

National Archives at College Park (8601 Adelphi Road, College Park, MD).

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740-6001. Requests also may be transmitted by FAX to 301-713-6852 or by e-mail to records.mgt@arch2.nara.gov.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports and/or copies of previously approved schedules or manuals should so indicate in their request.

FOR FURTHER INFORMATION CONTACT:

Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. Telephone: (301) 713-7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs the records to conduct its business. Routine administrative records common to most agencies are approved for disposal in the General Records Schedules (GRS), which are disposition schedules issued by NARA that apply Government-wide.

On March 25, 1999, the Archivist issued NARA Bulletin 99-04, which told agencies what they must do to schedule electronic copies associated with previously scheduled program records and certain administrative records that were previously scheduled under GRS 20, Items 13 and 14. On December 27, 1999, the Archivist issued NARA Bulletin 2000-02, which suspended Bulletin 99-04 pending NARA's completion in FY 2001 of an overall review of scheduling and appraisal. On completion of this review, which will address all records, including electronic copies, NARA will determine whether Bulletin 99-04

should be revised or replaced with an alternative scheduling procedure. However, NARA will accept and process schedules for electronic copies prepared in accordance with Bulletin 99-04 that are submitted after December 27, 1999, as well as schedules that were submitted prior to this date.

Schedules submitted in accordance with NARA Bulletin 99-04 only cover the electronic copies associated with previously scheduled series. Agencies that wish to schedule hitherto unscheduled series must submit separate SF 115s that cover both recordkeeping copies and electronic copies used to create them.

In developing SF 115s for the electronic copies of scheduled records, agencies may use either of two scheduling models. They may add an appropriate disposition for the electronic copies formerly covered by GRS 20, Items 13 and 14, to every item in their manuals or records schedules where the recordkeeping copy has been created with a word processing or electronic mail application. This approach is described as Model 1 in Bulletin 99-04. Alternatively, agencies may group records by program, function, or organizational component and propose disposition instructions for the electronic copies associated with each grouping. This approach is described as Model 2 in the Bulletin. Schedules that follow Model 2 do not describe records at the series level.

For each schedule covered by this notice the following information is provided: Name of the Federal agency and any subdivisions requesting disposition authority; the organizational unit(s) accumulating the records or a statement that the schedule has agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency; the control number assigned to each schedule; the total number of schedule items; the number of temporary items (the record series proposed for destruction); a brief description of the temporary electronic copies; and citations to previously approved SF 115s or printed disposition manuals that scheduled the recordkeeping copies associated with the electronic copies covered by the pending schedule. If a cited manual or schedule is available from the Government Printing Office or has been posted to a publicly available Web site, this too is noted.

Further information about the disposition process is available on request.

Schedules Pending

1. Department of Health and Human Services, National Institutes of Health (N9-443-01-1, 11 items, 11 temporary items). Electronic copies of records created using electronic mail and word processing that relate to operational and administrative activities of the agency's Clinical Center. Included are electronic copies of records associated with such series as the Clinical Center central files, program and analysis review records, organization and functions files, minutes of meetings, case files on volunteers, and documentation concerning instrument maintenance. This schedule follows Model 1 as described in the Supplementary Information section of this notice in that it adds disposition instructions for the electronic copies associated with individual file series of records. However, it only includes the titles, not the series description, of the recordkeeping files. Recordkeeping copies of these files are included in Disposition Jobs NC1-90-78-12, NC1-90-77-2, NC1-90-78-9, NC1-90-78-19, N1-443-93-1, N1-443-96-1, and NC1-90-77-9, which may be requested in accordance with the procedures outlined in the Dates section of this notice.

Dated: April 2, 2001.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44145; File Nos. SR-Amex-01-18; SR-CBOE-01-15; SR-ISE-01-07; SR-PCX-01-18; and SR-Phlx-01-37]

Self-Regulatory Organizations: Notice of Filing and Order Granting Partial Accelerated Approval for a Sixty Day Pilot Program of Proposed Rule Changes and Amendments by the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the International Securities Exchange LLC, the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc. Relating to the Application of the Quote Rule to Options Trading

April 2, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4

¹ 15 U.S.C. 78s(b)(1).

thereunder;² notice is hereby given that on March 15, 2001, the American Stock Exchange LLC ("Amex"); on March 30, 2001, the Chicago Board Options Exchange, Inc. ("CBOE"); on February 28, 2001, the International Securities Exchange LLC ("ISE"); on March 29, 2001, the Pacific Exchange, Inc. ("PCX"); and on March 12, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx") (referred to collectively as "Exchanges") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule changes as described in Items I and II below, which Items have been prepared by the Exchanges.³

Amex submitted to the Commission Amex Amendment No. 1 to its proposed rule change on March 21, 2001⁴ and Amex Amendment No. 2 on March 28, 2001.⁵ CBOE filed CBOE Amendment No. 1 to its proposed rule change on March 30, 2001.⁶ ISE submitted ISE Amendment No. 1 to its proposal on March 30, 2001.⁷ The PCX submitted PCX Amendment No. 1 on March 29, 2001.⁸ The Phlx submitted Phlx Amendment No. 1 to its proposal on

March 16, 2001⁹ and Phlx Amendment No. 2 on March 29, 2001.¹⁰ The Commission is publishing this notice to solicit comments on the proposed rule changes, as amended, from interested persons. As discussed below, the Commission is also granting accelerated approval to those portions of the proposals relating to the implementation of sixty-day pilot programs ("Pilots") to accommodate the Exchanges' efforts to amend their rules to conform to the Quote Rule by the compliance date of April 1, 2001.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The Exchanges propose to amend their rules to conform to the requirements of the Quote Rule. The text of the proposed rule changes follows. New text is italicized and deleted text is bracketed.

A. Amex Proposed Rule Text

Rule 958A. [Specialist Options Transactions]

[(a) Firm Quotes. At all times other than during rotation, a specialist is required to sell (buy) at least ten (10) contracts at the offer (bid) which is displayed when a buy (sell) order reaches the trading post where the option class is located for trading. Option series that are subject to this rule shall be determined from time to time at the discretion of the Exchange. A Floor Official may determine on a case by a case basis that an exception to the rule is warranted for, among other things, a change in market conditions, an obvious error occurring in the posting of the display market quote due to reporter errors or system malfunctions.

⁹ In Amendment No. 1, Phlx made technical corrections to its rule text to, in part, better conform to the Quote Rule; requested a 60 day pilot program to accommodate the application of the Quote Rule to its market; and clarified that the applicable firm quote size will be the AUTO-X guarantee or ten contracts for booked limit orders. See letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 15, 2001 ("Phlx Amendment No. 1").

¹⁰ In Amendment No. 2, Phlx made further technical corrections to its rule text to conform to the Quote Rule; clarified that responsible brokers or dealers were collectively responsible for satisfying the disseminated size or quotation size; clarified the responsibility of a responsible broker or dealer when acting as an agent for a limit order; represented that Phlx would notify specified persons of an unusual market condition through OPRA using an agreed-upon indicator; and represented that Phlx will periodically publish its established quotation size for broker-dealer orders on its web site. See letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 28, 2001 ("Phlx Amendment No. 2").

(b) Public Customer Definition. Only non-broker-dealer customer orders shall be entitled to executions pursuant to the provisions of this rule. For purposes of this Rule, the term "broker/dealer" includes foreign broker/dealers.

(c) Registered Option Trader Orders. Specialists are not required to display as a market quotation bids or offers of a Registered Option Trader for less than 10 contracts.

*** * * Commentary**

.01 Trade or Fade. With respect to broker-dealer orders to buy (sell) at the displayed offer (bid), or portions of customer orders that are not entitled to an execution pursuant to provisions of paragraph (a), the specialist is required to either (1) sell (buy) the number of contracts specified in the order, or (2) change the displayed offer (bid) to reflect that such displayed offer (bid) is no longer available. In such instance, where a displayed offer (bid) is revised, it shall be considered conduct inconsistent with just and equitable principles of trade for the specialist to immediately re-display the previously disseminated offer (bid), unless such action is warranted by a change in market conditions].

Application of the Firm Quote Rule

(a) Definitions—(i) For purposes of this rule the terms "aggregate quotation size", "best bid and best offer", "bid and offer", "quotation size", "quotation vendor", "reported security", "listed option", "option class", "option series" and "trading rotation" shall have the meanings set forth in SEC Rule 11Ac1-1.

(ii) For purposes of this rule and SEC Rule 11Ac1-1 as applied to the Exchange and its members, the term "responsible broker or dealer" shall mean, with respect to any bid or offer for any listed option made available by the Exchange to quotation vendors, the specialist and any registered options traders constituting the trading crowd in such option series shall collectively be the responsible broker or dealer to the extent of the aggregate quotation size specified.

(b) Dissemination Requirements of the Exchange—with respect to paragraph (b) of SEC Rule 11Ac1-1 and except as set forth in Commentary .01 of this rule, the Exchange shall, at all times it is open for trading, (A) collect, process and make available to quotation vendors the best bid, the best offer, quotation sizes and aggregate quotation sizes associated therewith for each option series that is a reported security and for which a responsible broker or dealer is obligated to execute any

² 17 CFR 240.19b-4.

³ For ease of comparison and review, the Commission has consolidated the proposed rule changes of the Exchanges into one notice, which combines and summarizes the main provisions of the Exchanges' proposed rule changes.

⁴ In Amendment No. 1, Amex made technical corrections to its rule text to, in part, better conform to Exchange Act Rule 11Ac1-1 ("Quote Rule"); clarified in a footnote that Nasdaq has begun trading in decimals; and requested a 60 day pilot program to accommodate the application of the Quote Rule to its market. See letter from Claire P. McGrath, Vice President and Special Counsel, Derivative Securities, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 20, 2001 ("Amex Amendment No. 1").

⁵ In Amendment No. 2, Amex made further corrections to its rule text to better conform to the Quote Rule. See letter from Claire P. McGrath, Vice President and Special Counsel, Derivative Securities, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated March 27, 2001 ("Amex Amendment No. 2").

⁶ In Amendment No. 1, CBOE made technical corrections to its rule text to, in part, better conform to the Quote Rule. See letter from Madge M. Hamilton, Legal Division, CBOE to Nancy Sanow, Assistant Director, Division, Commission, dated March 30, 2001 ("CBOE Amendment No. 1").

⁷ In Amendment No. 1, ISE made technical corrections to its rule text to, in part, better conform to the SEC's Quote Rule and requested a 60-day pilot program to accommodate the application of the Quote Rule to its market. See letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division, Commission, dated March 29, 2001 (replacing Form 19b-4 in its entirety) ("ISE Amendment No. 1").

