affirmative disclosure obligations require that a dealer disclose, at or before the sale of municipal securities to a customer, all material facts concerning the transaction, including a complete description of the security.[4] These obligations apply even when a dealer is acting as an order taker and effecting non-recommended secondary market transactions.

Rule G–17 requires that dealers disclose to a customer at the time of trade all material facts about a transaction known by the dealer. In addition, a dealer is required to disclose material facts about a security when such facts are reasonably accessible to the market. Thus, a dealer would be responsible for disclosing to a customer any material fact concerning a municipal securities transaction made publicly available through sources such as the NRMSIR system, the MSIL® system, TRS, rating agency reports and other sources of information relating to the municipal securities transaction generally used by dealers that effect transactions in the type of municipal securities at issue (collectively, ''established industry sources'').[5]

In addition to the basic disclosure obligations, the duty to ''deal fairly'' is intended to ''refer to the customs and practices of the municipal securities markets, which may, in many instances differ from the corporate securities markets.'' [6] The customs and practices of the industry suggest that the sources of information generally used by a dealer that effects transactions in municipal securities may vary with the type of municipal security. For example, a dealer might have to draw on fewer industry sources to disclose all material facts about an insured ''triple-A'' rated general obligation bond than for a non-rated conduit issue. In addition, to the extent that a security is more complex, for example, because of complex structure or where credit quality is changing rapidly, a dealer might need to take into account a broader range of information sources prior to executing a transaction.

II. Discussion

The MSRB believes that the proposed rule change is consistent with section 15B(b)(2)(C) of the Exchange Act.[7] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–45361 (January 30, 2002), 67 FR 6562.

[4] *See e.g.,* Rule G–17 Interpretation—Educational Notice on Bonds Subject to ''Detachable'' Call Features, May 13, 1993, *MSRB Rule Book* (July 2001) at 129–130. The Commission described material facts as those ''facts which a prudent investor should know in order to evaluate the offering before reaching an investment decision.'' *Municipal Securities Disclosure,* Exchange Act Release No. 26100 (Sept. 22, 1988) 53 FR 37778 at note 76, quoting In re *Walston & Co. Inc., and Harrington*, Exchange Act Release No. 8165 (Sept. 22, 1967) 43 SEC 508, 1967 SEC LEXIS 553. Furthermore, the United States Supreme Court has stated that a fact is material if there is a substantial likelihood that its disclosure would have been considered significant by a reasonable investor. *TSC Industries, Inc.* v. *Northway, Inc.,* 426 U.S. 438 (1976).

[5] Dealers operating electronic trading platforms have inquired whether providing electronic access to material information is consistent with the obligation to disclose information under Rule G–17. The MSRB believes that the provision of electronic access to material information to customers who elect to transact in municipal securities on an electronic platform is generally consistent with a dealer's obligation to disclose such information, but that whether such access is effective disclosure ultimately depends upon the particular facts and circumstances present.

[6] *See* Exchange Act Release No. 13987 (Sept. 22, 1977).

[7] MSRB rules shall, ''be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade * * * to remove impediments to and perfect the

Continued

MSRB believes that this rule satisfies this standard because it is intended to clarify that a dealer's general obligation to provide disclosure is viewed within the context of reasonably available information about the municipal security and the dealer's actual knowledge of the municipal security. Additionally, the MSRB believes that the proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, since it applies equally to all brokers, dealers and municipal securities dealers.

The Commission must approve a proposed MSRB rule change if the Commission finds that the MSRB's proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that govern the MSRB.[8] The language of section 15B(b)(2)(C) of the Exchange Act requires that the MSRB's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, 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 system, and, in general, to protect investors and the public interest.[9]

After careful review, the Commission finds that the MSRB's proposed rule change consisting of an interpretation of Rule G–17, on disclosure of material facts, meets this standard. The Commission believes that this proposed rule change is consistent with the requirements of the Exchange Act, and the rules and regulations thereunder. In particular, the Commission finds that the proposed rule is consistent with the requirements of section 15B(b)(2)(C) of the Act, set forth above.

III. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act, [10] that the proposed rule change (File No. SR–MSRB–2002–01) be and hereby is, approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7042 Filed 3–22–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45573; File No. SR–Phlx–2001–33]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Solicitation of Trading Interest on the Exchange Floor

March 15, 2002.

I. Introduction

On March 8, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''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 adopt Phlx Rule 1033(a)(ii) and Options Floor Procedure Advice (''OFPA'') F–32 pertaining to the solicitation of quotations.[3] On May 11, 2001, the Exchange filed Amendment No. 1 to the proposed rule change with the Commission.[4] On November 21, 2001, the Exchange filed Amendment No. 2 to the proposed rule change with the Commission.[5] The proposed rule change and Amendment Nos. 1 and 2 were published in the **Federal Register** on February 12, 2002.[6] No comments were received regarding the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The Exchange proposes to adopt Phlx Rule 1033(a)(ii) and OFPA F–32, which would permit the members of a trading crowd (including the specialist and Registered Options Traders (''ROTs'')) to discuss, negotiate, and agree upon the price or prices at which an order of a size greater than the AUTO–X guarantee can be executed at that time, or the number of contracts that can be executed at a given price or prices in response to a floor broker's request for a single bid or offer. The proposal would expressly permit a collective response from trading crowd members. However, members would not be required to participate in a collective response and may voice a bid or offer independently from, and differently from, the trading crowd members. In fact, an individual ROT with the necessary liquidity, willing to execute a trade at a price better than the prevailing market, could bid against the crowd and take the entire trade, or part of the trade, pursuant to the Phlx allocation rules.[7]

III. Discussion

After careful consideration the Commission has determined to approve the proposed rule change. For the reasons discussed below, 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,[8] and, in particular, with section 6(b)(8) of the Act,[9] which requires that the rules of an exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

This proposed rule change will clearly establish in the Phlx's rules the parameters under which Phlx specialists and ROTs may coordinate to respond efficiently to the needs of investors, while fulfilling their duty to make fair and orderly markets. In particular, the proposed rule change will allow the trading crowd, in response to a floor broker's request for a single bid or offer for a large size order, to collectively discuss, negotiate and agree upon the price or prices at which an order of a size greater than the AUTO–X guarantee

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mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

[8] Additionally, in approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78o–4(b)(2)(c).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] The Exchange filed this proposed rule change pursuant to the provisions of Section IV.B.j. of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Exchange, among other things, to adopt new, or amend existing, rules to include any practice or procedure whereby market makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class.

[4] See Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 10, 2001 (''Amendment No. 1'').

[5] *See* Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated November 21, 2001 (''Amendment No. 2'').

[6] *See* Securities Exhange Act Release No. 45391 (February 4, 2002), 67 FR 6570.

[7] *See* Phlx Rule 1014. *See also* File No. SR–Phlx-2001–39 (proposing to amend Phlx Rule 1014).

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

[9] 15 U.S.C. 78f(b)(8).