⁸ In Amendment No. 1, PCX made technical corrections to its rule text to, in part, better conform to the Quote Rule. See letter from Michael D. Pierson, Senior Vice President Regulatory Policy, PCX, to John Roeser, Division, Commission, dated March 29, 2001 ("PCX Amendment No. 1").

customer order as set forth in paragraph (c)(i) below; and (B) shall for each listed option class, establish by rule and periodically publish the quotation size for which the responsible broker or dealer is obligated to execute an order for the account of a broker or dealer to buy or sell an option series that is a reported security at its published bid or offer as set forth in paragraph (c)(ii) below. The Exchange may collect, process and make available to quotation vendors a best bid or best offer determined by an automated quotation system.

The Exchange's obligation to collect, process and make available data as set forth above shall not include (A) collecting processing or making available any such bid or offer which is executed immediately after being made in the crowd and any such bid or offer which is cancelled or withdrawn if not executed immediately after being made; or (B) data communicated during any period when trading in such reported security has been suspended or halted; prior to the commencement of trading in such reported security on any trading day; or during a trading rotation. The minimum quotation size made available to quotation vendors or established by rule and published by the exchange shall be ten contracts for each option series.

(c) *Obligations of a Responsible Broker or Dealer—Pursuant to SEC Rule 11Ac1-1* each responsible broker or dealer for each series of each listed option class shall promptly communicate to the Exchange its best bid, best offer, quotation size and aggregate quotation size. No responsible broker or dealer shall communicate a quotation size or aggregate quotation size for less than ten contracts. This obligation may be fulfilled by the use of an automated quotation system.

(i) Subject to the provisions of paragraph (d) of this rule, each responsible broker or dealer shall be obligated to execute any customer order in an option series in an amount up to its published quotation size.

(ii) Subject to the provisions of paragraph (d) of this rule, each responsible broker or dealer shall be obligated to execute any order for the account of a broker or dealer in a listed option in an amount up to the quotation size established by rule and periodically published by the Exchange.

(iii) Subject to the provisions of paragraph (d) of this Rule, each responsible broker or dealer shall comply with the Thirty Second Response provisions set forth in paragraph (d)(3) of SEC Rule 11Ac1-1.

(d) *Use of Unusual Market Exception—Notwithstanding* paragraphs (b) and (c) above and pursuant to paragraph (b)(3) of SEC Rule 11Ac1-1, if the Exchange determines, in accordance with the procedures set forth below, that the level of trading activity or the existence of unusual market conditions is such that the Exchange cannot collect, process and make available to quotation vendors quotation data in a manner which accurately reflects the current state of the market at the Exchange, the Exchange shall immediately notify the persons specified in paragraph (b)(3) of SEC Rule 11Ac1-1 below and, upon such notification, the obligation imposed upon Exchange members under paragraph (c)(2) of SEC Rule 11Ac1-1 and the Exchange under paragraphs (b)(1) and (2) of SEC Rule 11Ac1-1 shall be suspended, until a determination by the Exchange that the unusual market activity or condition has terminated and the specified persons have been notified that the unusual market activity or condition has terminated:

(i) If a responsible broker or dealer is unable to update his quotations on a timely basis due to the high level of trading activity or the existence of an unusual market condition, he shall promptly notify a Floor Official.

(ii) Upon notification by a responsible broker or dealer, the Floor Official shall promptly verify the existence of the unusual market activity or condition and if, in his judgment, the responsible broker or dealer is unable to update his quotations on a timely basis, the Floor Official shall promptly notify the Market Operations Division of the Exchange. If a Floor Official, independent of notification by a responsible broker or dealer, becomes aware of any unusual market activity or condition which adversely affects a responsible broker or dealer's ability to promptly communicate quotation data, he shall likewise promptly advise the Market Operations Division.

(iii) If the Exchange is unable to accurately collect, process, and/or disseminate quotation data owing to the high level of trading activity or the existence of unusual market conditions, the Market Operations Division of the Exchange, after consultation with a Floor Official, shall make a determination that this is the case.

(iv) The Market Operations Division, after receiving notification from a Floor Official pursuant to either subparagraphs (i) and (iii) above, shall notify the persons specified in paragraph (b)(3) of SEC Rule 11Ac1-1 regarding the Exchange's inability to

accurately collect, process, and make available the quotation data required by SEC Rule 11Ac1-1. The Exchange shall append to each quotation made available to a quotation vendor an identifier which will indicate that the obligation imposed upon Exchange members and the Exchange by SEC Rule 11Ac1-1 has been suspended.

(v) The Floor Official or the Market Operations Division (as the case may be) shall monitor the unusual market activity or condition until it has terminated. Thereupon, the Market Operations Division shall immediately notify the persons specified in paragraph (b)(3) of SEC Rule 11Ac1-1 that the Exchange is once again capable of disseminating the quotation data required by Rule SEC 11Ac1-1 and responsible brokers or dealers shall be once again obligated under SEC Rule 11Ac1-1 as made applicable to Exchange members pursuant to this Rule 958A.

* * * * *

* * * Commentary

.01 As of April 1, 2001, the compliance date for application of SEC Rule 11Ac1-1 to the trading of options, the Exchange is able to disseminate to quotation vendors the quotation size or aggregate quotation size of the best bid or best offer in most, but not all, option classes. This is not expected to be a permanent condition and it is anticipated that quotation sizes will be available for all option classes shortly after the compliance date. However, until such time as the Exchange is able to disseminate quotation size for all option classes, for those option classes for which it is unable to do so, it will collect, process and disseminate the best bid and best offer, and establish by rule and periodically publish the quotation size for which the responsible broker or dealer is obligated to execute a customer order to buy or sell an option series in that class.

.02 No specialist shall be deemed to be a responsible broker or dealer with respect to a published bid or offer that is erroneous as a result of an error or omission made by the Exchange or any quotation vendor. If a published bid or published offer is accurate but the published quotation size (or published aggregate quotation size, as the case may be) associated with it is erroneous as a result of an error or omission made by the Exchange or any quotation vendor, then the specialist who is responsible for the published bid or published offer shall be obligated to the extent set forth in paragraph (c) of Rule 11Ac1-1 but only to the extent of one

unit of trading in the reported security in question.

.03 Absent unusual market conditions, the responsible broker or dealer shall honor any bid or offer then being displayed by quotation vendors which is erroneous, up to the quotation size then being so displayed, which has been displayed for six minutes or more. Provided, however, that the specialist shall not be required to honor such a bid or offer which is erroneous as to either price or size or both if:

(i) as a matter of record, an execution, cancellation or update of such bid or offer was in effect or in process;

(ii) in honoring such a bid or offer, the resulting transaction would violate applicable Exchange rules or federal regulations;

(iii) equipment failure prevents the specialist from monitoring such bid or offer; or

(iv) the price sought upon such quotation is above the current bid or below the current offer, on the Floor, by (a) \$.25 or more in the case of a reported security trading at \$3 or less or (b) \$.50 or more in the case of a reported security trading at more than \$3.

B. CBOE Proposed Rule Text

Rule 8.51. [Trading Crowd] Firm Disseminated Market Quotes

(a) Rule 8.51. Definitions.

(1) For the purposes of this rule, and SEC Rule 11Ac1-1 as applied to the Exchange and members on the floor, the term "responsible broker or dealer" shall mean, with respect to any bid or offer for any reported security made available by the Exchange to quotation vendors, the trading crowd in a series or class of option, which shall be the responsible broker or dealer to the extent of the quotation size specified in (b) or (c) of this rule.

(2) For purposes of this rule, the term "reported security" means any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective national market system plan for reporting transactions in listed options.

(b) Firm Quote Requirement for Non-broker-dealer Orders. All [The] classes and series [which] shall be subject to the requirements of this rule. [will be determined at the discretion of the appropriate Market Performance Committee ("MPC").]

(1) The appropriate Floor Procedure Committee may establish the firm quote requirement for each series of option, which shall be for at least one contract, for non-broker-dealer orders. The Exchange will periodically publish the

firm quote requirement for each series of option. In the event the Exchange disseminates quotation size, the firm quote requirement would be for up to the disseminated size.

[(1) Only non-broker dealer customer orders shall be entitled to an execution pursuant to the provisions of this paragraph (a). For the purposes of this Rule, the term broker-dealer includes foreign broker-dealers as defined in Rule 1.1(xx).]

(2) [The firm quote requirement shall be no less than the RAES contract limit applicable to that class of options, except where the RAES contract limit is more than fifty contracts for a particular option class then the firm quote requirement shall be fifty contracts. However, for those classes where the RAES contract limit is fifty or less, the appropriate Floor Procedure Committee, in its discretion, may establish a different firm quote requirement for a particular class of options that is no less than the RAES contract limit and no more than 50 contracts. For classes or series that are not traded on RAES, the appropriate Floor Procedure Committee may establish a firm quote requirement of between 10 and 50 contracts; The firm quote requirement applies at all times other than during rotation, unless there is a contrary Floor Official ruling pursuant to subparagraph (3) of this paragraph (a).]

The firm quote requirement obligates [a trading crowd] the responsible broker or dealer to sell(buy) at least the established number of contracts at the offer(bid) which is displayed when [a] the responsible broker or dealer receives a buy (sell) order [reaches] at the trading station where the particular option class is located for trading. [The Exchange may establish a higher firm quote requirement, of up to 100 contracts, for the trading crowd for options on the Dow Jones Industrial Average. Except in the case of rerouted RAES orders that are eligible for the RAES kick out price in accordance with Interpretation .04 to Rule 6.8, an order ordinarily will be deemed to reach the trading station when a Floor Broker represents the order in open outcry at the trading station.]

(3) When orders for the same class (whether for the same series or different series) from the same beneficial owner are represented at the trading station at approximately the same time, then only the first of such orders that cumulatively equal or add up to less than the firm quote requirement shall be entitled to an execution pursuant to paragraphs (b) and (c) [(a)(2)] above.

[(4) On a case by case basis, any two Floor Officials may grant exemptions to

or suspend the provisions of this paragraph (a) for either a class or series within a class if, in their determination, to do so is in the interest of a fair and orderly market. Additionally, any two Floor Officials may determine that an exemption to Rule 8.51(a) is warranted, on a case by case basis, upon their determination that an obvious error occurred in the posting of the disseminated market quote.]

[(5) The senior person then in charge of the Exchange's Control Room shall have the authority to suspend the firm quote requirements of this paragraph (a) with respect to a class of options if a system malfunction or circumstance impairs the Exchange's ability to disseminate or update market quotes in a timely and accurate manner. After exercising such authority, that senior person shall immediately seek approval by two Floor Officials, who may confirm or overrule the decision. If this authority is invoked, the Exchange's Control Room will disseminate a message notifying the public that the displayed quotes are not firm because of a data dissemination problem. Once the problem has been corrected and the market quotes have been updated, the suspension of the firm quote requirements of paragraph (a), shall be lifted by either the senior person then in charge of the Exchange's Control Room, or by two Floor Officials.]

[(b)(c) Firm Quote Requirement for Broker-Dealer Orders. The appropriate Floor Procedure Committee may establish the firm quote requirement for each series of option, which shall be for at least one contract, for broker-dealer orders. The Exchange will periodically publish the firm quote requirement for each series of option. In the event the Exchange disseminates quotation size, if the disseminated quotation size is for a lesser amount than the firm quote requirement, then the broker-dealer firm quote requirement would be for the disseminated size. For purposes of this Rule, the term broker-dealer includes foreign broker-dealers as defined in Rule 1.1(xx). [With respect to orders (or portions of orders) at the displayed offer (bid), that are not entitled to an execution pursuant to the provisions of paragraph (a), the trading crowd is required to either

(1) sell (buy) the number of contracts specified in the order; or

(2) change the displayed offer (bid) to reflect that the previously displayed offer (bid) is no longer available.]

(d) Thirty Seconds Rule. Each responsible broker or dealer within thirty seconds from receiving an order that is greater than the quotation size

established by paragraph (b) or (c) of this rule must:

(1) Execute the entire order; or
(2) (A) Execute that portion of the order equal to at least the quotation size established by paragraphs (b) or (c) of this rule; and

(B) Revise its bid or offer.

(e) Exemptions to Firm Quote Requirements. Non-Firm Mode.

(1) With respect to paragraph (b)(3) of SEC Rule 11Ac1-1:

(i) Any two Floor Officials, on a case by case basis, for either a class or series within a class, may make a determination, that the level of trading activity or the existence of unusual market conditions are such that the Exchange is incapable of collecting, processing and making available to quotation vendors bids, offers and quotation sizes with respect to one or more class or series within a class of option in a manner which accurately reflects the current state of the market on the floor. During any period that the market in a reported security is in a non-firm mode, the responsible broker or dealer shall be relieved of their obligations under SEC Rule 11Ac1-1 as applicable to such members under this Rule 8.51 with respect to such reported security, but the responsible broker or dealer shall report bids and offers or revised bids and offers in such reported security, for publication, on a "best efforts" basis; or

(ii) The senior person, then in charge of the Exchange's Control Room, shall have the authority to suspend the firm quote requirements of paragraphs (b) or (c) with respect to a class of options if he or she determines that the level of trading activity or the existence of unusual market conditions are such that the Exchange is incapable of collecting, processing and making available to quotation vendors bids, offers and quotation sizes with respect to one or more class or series of option in a manner which accurately reflects the current state of the market on the floor. After exercising such authority, that senior person shall immediately seek approval by two Floor Officials, who may confirm or overrule the decision. During any period that the market in a reported security is in a non-firm mode, the responsible broker dealer shall be relieved of their obligations under SEC Rule 11Ac1-1 as applicable to such members under this Rule 8.51 with respect to such reported security, but the responsible broker or dealer shall report bids and offers or revised bids and offers in such reported security, for publication, on a "best efforts" basis.

(iii) Whenever two Floor Officials or the senior person then in charge of the

Exchange's Control Room make a determination under subparagraphs (i) or (ii) above with respect to any reported security, the Exchange's Control Room will disseminate a message notifying the specified persons that the displayed quotes are not firm.

(iv) During any period that the market in a reported security is in a non-firm mode, the Floor Officials shall monitor the activity or condition, which formed the basis for his or their determination. No more than 30 minutes after such market has been designated to be in a non-firm mode, the DPM shall review the condition of such market with the Floor Officials. Continuation of the non-firm mode for longer than 30 minutes shall require the reaffirmation of the reviewing Floor Officials. Such review and reaffirmation shall occur not less frequently than every 30 minutes thereafter while the non-firm mode is in effect.

(v) When the Exchange is once again capable of collecting, processing and making available to quotation vendors bids and offers with respect to a reported security that is in a non-firm mode in a manner which accurately reflects the current state of the market on the floor then the senior person then in charge of the Exchange's Control Room, or two Floor Officials shall lift the non-firm mode designation. Once the non-firm mode designation has been lifted, responsible broker dealers shall be obligated for the firm quote requirement as stated in paragraphs (b) or (c).

(2) No responsible broker or dealer shall be obligated to execute a transaction for any listed option as provided in paragraphs (b) and (c) of this rule¹¹ when:

(i) (A) Prior to the presentation of an order to sell(buy), a responsible broker or dealer has communicated to the exchange, a revised quotation size; or

(B) At the time an order to sell(buy) is presented, a responsible broker or dealer is in the process of effecting a transaction in such class and/or series of option, and immediately after the completion of such transaction, it communicates to the exchange a revised quotation size, such responsible broker or dealer shall not be obligated by paragraphs (b), (c) or (d) of this Rule to sell(buy) that option in an amount greater than such revised quotation size.

(C) Before the order sought to be executed is presented, a responsible broker or dealer has communicated to the exchange, a revised bid or offer; or

¹¹ This section is pursuant to SEC Rule 11Ac1-(d)(4). The responsible broker or dealer shall also be relieved of their obligations under SEC Rule 11Ac1-1(c)(2).

(D) At the time the order sought to be executed is presented, a responsible broker or dealer is in the process of effecting a transaction in such class or series of option, and, immediately after the completion of such transaction, a responsible broker or dealer communicates to the exchange, a revised bid or offer; provided, however, that the responsible broker or dealer shall nonetheless be obligated to execute any such order as provided in paragraphs (b) or (c) of this rule at its revised bid or offer in any amount up to its published quotation size or revised quotation size; or

(ii) The order for the purchase or sale of a listed option is presented during a trading rotation in that listed option.

(f) Each member on the floor shall abide by such rules and procedures adopted by the Exchange, in order to enable the Exchange to meet its quotation dissemination requirements.¹²

* * * Interpretations and Policies:

.01 With respect to subsection [(a)] (b) of this Rule, if the disseminated bid (offer) is on behalf of an order represented by a Floor Broker, DPM, or OBO and is for less than the firm quote requirement applicable for that class of options, [the trading crowd] a responsible broker or dealer is obligated to buy or sell the necessary number of contracts needed to make the disseminated quote firm for the firm quote requirement for that class of options.

.02 Where a Floor Broker, DPM, or OBO has caused a bid or offer to be disseminated and the order is subsequently filled or canceled, the Floor Broker, DPM, or OBO will be responsible for causing such disseminated bid or offer to be removed. Failure to do so will result in the Floor Broker, DPM, or OBO being responsible for satisfying the firm disseminated quote commitment pursuant to subsection [(a)](b) or (c) of this Rule. [A Market-Maker] Any member who has caused a bid or offer to be disseminated is equally responsible for removing such bid or offer when he leaves the trading crowd.

[.03 In broad-based index options, orders for accounts exempted from the firm quote treatment as defined in paragraph (a)(1) that in each case are for less than the firm quote requirement applicable for that class of options, and are represented in the crowd by a Floor Broker or DPM need not be reflected in the displayed market quote. In all option classes other than broad-based index option classes, orders for accounts

¹² See SEC Rule 11Ac1-1.

exempted from the firm quote treatment as defined in paragraph (a)(1) that in each case are for less than ten contracts, and are represented in the crowd by a Floor Broker or DPM need not be reflected in the displayed market quote. However, a Floor Broker or DPM remains obligated to use due diligence in the representation of such orders as set forth in Rule 6.73.]

.03[.04] Where a disseminated market quote is revised, as provided for in paragraph (e) [(b)] of this Rule, it shall be considered conduct inconsistent with just and equitable principles of trade for [the trading crowd] *a responsible broker or dealer* immediately to re-display the previously disseminated market quote, unless such action is warranted by a change in market conditions.

.04[.05] Floor Officials may, as provided for under Rules 6.20(c) and 17.50(g)(6), impose a fine on members of the trading crowd for violations of this Rule and its Interpretations and Policies.

.05[.06] The requirement of paragraphs [subsection] (b) and (c) of this Rule *that* [that the trading crowd] *the responsible broker or dealer* must honor displayed quotations up to the firm quote requirement subject to the conditions of the Rule applies not only to orders to buy or to sell options, but also to two-part spread or straddle for [equity] *all* options orders which may be executed at displayed quotations for both parts of the order. This obligation of [the trading crowd] *a responsible broker or dealer* applies to two-part orders where the two sides are on opposite sides of the market in a one-to-one ratio, and extends to the amount of the firm quote requirement on each side of the order.

.06[.07] Pursuant to Rule 6.20 Interpretation .09, the reference to any two Floor Officials in Rule 8.51 and its Interpretations and Policies includes, but is not limited to, members of the appropriate Market Performance Committee.

.07[.08] Pursuant to Rule 6.6, if a] *Under paragraph (e) of this Rule, when two Floor Officials may determine that a market in a class or series of option is fast [market is declared] pursuant to Rule 6.6, the Floor Officials may determine the market constitutes a level of trading activity or such unusual market conditions that the Exchange is incapable of collecting, processing and making available to quotation vendors bids, offers and quotation sizes in a manner that accurately reflects the current state of the market on the floor, and thus, suspend the firm quote requirement. [any two Floor Officials*

have the power, but are not required, to suspend the firm quote requirement of Rule 8.51(a).]

.08[.09] *The trading crowd shall not be deemed to be a responsible broker or dealer with respect to a published bid or offer that is erroneous as a result of an error or omission made by the Exchange or any quotation vendor. If a published bid or published offer is accurate but the published quotation size (or published aggregate quotation size, as the case may be) associated with it is erroneous as a result of an error or omission made by the Exchange or any quotation vendor, then the trading crowd responsible broker or dealer is responsible for the published bid or published offer shall be obligated to the extent set forth in paragraph (c) of Rule 11Ac1-1 but only to the extent of one contract of the listed option in question.*

* * * * *

Rule 6.6. Unusual Market Conditions

* * * * *

(b) If a market is declared fast, any two Floor Officials shall have the power to do one or more of the following with respect to the class or classes involved.

* * * * *

(iv) Suspend the firm quote requirement *as permitted* [of] under Rule 8.51[(a)].

* * * * *

Rule 6.20. Admission to and Conduct on the Trading Floor; Member Education

* * * * *

.09 Members of the appropriate Market Performance Committee may perform the functions of a Floor Official for the purpose of enforcing trading conduct policies, including but not limited to, enforcing policies and acting pursuant to rules related to the Retail Automatic Execution System, fast markets, and the firm quote requirement of Rule 8.51[(a)].

* * * * *

Rule 26.11. Market-Makers

* * * * *

[(e) Firm Disseminated Quotations. The trading crowd (including the DPM) at the trading station for a class of market baskets is required to sell (buy) one contract, or such greater number as shall be indicated, at the offer (bid) which is displayed when a buy (sell) order reaches that trading station.]

Supplements Rule 8.5 and replaces Rules 8.3, 8.7, and 8.50 [and 8.51].

* * * * *

Rule 27.6. Application of Certain Rules to BOUNDS

For purposes of Rule 6.51, a transaction in BOUNDS need not be identified as a put or a call. [The requirements contained in Rule 8.51 regarding trading crowd firm disseminated market quotes will not apply to BOUNDS.] For purposes of Rule 9.15, the requirement to deliver an Options Disclosure Document shall include the obligation to deliver any supplement thereto pertaining to BOUNDS with respect to any customer whose account is approved for trading in BOUNDS.

This Rule supplements Rules 6.51, [8.51] and 9.15

C. ISE Proposed Rule Text

Rule 804. Market Maker Quotations

(a) No change.

(b) Size Associated with Quotes. A market maker's bid and offer for a series of options contracts shall be accompanied by the number of contracts *at that price* the market maker is willing to buy *from* or sell [at that price] *to* (i) *Public Customers* (the "Public Customer Size") and (ii) *Non-Customers* (the "Non-Customer Size"). Unless the Exchange has declared a fast market pursuant to Rule 704, a market maker may not *initially* enter a bid or offer [for] *with a Public Customer Size* of less than ten (10) contracts. Where the size associated with a market maker's bid or offer falls below ten (10) contracts due to executions at that price and consequently the size of the best bid or offer on the Exchange would be for less than ten (10) contracts, the market maker shall enter a new bid or offer for at least ten (10) contracts, either at the same or a different price. *Every market maker bid or offer must have a Non-Customer Size of at least one (1) contract.*

(c) No change.

(d) Firm Quotes. (1) [With respect to Public Customer Orders, market] *Market maker bids and offers are firm for Public Customer Orders and Non-Customer Orders both under this Rule and Rule 11Ac1-1 under the Exchange Act ("Rule 11Ac1-1") for the number of contracts specified for each according to the requirements of paragraph (b) above [associated with each, unless:]. Market maker bids and offers are not firm under this Rule and Rule 11Ac1-1 if:*

(i) the Exchange determines that an exception is warranted, on a case by case basis, because of an obvious error; [or]

(ii) a system malfunction or other circumstance impairs the Exchange's ability to disseminate or update market

quotes in a timely and accurate manner[.];

(iii) the level of trading activities or the existence of unusual market conditions is such that the Exchange is incapable of collecting, processing, and making available to quotation vendors the data for the option in a manner that accurately reflects the current state of the market on the Exchange, and as a result, the market in the option is declared to be "fast" pursuant to Rule 704;

(iv) during trading rotations; or
(v) any of the circumstances provided in paragraph (c)(3) of Rule 11Ac1-1 exist.

(2) Within thirty seconds of receipt of a Public Customer Order (Non-Customer Order) to buy or sell an option in an amount greater than the Public Customer Size (Non-Customer Size), that portion of the order equal to the Public Customer Size (Non-Customer Size) will be executed and the bid or offer price will be revised.

[(2) With respect to Non-Customer Orders, market makers must either buy or sell the number of contracts specified in their quotes or change their quotes to reflect that the previously displayed quote is no longer available.]

Paragraphs (e)-(f): No change.

Rule 704. [Unusual Market Conditions] Collection and Dissemination of Quotations

[(a) Whenever an Exchange official who is designated by the Board shall have the power to determine, because of an influx of orders or other unusual conditions or circumstances and the interest of maintaining a fair and orderly market so requires, such designated Exchange official may declare the market in one or more classes of options contracts to be "fast."]

(a) Each market maker shall communicate to the Exchange its bid and offers in accordance with the requirements of Rule 11Ac1-1 under the Exchange Act and the Rules of the Exchange.

(b) The Exchange will disseminate to quotation vendors the highest bid and the lowest offer, and the aggregate quotation size associated therewith that is available to Public Customer Orders, in accordance with the requirements of Rule 11Ac1-1 under the Exchange Act.

(c) Unusual Market Conditions.

(1) An Exchange official designated by the Board shall have the power to determine that the level of trading activities or the existence of unusual market conditions is such that the Exchange is incapable of collecting, processing, and making available to quotation vendors the data for the

option in a manner that accurately reflects the current state of the market on the Exchange. Upon making such a determination, the Exchange shall designate the market in such option to be "fast." When a market for an option is declared fast, the Exchange will provide notice that its quotations are not firm by appending an appropriate indicator to its quotations.

[(b)] (2) If a market is declared fast, designated Exchange officials shall have the power to: (i) Direct that one or more trading rotations be employed pursuant to Rule 701; (ii) suspend the minimum size requirement of Rule 804(b); or (iii) take such other actions as are deemed in the interest of maintaining a fair and orderly market.

[(c)] (3) The Exchange will monitor the activity or conditions that caused a fast market to be declared, and a designated Exchange official shall review the condition of such market at least every thirty (30) minutes. Regular trading procedures shall be resumed by the Exchange when a designated Exchange official determines that the conditions supporting a fast market declaration no longer exist. The Exchange will provide notice that its quotations are once again firm by removing the indicator from its quotations.

[(d)] (4) If the conditions supporting a fast market declaration cannot be managed utilizing one or more of the procedures described above [contained in paragraphs (b) of this Rule], then a designated Exchange official shall halt trading in the class or classes so affected.

D. PCX Proposed Rule Text

¶ 4935 Obligations of Market Makers

RULE 6.37(a)-(c)—No change.

[(d) Trade or Update. When an order is represented at a trading post for execution at the currently disseminated bid or offer, Market Makers or Lead Market Makers at the trading post, if they do not satisfy the order in its entirety, shall lower their bid or raise their offer. Thereafter, the dissemination of such revised bid or offer must be maintained for a reasonable period of time, as specified in Commentary .09.]

Commentary:

.01-.09—No change.

[.10 For purposes of subsection (d), two minutes shall be presumed to be "reasonable" period of time in which to maintain a revised bid or offer. However, a revised market may be further revised before two minutes pass if the following market changes occur:

(1) A change in the market quote in the underlying security or a change in the size of the market quoted; or

(2) In the case of another option series on the same underlying security, a quote change of twice the minimum price differential resulting from a customer order.

Two Floor Officials may grant exemption from the rule on a case-by-case basis if the individual situation warrants such action.]

* * * * *

¶ 5221 [Guaranteed Markets] Firm Quotes

Rule 6.86—Deleted in its entirety.

RULE 6.86 (a) Definitions

(1) For purposes of this Rule the terms "bid and offer," "quotation size," "quotation vendor," "reported security," "listed option," "option series" and "trading rotation" will have the meanings set forth in SEC Rule 11Ac1-1.

(2) For purposes of this Rule and SEC Rule 11Ac1-1 as applied to the Exchange and its members, the term "Responsible Broker or Dealer" means that with respect to any bid or offer for any listed option made available by the Exchange to quotation vendors, the Lead Market Maker and any registered Market Makers constituting the trading crowd in such option series will collectively be the Responsible Broker or Dealer to the extent of the aggregate quotation size specified.

(b) Dissemination Requirements

(1) Price. The Exchange will, at all times that it is open for trading, collect, process and make available to quotation vendors the best bid and best offer for each option series that is a reported security. The Exchange may collect, process and make available to quotation vendors a best bid and best offer determined by an automated quotation system.

(2) Size. The Exchange will for each listed option, establish by rule and periodically publish the quotation size for which the Responsible Broker or Dealer is obligated to execute an order to buy or sell an option series that is a reported security at its published bid or offer as set forth in subsection (c) below.

(3) The Exchange's obligation to collect, process and make available data as set forth above will not include:

(A) collecting, processing or making available any such bid or offer that is executed immediately after being made in the trading crowd and any such bid or offer that is cancelled or withdrawn if not executed immediately after being made; or

(B) data communicated during any period when trading in such reported security: (i) has been suspended or halted; (ii) prior to the commencement

of trading in such reported security on any trading day; or (iii) during a trading rotation.

(c) Obligations of Responsible Brokers or Dealers

(1) *Customer Orders.* Except as provided in subsection (d), below, each Responsible Broker or Dealer is obligated to execute any customer order in a listed option series in an amount up to the quotation size established by rule and periodically published by the Exchange. The minimum quotation size established by rule and published by the Exchange for customer orders will be 20 contracts for each option series.

(2) *Broker-Dealer Orders.* Except as provided in subsection (d), below each Responsible Broker or Dealer is obligated to execute any order in a listed option for the account of a broker or dealer in an amount up to the quotation size established by rule and periodically published by the Exchange. The minimum quotation size established by rule and published by the Exchange for broker-dealer orders will be one contract for each option series.

(3) Each Responsible Broker or Dealer, within thirty seconds of receiving an order to buy or sell a listed option in an amount greater than the quotation size required pursuant to subsections (c)(1) or (c)(2), above, must either:

(A) execute the entire order; or

(B) execute the portion of the order that is equal to the size required pursuant to this subsection (c) and revise its bid or offer.

(d) Exception for Unusual Market Conditions

(1) If the Exchange determines, in accordance with the procedures set forth below, that the level of trading activity or the existence of unusual market conditions is such that the Exchange cannot collect, process and make available to quotation vendors quotation data in a manner that accurately reflects the current state of the market at the Exchange, the Exchange will immediately notify the persons specified in SEC Rule 11Ac1-1(b)(3) and, upon such notification, the obligation imposed upon Exchange members under SEC Rule 11Ac1-1(c)(2) and the Exchange under subsection (b), above, will be suspended, until the Exchange determines that the unusual market activity or condition has terminated and the specified persons have been notified that the unusual market activity or condition has terminated.

(A) If a Responsible Broker or Dealer is unable to update its quotations on a timely basis due to the high level of trading activity or the existence of unusual market conditions, the

Responsible Broker or Dealer will promptly notify a Floor Official.

(B) Upon notification by a Responsible Broker or Dealer, the Floor Official will promptly verify the existence of the unusual market activity or condition and if, in the Floor Official's judgment, the Responsible Broker or Dealer is unable to update its quotations on a timely basis, the Floor Official will promptly notify the Exchange. If a Floor Official, independent of notification by a responsible broker or dealer, becomes aware of any unusual market activity or condition that adversely affects a Responsible Broker or Dealer's ability to promptly communicate quotation data, the Floor Official will likewise promptly advise the Exchange.

(C) If the Exchange is unable to accurately collect, process, or disseminate quotation data owing to a high level of trading activity or the existence of unusual market conditions, the Exchange, after consultation with a Floor Official, will make a determination that this is the case.

(D) The Exchange, after receiving notification from a Floor Official pursuant to either subsection (A) or (B), above, will notify the persons specified in SEC Rule 11Ac1-1(b)(3) regarding the Exchange's inability to accurately collect, process, and make available the quotation data required by SEC Rule 11Ac1-1. The Exchange will append to each quotation made available to a quotation vendor an identifier that will indicate that the obligation that is imposed upon Exchange members and the Exchange by SEC Rule 11Ac1-1 has been suspended.

(E) The Floor Official or Exchange staff (as the case may be) will monitor the unusual market activity or condition until it has terminated. Thereupon, the Exchange will immediately notify the persons specified in SEC Rule 11Ac1-1(b)(3) that the Exchange is once again capable of disseminating the quotation data required by SEC Rule 11Ac1-1 and Responsible Brokers or Dealers will be once again obligated under SEC Rule 11Ac1-1.

Commentary:

.01 As of April 1, 2001, the compliance date for the application of SEC Rule 11Ac1-1 to the trading of options, the Exchange will collect, process and disseminate the best bid and best offer in each option series, and establish by rule and periodically publish the quotation size for which the responsible broker or dealer is obligated to execute a customer order to buy or sell an option in that series.

.02 No Lead Market Maker or Marker Maker will be deemed to be a Responsible Broker or Dealer with respect to a published bid or offer that is erroneous as a result of an error or omission made by the Exchange or any quotation vendor. If a published bid or offer is accurate but the published quotation size associated with it is erroneous as a result of an error or omission made by the Exchange or any quotation vendor, then the Lead Market Maker or Market Maker who is responsible for the published bid or published offer will be obligated to the extent set forth in SEC Rule 11Ac1-1(c), but only to the extent of one unit of trading in the option series in question.

E. Phlx Proposed Rule Text

Rule 1082. Firm Quotations

(a) Definitions

(i) The term "disseminated price" shall mean the bid (or offer) price for an options series that is made available by the Exchange and displayed by a quotation vendor on a terminal or other display device.

(ii) The term "disseminated size" shall mean with respect to the disseminated price for any quoted options series, the AUTO-X guarantee for the quoted option, except that the disseminated size of bids and offers of limit orders on the book shall be ten (10) contracts.

(iii) The term "SEC Quote Rule" shall mean Rule 11Ac1-1 under the Securities Exchange Act of 1934, as amended.

(iv) The terms "customer," "responsible broker or dealer," and "specified persons" shall have the meaning set forth in the SEC Quote Rule.

(b) Except as provided in paragraph (c) of this Rule, all quotations made available by the Exchange and displayed by quotation vendors shall be firm for customer orders at the disseminated price in an amount up to the disseminated size. Responsible brokers or dealers bidding (or offering) at the disseminated price shall be collectively required to execute orders presented to them at such price up to the disseminated size in accordance with Rule 1015, or, if the responsible broker or dealer is representing (as agent) a limit order, such responsible broker or dealer shall be responsible (as agent) up to the size of such limit order, but may be responsible as principal for all or a portion of the excess of the disseminated size over the size of such limit order to the extent provided in Rule 1015.

(c) The requirements of paragraph (b) or (d) of this Rule shall not apply to

displayed quotations: (i) when the level of trading activities or the existence of unusual market conditions is such that the Exchange is incapable of collecting, processing, and making available to quotation vendors the data for a subject security required to be made available pursuant to the SEC Quote Rule in a manner that accurately reflects the current market on the Exchange as determined by two Floor Officials, with the concurrence of the Director of Surveillance, or his designee; (ii) during a trading rotation; (iii) if any of the circumstances provided in paragraph (c)(3) of the SEC Quote Rule exist; or (iv) on a case by case basis where it is determined that an exemption is warranted for an obvious error in the posting of the disseminated price or disseminated size due to reporter error or system malfunction. The Exchange shall immediately notify all specified persons of such a determination. Regular trading procedures shall be resumed when two Floor Officials determine that the conditions supporting that declaration no longer exist. The Exchange shall immediately notify all specified persons of such a determination.

Any exemption granted pursuant to paragraph (c)(iv) shall be in writing and shall set forth the basis upon which the exemption is granted.

(d) In accordance with paragraph (d)(1)(ii) of the SEC Quote Rule, the quotation size for a disseminated price with respect to an order for the account of a broker or dealer ("broker-dealer order") shall be one (1) contract ("quotation size"), and all quotations made available by the Exchange and displayed by quotation vendors shall be firm for broker-dealer orders at the disseminated price in an amount up to the quotation size. The quotation size for broker-dealer orders provided in this paragraph (d) shall be periodically published by the Exchange. Responsible brokers or dealers bidding (or offering) at the disseminated price shall be collectively required to execute broker-dealer orders at such price up to the quotation size.

(e) If responsible brokers or dealers receive an order to buy or sell a listed option at the disseminated price in an amount greater than the disseminated size (for customer orders) or the quotation size (for broker-dealer orders), such responsible broker or dealer shall, within thirty (30) seconds of receipt of the order, (i) execute the entire order at the disseminated price (or better), or (ii) execute that portion of the order equal to the disseminated size (in the case of a customer order) or the quotation size (in the case of a broker-dealer order) at

the disseminated price (or better), and revise its bid or offer.

A-3 Requesting Market Quotations

A Specialist may request an ROT in the crowd to state his current bid and offer (including size) for any series of options traded at the post. A Specialist may request that staff or a Floor Official call for additional ROTs to enter the trading crowd.

A-11 Responsibility to [Make Ten-Up Markets] Fill Customer Orders

(a) *Execution [Quotation] Guarantees*—[Public] C[C]ustomer market or marketable limit orders in any options series on the Exchange are to be filled at the best market, in accordance with Rule 1082, to a minimum of the disseminated size [ten contracts] by floor traders (i.e., Specialists and ROTs) in the crowd as follows:

(i) If only one floor trader is quoting the availed upon best bid (or offer), that floor trader is responsible for providing a fill for the disseminated size [on the minimum ten contracts].

(ii) If more than one floor trader is quoting the availed upon best bid (or offer), and their combined quote size is less than the disseminated size [ten contracts], participation for the additional contracts needed to meet the disseminated size [minimum ten contract] requirement shall be decided upon agreement by those floor traders or otherwise divided proportionately among them.

(iii) If the availed upon best bid (or offer) is established by someone other than a floor trader and is not for at least the disseminated size [ten contracts], participation for the additional contracts needed to meet the disseminated size [minimum ten contract] requirement shall be supplied at that same price by the floor trader with the immediately prior best bid (or offer). If more than one floor trader was on the prior bid (or offer), participation for the additional contracts shall be decided upon agreement by those floor traders or otherwise divided proportionately among them. For example, if a $2\frac{1}{4}$ or 2.25 bid by an ROT is followed by a $2\frac{1}{2}$ or 2.50 bid for five contracts by a customer, the ROT who was bidding $2\frac{1}{4}$ or 2.25 will be responsible for buying the other five contracts at $2\frac{1}{2}$ or 2.50.

[(iv) ROT orders for less than ten contracts that are represented at a trading post by a Floor Broker shall not be disseminated and shall have no standing in the crowd. Floor Brokers shall otherwise remain obligated to use due diligence in the representation of orders pursuant to Rule 155.]

[(v)iv] The "availed upon best bid (or offer)" for purposes of this Advice shall be the disseminated price (as defined in Rule 1082) [crowd markets or the displayed or screen markets, whichever is better. In the instance of a broker quoting a market on behalf of a ten-up eligible order, once the crowd market has been sought, the screen market (if superior) is available on an immediate basis and if not availed upon the displayed market may be revised].

[(vi) In each case where the responsibility to make ten-up markets based on displayed or screen quotations generally applies, an exemption will exist for the first three minutes following completion of the rotation in each series for which a quotation update to the opening quote has not yet occurred. While any such exemption is in effect, the ten-up market guarantee will be based on the crowd markets.]

[(vii)iv] Orders received by a member from a customer may not be unbundled for the primary purpose of availing upon the execution guarantee [ten up market] requirement, nor may a Firm solicit a customer to unbundle an order for the primary purpose of availing upon the execution guarantee [ten up market requirement].

[(viii)vi] Floor Brokers must make reasonable efforts to ascertain whether each order entrusted to them is for the account of a customer or a broker-dealer. If it is ascertained that the order is for the account of a broker-dealer, the responsible Floor Broker must advise the crowd of that fact prior to bidding/offering on behalf of the order or executing the order. The responsible floor agent must legibly mark the floor ticket as "B/D" when it has been determined that the order is for an account of a broker/dealer.

[(ix)vii] The disseminated size requirement shall not apply when Exchange quotations are not required to be firm pursuant to paragraph (c) of Rule 1082. [Exemptions from the ten-up requirement may be granted by two Floor Officials with the concurrence of the Director of Surveillance or his designee, (1) under exceptional circumstances or for good cause shown (e.g., in fast market conditions) for all or part of a trading session; or (2) on a case-by-case basis where it is determined that an exemption is warranted for an obvious error in the posting of the displayed market quote due to reporter error or system malfunction. Any such exemption shall be in writing and shall set forth the basis upon which the exemption is granted.]

(b) Trade or Fade When paragraph (e) of Rule 1082 is applicable to an order

received by a responsible broker or dealer, participation by Specialists or ROTs above their stated size to fill the order completely or meet the disseminated size requirement (for customer orders) or the quotation size requirement (for broker-dealer orders) shall be decided upon agreement by such Specialists or ROTs or otherwise divided proportionately among them.

[With respect to non-public customer orders to buy (sell) at the displayed offer (bid), or portions of customer orders greater than the minimum size guarantee in that option, the trading crowd is required to either: (1) sell (buy) the number of contracts specified in the order; or (2) change the displayed offer (bid) to reflect that the previously displayed offer (bid) is no longer available.] Where the [a] disseminated market quote of a responsible broker or dealer is revised, as provided for in Rule 1082 [this paragraph], it shall be considered conduct inconsistent with just and equitable principles of trade for such responsible broker or dealer [the trading crowd] to immediately re-display its [the] previously disseminated market quote, unless such action is warranted by a change in market conditions.

F-7 Bids and Offers

All bid and offer prices shall be general ones and shall not be specified for acceptance by particular members.

In the absence of a stated size to any bid or offer voiced or displayed on the Options Floor, the person responsible for such bid and offer is deemed to be quoting for one contract, except in those instances where predetermined volume guarantees are provided for the facilitation of specific account types. Floor traders (*Specialists and ROTs*) are [may], however, [be] required to trade more than one contract in connection with the execution of a customer order pursuant to [provisions under] Advice A-11.

The size of any disseminated bid or offer by the Exchange shall be equal to the AUTO-X guarantee for the quoted option and shall be firm, except that the disseminated size of bids and offers of *limit orders on the book* [customer limit orders] shall be ten (10) contracts and shall be firm regardless of the actual size of such orders.

F-10 Unusual [Extraordinary] Market Conditions [(Fast Markets)]

In the interest of maintaining a fair and orderly market under unusual [trading] market conditions for one or more classes of options, two Floor Officials, with the concurrence of the Director of Surveillance or his designee,

may [declare a "fast market" for these options] determine that the level of trading activities or the existence of unusual market conditions is such that the Exchange is incapable of collecting, processing, and making available to quotation vendors the data for a subject security required to be made available pursuant to the SEC Quote Rule in a manner that accurately reflects the current market on the Exchange. The Exchange shall immediately notify all specified persons of such a determination. Regular trading procedures shall be resumed when two Floor Officials determine that the conditions supporting that declaration no longer exist. During the period for which [a fast market is in effect] such a determination has been made, displayed quotes for the respective options are not firm (as required by Rule 1082) and volume guarantees of [Option] Advice A-11 and Rule 1015 are not applicable, but the respective Specialists and trading crowds are required to use best efforts to update quotes and fill incoming orders in accordance with Advice A-11 and Rule 1015.

Rule 1015. [Quotation] Execution Guarantees

(a) Execution [Quotation] Guarantees—[Public] C[c]ustomer market or marketable limit orders in any options series on the Exchange are to be filled at the best market, in accordance with Rule 1082, to a minimum of the disseminated size [ten contracts] by floor traders (i.e., Specialists and ROTs) in the crowd as follows:

(i) If only one floor trader is quoting the availed upon best bid (or offer), that floor trader is responsible for providing a fill for the disseminated size [on the minimum ten contracts].

(ii) If more than one floor trader is quoting the availed upon best bid (or offer), and their combined quote size is less than the disseminated size [ten contracts], participation for the additional contracts needed to meet the disseminated size [minimum ten contract] requirement shall be decided upon agreement by those floor traders or otherwise divided proportionately among them.

(iii) If the availed upon best bid (or offer) is established by someone other than a floor trader and is not for at least the disseminated size [ten contracts], participation for the additional contracts needed to meet the disseminated size [minimum ten contract] requirement shall be supplied at that same price by the floor trader with the immediately prior best bid (or offer). If more than one floor trader was on the prior bid (or

offer), participation for the additional contracts shall be decided upon agreement by those floor traders or otherwise divided proportionately among them. For example, if a $2\frac{1}{4}$ or 2.25 bid by an ROT is followed by a $2\frac{1}{2}$ or 2.50 bid for five contracts by a customer, the ROT who was bidding $2\frac{1}{4}$ or 2.25 will be responsible for buying the other five contracts at $2\frac{1}{2}$ or 2.50.

[(iv) ROT orders for less than ten contracts that are represented at a trading post by a Floor Broker shall not be disseminated and shall have no standing in the crowd. Floor Brokers shall otherwise remain obligated to use due diligence in the representation of orders pursuant to Rule 155.]

[(v)iv] The "availed upon best bid (or offer)" for purposes of this [Advice] Rule shall be the disseminated price (as defined in Rule 1082) [crowd markets or the displayed or screen markets, whichever is better. In the instance of a broker quoting a market on behalf of a ten-up eligible order, once the crowd market has been sought, the screen market (if superior) is available on an immediate basis and if not availed upon the displayed market may be revised].

[(vi) In each case where the responsibility to make ten-up markets based on displayed or screen quotations generally applies, an exemption will exist for the first three minutes following completion of the rotation in each series for which a quotation update to the opening quote has not yet occurred. While any such exemption is in effect, the ten-up market guarantee will be based on the crowd markets.]

[(vii)v] Orders received by a member from a customer may not be unbundled for the primary purpose of availing upon the execution guarantee [ten up market] requirement, nor may a Firm solicit a customer to unbundle an order for the primary purpose of availing upon the execution guarantee [ten up market requirement].

[(viii)vi] Floor Brokers must make reasonable efforts to ascertain whether each order entrusted to them is for the account of a customer or a broker-dealer. If it is ascertained that the order is for the account of a broker-dealer, the responsible Floor Broker must advise the crowd of that fact prior to bidding/offering on behalf of the order or executing the order. The responsible floor agent must legibly mark the floor ticket as "B/D" when it has been determined that the order is for an account of a broker/dealer.

[(ix)vii] The disseminated size requirement shall not apply when Exchange quotations are not required to be firm pursuant to paragraph (c) of Rule 1082. [Exemptions from the ten-up

requirement may be granted by two Floor Officials with the concurrence of the Director of Surveillance or his designee, (1) under exceptional circumstances or for good cause shown (e.g., in fast market conditions) for all or part of a trading session; or (2) on a case-by-case basis where it is determined that an exemption is warranted for an obvious error in the posting of the displayed market quote due to reporter error or system malfunction. Any such exemption shall be in writing and shall set forth the basis upon which the exemption is granted.]

(b) *Trade or Fade* When paragraph (e) of Rule 1082 is applicable to an order received by a responsible broker or dealer, participation by Specialists or ROTs above their stated size to fill the order completely or meet the disseminated size requirement (for customer orders) or the quotation size requirement (for broker-dealer orders) shall be decided upon agreement by such Specialists or ROTs or otherwise divided proportionately among them.

[With respect to non-public customer orders to buy (sell) at the displayed offer (bid), or portions of customer orders greater than the minimum size guarantee in that option, the trading crowd is required to either: (1) sell (buy) the number of contracts specified in the order; or (2) change the displayed offer (bid) to reflect that the previously displayed offer (bid) is no longer available.] Where the disseminated market quote of a responsible broker or dealer is revised, as provided for in Rule 1082 [this paragraph], it shall be considered conduct inconsistent with just and equitable principles of trade for such responsible broker or dealer [the trading crowd] to immediately re-display its [the] previously disseminated market quote, unless such action is warranted by a change in market conditions.

Rule 1033. Bids And Offers-Premium

(a) *Size of Bid/Offer and Disseminated Size* [10 up] Guarantee. All bids or offers made on the Floor for option contracts shall be deemed to be for one option contract unless a specific number of option contracts is expressed in the bid or offer. A bid or offer for more than one option contract shall be deemed to be for the amount thereof or a smaller number of option contracts. [The Exchange, in its discretion, may require that specialists and ROTs be responsible] Responsibility for ensuring that customer [public] orders are filled to a minimum of the disseminated size [depth of ten (10) contracts] at the disseminated price [best quoted bid or

offer] is as set forth in Exchange Rules 1082 and 1015.

(b)-(i) No change.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the Exchanges included statements concerning the purpose of, and basis for, the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The Exchanges have prepared summaries set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. Purpose

On November 17, 2000, the Commission adopted several amendments to the Quote Rule¹³ to apply it to the options exchanges and options market makers. The compliance date for these amendments is April 1, 2001.¹⁴ As a result, it is necessary for the Exchanges to amend their rules to conform to the requirements of the Quote Rule. In particular, the Quote Rule requires responsible brokers or dealers to execute orders at their disseminated quotations, unless the level of trading activities or the existence of unusual market conditions is such that the exchange in which such responsible broker or dealer is a member is incapable of collecting, processing, and making available to quotation vendors the data for the options in a manner that accurately reflects the current state of the market ("unusual market conditions exception to the Quote Rule").¹⁵ In the Adopting Release, the Commission noted that the options exchanges may have to amend their rules to conform to the Quote Rule's exception for unusual market conditions.¹⁶

In applying the Quote Rule to the options markets, the Commission provided certain accommodations, because it recognized the unique structure of the options market. For example, the Commission provided the Exchanges with the flexibility to determine whether to collect from responsible brokers or dealers and make

available to quotation vendors the size associated with each quotation or to choose, instead, to establish by rule and periodically publish the size for which their disseminated bid and offer in each option series is firm. Further, the Commission gave the Exchanges the flexibility to require responsible brokers or dealers to be firm for different quotation sizes for customer orders than for broker-dealer orders. Finally, with respect to orders to buy or sell options in an amount greater than the firm quote size, the Commission also amended the Quote Rule to require a responsible broker or dealer to respond within 30 seconds to an order to buy or sell options in an amount greater than the firm quote size by either (i) executing the entire order; or (ii) executing at least that portion of the order equal to the applicable firm quote size and then revising its bid or offer ("Thirty Second Response Requirement").¹⁷ A brief summary of the proposed rule changes filed by each of the Exchanges is provided below.

a. *Amex*. Generally, Amex proposes a number of amendments to Amex Rule 958A to conform it to the Quote Rule. First, Amex proposes to define the term "responsible broker or dealer" to mean that the specialist and any registered options traders constituting the trading crowd in a given options series would be collectively responsible for the aggregate quotation size at the disseminated price. Second, for customer orders in option classes for which quotation size can be disseminated by the Options Price Reporting Authority ("OPRA") (currently, only those option classes trading in decimals), the Amex will collect and disseminate quotes with the size at which its specialists and registered traders will be firm.¹⁸ Third, for customer orders in option classes for which quotation size cannot be disseminated by OPRA and until such time as OPRA is able to disseminate quotation size, the Amex will establish by rule and periodically publish on its website¹⁹ the size for which the disseminated quotation is firm.²⁰ Fourth, for broker-dealer orders in all option classes, the Amex will establish

¹³ 17 CFR 240.11Ac1-1(d)(3).

¹⁸ Proposed Amex Rule 958A(b). Amex will continue to require that specialists and registered traders be firm for customer orders for a minimum of 10 contracts.

¹⁹ Telephone conversation between Claire P. McGrath, Vice President and Special Counsel, Derivative Securities, Amex, and Deborah Flynn, Senior Special Counsel, Division, Commission, on March 30, 2001.

²⁰ Proposed Amex Rule 958A, Commentary .01. The minimum size established by the Amex for these option classes will also be 10 contracts.

¹³ 17 CFR 240.11Ac1-1.

¹⁴ Securities Exchange Act Release No. 43591 (November 17, 2000), 65 FR 75439 (December 1, 2000) ("Adopting Release").

¹⁵ 17 CFR 240.11Ac1-1(b)(3)(i)

¹⁶ See Adopting Release, *supra* note 14 at fn. 80.

by rule and periodically publish on its website²¹ the size for which disseminated quotations are firm. Fifth, the Amex proposes to amend Amex Rule 958A to relieve responsible brokers or dealers from their obligations under Rule 11Ac1-1 in unusual market conditions,²² and to comply with the Thirty Second Response Requirement, described above.²³ Sixth, Amex proposes to relieve responsible broker-dealers from their obligations under the Quote Rule in the limited circumstances of an error or omission on the part of the Exchange or any quotation vendor.²⁴ Finally, Amex, along with PCX, also has included as part of its proposal an exception from the Exchange's obligation to collect, process and make available data during a trading rotation.²⁵

b. *CBOE*. CBOE proposes to amend CBOE Rule 8.51 to define the term "responsible broker or dealer" to mean that the trading crowd in a given series or class of option would be responsible for the aggregate quotation size at the disseminated price.²⁶ CBOE further proposes to allow the appropriate Floor Procedure Committee to set the firm quote requirement for both non-broker-dealer orders and broker-dealer orders.²⁷ The proposed rule change does require, however, that both types of order be subject to a firm quote requirement of at least one contract. The proposed rule change also requires CBOE to periodically publish its firm quote requirement. CBOE intends to publish the firm quote requirement on CBOE's public website.²⁸ In addition, under the proposed rule change, if CBOE disseminates quotation sizes, the firm quote requirement for non-broker-dealer orders will be no greater than the disseminated size. CBOE also proposes to amend CBOE Rule 8.51 to relieve responsible brokers or dealers from their obligations under Rule 11Ac1-1 in unusual market conditions,²⁹ and to comply with the Thirty Second Response Requirement.³⁰ In addition, CBOE proposes to relieve responsible broker-dealers from their obligations under the Quote Rule in the limited circumstances of an error or omission

made by the Exchange or any quotation vendor.³¹

CBOE's proposed rule change also proposes to include foreign broker-dealers within its definition of broker-dealer for purposes of their members' firm quote obligation.³² Finally, CBOE currently has a rule that provides that when multiple orders for the same class from the same beneficial owner are represented at the trading station at approximately the same time, only the first of such orders that cumulatively equal or add up to less than the firm quote requirement would be entitled to an execution pursuant to CBOE's rules.³³ CBOE proposes that responsible broker-dealers also would be relieved of the obligations under Rule 11Ac1-1 in these circumstances.³⁴

c. *ISE*. ISE proposes to amend ISE Rule 804 to specify that each market maker's quotes must be firm for customer orders up to the size of the quotation, and that each market maker quote must also be firm to non-customers for at least one contract.³⁵ According to ISE, this rule change codifies current ISE practices and therefore, does not change current market maker obligations. Specifically, ISE's disseminated quotation will be firm for all public-customer orders. Also, the disseminated quotation price will be firm for non-customers for at least one contract.³⁶ As required under the Quote Rule, ISE also will publish on its website the fact that it is firm for non-customers for at least one contract.

ISE's proposed rule change would also relieve its market makers from their obligations under the Quote Rule in

unusual market conditions,³⁷ and would amend ISE Rule 704 (Unusual Market Conditions) to specify that, during fast markets,³⁸ ISE would disseminate quotes with an indicator to provide notice that its quotes are not firm,³⁹ and that the indicator would be removed to provide notice when quotes become firm again. In addition, ISE proposes to adopt language to incorporate into its rules the Thirty Second Response Requirement.⁴⁰ Finally, ISE proposes to retain its existing, very general provision for obvious errors as an exception to their members' obligations under the Quote Rule.⁴¹

d. *PCX*. PCX proposes to define the term "responsible broker or dealer" to mean that the Lead Market Maker and any registered market makers constituting the trading crowd in a given option series would be responsible collectively for the aggregate quotation size at the disseminated price.⁴² PCX proposes to comply with the Quote Rule by establishing by rule and periodically publishing the quotation size for which each responsible broker or dealer on PCX is obligated to execute an order to buy or sell an option series that is a reported security at its published bid or offer.⁴³ The PCX also proposes to establish by rule that the minimum quotation size would be 20 contracts for customer orders and one contract for broker-dealer orders.⁴⁴ PCX proposes to continue to disseminate its firm quote sizes in each option series over OPRA.⁴⁵ Further, PCX is proposing to relieve responsible brokers or dealers of their obligations under the Quote Rule in

³¹ Proposed CBOE 8.51, Interpretation and Policy .08.

³² Proposed CBOE Rule 8.51(c). In conjunction with this proposal, CBOE has submitted a request for an exemption that would allow responsible brokers or dealers to be firm for orders from foreign broker-dealers to the same amount as they are firm for U.S. broker-dealers under the Quote Rule. See letter to Annette L. Nazareth, Director, Division, Commission, from Timothy H. Thompson, Esq., Assistant General Counsel, CBOE, dated March 29, 2001.

³³ Current CBOE Rule 8.51(a)(3).

³⁴ Proposed CBOE Rule 8.51(b)(3). In conjunction with this proposal, CBOE has submitted to the Commission a request for an exemption that would allow responsible brokers or dealers to be relieved of their obligations under the Quote Rule for multiple orders for the same class of options received from the same beneficial owner at approximately the same time. See letter to Annette L. Nazareth, Director, Division, Commission, from Timothy H. Thompson, Esq., Assistant General Counsel, CBOE, dated March 29, 2001.

³⁵ Proposed ISE Rule 804(b).

³⁶ Proposed ISE Rule 804(b). Because each quotation must be firm to non-customers for at least one contract, when there are multiple competing market makers quoting at the best price, the ISE's disseminated price would be firm to non-customers for more than one contract.

³⁷ Proposed ISE Rule 804(d)(1)(iii).

³⁸ The Commission notes that although ISE has decided to use the term "fast" market for those times when the level of trading activity or the existence of unusual market conditions is such that ISE is incapable of collecting, processing, and making available to quotation vendors quotation data, the definition of a fast market proposed by ISE in ISE Rule 704(d)(1)(iii) exactly parallels paragraph (b)(3)(i) of Exchange Act Rule 11Ac1-1.

³⁹ Proposed ISE Rule 704(c)(1). Each of the other Exchanges also represents that it would disseminate its quotes with an indicator to provide notice that their responsible brokers or dealers have been relieved of their obligations under the Quote Rule. Proposed Amex Rule 958A(d)(iv); Proposed CBOE Rule 8.51(e)(1)(iii); Proposed PCX Rule 6.86(d)(1)(D); and Phlx Amendment No. 2, *supra* note 10.

⁴⁰ Proposed ISE Rule 804(d)(2).

⁴¹ Proposed ISE Rule 804(d).

⁴² Proposed PCX Rule 6.86(a)(2).

⁴³ Proposed PCX Rule 6.86(b).

⁴⁴ Proposed PCX Rule 6.86(c).

⁴⁵ PCX notes, however, that the firm quote sizes that it will be disseminating over OPRA may not be the same sizes that PCX guarantees for automatic execution on its Auto-Ex System.

²¹ See *supra* note 19.

²² Proposed Amex Rule 958(A)(d).

²³ Proposed Amex Rule 958A(c)(iii).

²⁴ Proposed Amex Rule 958A, Commentary .02.

²⁵ Proposed Amex Rule 958A(b).

²⁶ Proposed CBOE Rule 8.51(a)(1).

²⁷ Proposed CBOE Rule 8.51(b)(1) and (c).

²⁸ However, at least initially, until the information can be placed on its website, CBOE will make a paper copy available to the public at its place of business.

²⁹ Proposed CBOE Rule 8.51(e).

³⁰ Proposed CBOE Rule 8.51(d).

unusual market conditions⁴⁶ and to incorporate into its rules the Thirty Second Response Requirement. In addition, PCX proposes to relieve responsible broker-dealers from their obligations under the Quote Rule in the limited circumstances of an error or omission made by the Exchange or any quotation vendor.⁴⁷ Finally, PCX, along with Amex, has also included as part of its proposal an exception from the Exchange's obligation to collect, process, and make available to quotation vendors quotation data during a trading rotation.⁴⁸

e. *Phlx*. Phlx proposes to define the term "responsible broker or dealer" to mean that all members in the trading crowd bidding (or offering) at the disseminated price would be collectively required to execute orders presented to them at such price up to the disseminated size.⁴⁹ Phlx also proposes to require firm quotes for customer orders up to the Phlx's disseminated size, which is defined to be the AUTO-X guarantee size unless the quote is for a limit order on the book, in which case the disseminated size is ten contracts.⁵⁰ Proposed Phlx Rule 1082(d) would allow the quotation size for broker-dealer orders to be one contract. In addition, the Phlx also proposes to amend Phlx Rule 1082 and Options Floor Procedure Advice F-10 to relieve responsible brokers or dealers of their obligations under the Quote Rule in unusual market conditions⁵¹ and to incorporate into its rules the Thirty Second Response Requirement.⁵²

In addition, Phlx proposes to relieve responsible broker-dealers from their obligations under the Quote Rule in the limited circumstances of an obvious error in the posting of the disseminated price or disseminated size due to reporter error or system malfunction.⁵³ Finally, Phlx proposes to retain a provision from its current rules in Proposed Phlx Rule 1015(a)(v) and Proposed Options Floor Procedure Advice A-11(a)(v) that would prohibit orders from being "unbundled" for the primary purpose of availing upon the execution guarantee requirement provided by the Phlx.

2. Statutory Basis

The Exchanges believe the proposed rule changes are consistent with Section

6(b) of the Exchange Act⁵⁴ in general and further the objectives of Section 6(b)(5)⁵⁵ in particular in that the proposed rule changes are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organizations' Statement on Burden on Competition

The Exchanges believe that the proposed rule changes will impose no burden on competition.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule changes.

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

Within 35 days of the 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 organizations consent, the Commission will:

A. By order approve such proposed rule changes, or

B. Institute proceedings to determine whether the proposed rule changes should be disapproved.

The Exchanges have requested that the Commission find good cause, pursuant to Section 19(b)(2) of the Exchange Act,⁵⁶ for approving the proposed rule changes so that they will be in place prior to April 1, 2001, the compliance date of the Quote Rule for the options market.

IV. Solicitation of Comments

CBOE currently has a rule that provides that when multiple orders for the same class from the same beneficial owner are represented at the trading station at approximately the same time, only the first of such orders that cumulatively equal or add up to less than the firm quote requirement would be entitled to an execution pursuant to CBOE's rules.⁵⁷ CBOE proposes that responsible broker-dealers also would

be relieved of their obligations under Rule 11Ac1-1 in these circumstances.⁵⁸

Similarly, Phlx proposes to retain a provision from its current rules in Proposed Phlx Rule 1015(a)(v) and Proposed Options Floor Procedure Advice A-11(a)(v) that would prohibit orders from being "unbundled" for the primary purpose of availing upon the execution guarantee requirement provided by the Phlx. These provisions were approved by the Commission and implemented by the respective exchanges prior to the recent adoption of amendments to the Quote Rule that extended it to the options markets. Generally, the Quote Rule requires each responsible broker or dealer to "execute any order to buy or sell a subject security * * * at a price at least as favorable to such buyer or seller as the responsible broker's or dealer's published bid or offer * * * in any amount up to its published quotation size."⁵⁹ The Quote Rule does not expressly provide an exception for multiple orders submitted by the same beneficial owner. And, in fact, the Quote Rule requires, subject to certain limitations, a responsible broker or dealer to execute any order up to its published size. As a result, the Commission specifically solicits comments on whether it would be appropriate for the Commission to grant an exemption from the requirements of the Quote Rule for multiple orders submitted by the same beneficial owner.

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule changes, as amended, are consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 Exchanges. All submissions should refer to the File Nos. SR-Amex-01-18, SR-CBOE-01-

⁴⁶ Proposed PCX Rule 6.86(d).

⁴⁷ Proposed PCX Rule 6.86, Commentary. 02.

⁴⁸ Proposed PCX Rule 6.86(b)(3)(B).

⁴⁹ Proposed Phlx Rule 1082(b).

⁵⁰ Proposed Phlx Rule 1082(a)(ii) and (b).

⁵¹ Proposed Phlx Rule 1082(c).

⁵² Proposed Phlx Rule 1082(e).

⁵³ Proposed Phlx Rule 1082(c)(iv).

⁵⁴ 15 U.S.C. 78f.

⁵⁵ 15 U.S.C. 78f(b)(5).

⁵⁶ 15 U.S.C. 78s(b)(2).

⁵⁷ Current CBOE Rule 8.51(a)(3).

⁵⁸ Proposed CBOE Rule 8.51(b)(3).

⁵⁹ 17 CFR 240.11Ac1-1(c)(2) (emphasis added).

15, SR-ISE-01-07, SR-PCX-01-18, and SR-Phlx-01-37 and should be submitted by May 1, 2001.

V. Commission Findings and Order Granting Partial Accelerated Approval of Certain Portions of the Proposed Rule Changes for a Sixty Day Pilot Period

The Commission finds that the proposed rule changes, as amended and subject to the limitations described below, relating to the implementation of the Pilots for a sixty day period, are consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange,⁶⁰ and, in particular, Section 6(b)(5) of the Exchange Act.⁶¹ As noted in the Adopting Release, the Commission believes that the application of the Quote Rule to the options markets will provide significant and immediate benefits to investors. In particular, market participants, including customers and broker-dealers, will be able to rely on quotes up to the published size when routing orders. Further, the Commission is approving portions of the proposed rule changes as Pilots on an accelerated basis because the options exchanges and market makers must begin to comply with the Quote Rule beginning on April 2, 2001. During the 60 day Pilots, the Commission will consider any comments received and determine whether to approve the Exchanges' proposed rule changes on a permanent basis.

A. Responsible Brokers or Dealers

Each of the Exchanges' proposed rules, except for ISE's proposed rules, require that the trading crowd, as a group, be obligated under the Quote Rule for executing orders at the Exchanges' disseminated quote up to the published quotation size. The Commission believes that because all of these Exchanges disseminate one quotation, rather than independent quotations from each market maker on the floor, these proposals are consistent with the definition of responsible broker or dealer in the Quote Rule.

B. Unusual Market Conditions Exception to the Quote Rule

The Commission notes that the Exchanges have proposed rules to

relieve responsible brokers or dealers from their obligations under the Quote Rule in unusual market conditions. Paragraph (b)(3)(i) of the Quote Rule provides that responsible brokers or dealers on the Exchanges will be relieved of their obligations under their rules and the Quote Rule when the level of trading activities or the existence of unusual market conditions is such that the Exchange is incapable of collecting, processing, and making available to quotation vendors quotation data. The Commission believes that such rules are consistent with the Exchange Act; however, the Commission expects that the Exchanges will reevaluate their rules during the Pilots to ensure that sufficient monitoring procedures are in place to fully implement the requirements of the Quote Rule.

C. Thirty Second Response Requirement

The Thirty Second Response Requirement provision of the Quote Rule requires a responsible broker or dealer to respond to an order to buy or sell a listed option in an amount greater than the firm quote size within thirty seconds by either executing the entire order or executing at least a portion of the order equal to the firm quote size and revising its bid or offer. The Commission expects that either the entire order would be executed at the disseminated price or better or that the responsible broker-dealer would execute at least that portion of the order equal to the applicable firm quote size at the disseminated price or better and then revise its bid or offer to an inferior quote. The Commission believes that the Exchanges' incorporation of the Thirty Second Response Requirement from the Quote Rule into their own rules should ensure that larger than firm quote size orders are handled in an expedited and equitable fashion.

D. Trading Rotations

As described above, PCX and Amex have each proposed an exception from the Exchanges' obligations pursuant to Rule 11Ac1-1(b)(1)(i) to collect, process and make available quotation data during a trading rotation. While the Quote Rule does not specifically provide for this exception for Exchanges,⁶² the Commission believes that the proposed exception is consistent with the Quote Rule. Specifically, to the extent that a trading rotation is either an opening rotation or involves a halt or suspension in trading, the Quote Rule explicitly provides an

exception for Exchanges from the dissemination requirement "during a period when trading in that security has been suspended or halted, or prior to the commencement of trading in that security on any trading day, on that exchange."⁶³

E. Obvious Errors

As described above, the Exchanges have proposed in their rules either to retain or incorporate an obvious error exception to the Quote Rule.⁶⁴ While ISE has retained a very general provision for obvious errors,⁶⁵ the other exchanges have limited the application of such an exception by permitting as an exception to the Quote Rule only those errors that are the result of an error or omission made by an exchange or quotation vendor or that are the result of a reporter error or system malfunction.⁶⁶

The Commission believes that for purposes of the Pilots, an obvious error exception to the Quote Rule must be interpreted very narrowly to avoid potential abuses and limitations on the Quote Rule. As a result, the Commission believes that, consistent with the Exchange Act, only errors that are not the result of an act or omission by the responsible broker or dealer should be permissible exceptions to the requirements of the Quote Rule. The Commission believes that any broader interpretation or application of the Exchanges' rules would be inconsistent with the Quote Rule. Similarly, the Commission believes that Amex Rule 958A, Commentary .03, which provides exceptions for when a responsible broker or dealer is not required to comply with an erroneous quote, is consistent with the Quote Rule only if it is interpreted to apply only when there has been an error or omission made by the Exchange or a quotation vendor.

F. Treatment of Orders From the Accounts of Foreign Broker-Dealers

As discussed above, the Commission received a request for an exemption from CBOE that would permit its responsible brokers or dealers to treat unregistered foreign broker-dealers the same as broker-dealers for purposes of the Quote Rule. By letter dated April 2,

⁶³ 17 CFR 240.11Ac1-1(b)(1)(i)(B).

⁶⁴ Proposed ISE Rule 804, Proposed Amex Rule 958A Commentary .02 and .03, Proposed PCX 6.86 Commentary .02, Proposed CBOE 8.51 Interpretation and Policy .08, and Proposed Phlx Rule 1082(c).

⁶⁵ Proposed ISE Rule 804(d).

⁶⁶ Proposed Amex Rule 958A, Commentary .02, Proposed CBOE Rule 8.51 Interpretation and Policy .08, Proposed PCX 6.86 Commentary .02, and Proposed Phlx Rule 1082(c).

⁶⁰ In granting partial approval of the proposals, the Commission has considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f). Approval of the Pilots should not be interpreted as suggesting that the Commission is predisposed to approving the Exchanges' proposed rule changes on a permanent basis.

⁶¹ 15 U.S.C. 78f(b)(5).

⁶² Rule 11Ac1-1(d)(4) provides an exception for responsible brokers or dealers during a trading rotation. 17 CFR 240.11Ac1-1(d)(4).

2001, the Commission granted the requested exemption to the CBOE, as well as all national securities exchanges, pursuant to Rule 11Ac1-1(e), permitting them to treat foreign broker-dealers the same as U.S. broker-dealers for purposes of the Quote Rule.⁶⁷ Notwithstanding the requirements of Rule 11Ac1-1(c)(2),⁶⁸ the Commission exempted responsible brokers or dealers from the requirement under paragraph (c)(2) of the Quote Rule⁶⁹ to execute any order for the account of a foreign broker or dealer to buy or sell an options series in an amount up to such responsible brokers' or dealers' published quotation size for orders for the account of a customer. This exemption was conditioned on such responsible brokers and dealers executing orders for the accounts of foreign brokers and dealers at a price at least as favorable as the responsible broker's or dealer's published bid or published offer in an amount up to their published quotation size for orders for the account of brokers and dealers. The Commission's exemption applies to responsible brokers and dealers on each of the exchanges that trade listed options.

G. Proposed CBOE Rule 8.51(b)(3), Proposed Phlx Rule 1015(a)(v), and Proposed Options Floor Procedure Advice A-11(a)(v)

As discussed above, CBOE currently has a rule that provides that when multiple orders for the same class from the same beneficial owner are represented at the trading station at approximately the same time, only the first of such orders that cumulatively equal or add up to less than the firm quote requirement would be entitled to an execution pursuant to CBOE's rules.⁷⁰ CBOE proposes that responsible broker-dealers also would be relieved of the obligations under Rule 11Ac1-1 in these circumstances.⁷¹ Similarly, Phlx proposes to retain a provision from its current rules in Proposed Phlx Rule 1015(a)(v) and Proposed Options Floor Procedure Advice A-11(a)(v) that would prohibit orders from being "unbundled" for the primary purpose of availing upon the execution guarantee requirement provided by the Phlx.

The Commission notes that neither exchange has provided a basis for why such provisions are consistent with the

Quote Rule.⁷² Although the Commission approved these provisions as being consistent with each exchange's rules, the Commission believes that these rules are not consistent with the Quote Rule. Therefore, these rules cannot be used to relieve the Exchanges' members from their obligations under the Quote Rule to be firm for the disseminated price up to their published quotation size. The Commission, however, is soliciting comment on whether it would be appropriate for it to grant responsible brokers or dealers an exemption from their obligations under the Quote Rule when multiple orders are submitted for the account of the same beneficial owner in the same options class at approximately the same time.

The Commission finds good cause for granting the Exchanges' request for the Pilots prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that April 1, 2001 is the compliance date for the amendments to the Quote Rule extending its application to the options markets. The Commission believes that granting accelerated approval to the Pilots will allow the Exchanges to implement the conforming amendments to the Quote Rule on its compliance date.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Exchange Act,⁷³ that only the portions of the proposed rule changes relating to the Pilots proposed by the Exchanges (File Nos. SR-Amex-01-18, SR-CBOE-01-15, SR-ISE-01-07, SR-PCX-01-18, and SR-Phlx-01-37), as amended, are approved until June 1, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷⁴

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-8740 Filed 4-9-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44147; File No. SR-CBOE-01-11]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Clarify Certain Provisions in Its Rules Relating to the Trading of Options on Securities That Represent an Interest in Registered Investment Companies

April 3, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder, notice is hereby given that on March 16, 2001, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") file 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 Exchange. CBOE filed the proposal as a "non-controversial" rule change under Rule 19b-4(f)(6)³ under the Act. 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

CBOE hereby proposes to clarify certain provisions in its rules relating to the trading of options on securities that represent an interest in registered investment companies, including margin requirements and strike price intervals.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE 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. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

⁶⁷ See letter from Annette L. Nazareth, Director, Division, Commission, to Timothy H. Thompson, Esq., Assistant General Counsel, CBOE, dated April 2, 2001.

⁶⁸ 17 CFR 240.11Ac1-1(c)(2).

⁶⁹ 17 CFR 240.11Ac1-1(c)(2).

⁷⁰ Current CBOE Rule 8.51(a)(3).

⁷¹ Proposed CBOE Rule 8.51(b)(3).

⁷² In fact, as noted above, the Commission has received a request for an exemption from CBOE that would allow its responsible brokers or dealers to be relieved of their obligations under the Quote Rule with respect to multiple orders for the same class of options received from the same beneficial owner at approximately the same time. See *supra* note 34.

⁷³ 15 U.S.C. 78s(b)(2).

⁷⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).