

prevailing market, the ROT could bid against the crowd and take the entire trade, as provided by Phlx Rule 1014(g)(i). If one or more ROTs have the necessary liquidity and believe that they can profit by taking order flow away from the crowd by independently offering a better price to the floor broker, they are free to do so.<sup>9</sup> Thus, the Phlx believes that when read together with existing Phlx rules, Phlx Rule 1033(a)(ii) and OFPA F-32 are well designed to enable the Exchange to provide the required liquidity to execute large orders, while retaining the potential for price competition from ROTs in the crowd.

Finally, the Phlx notes that unlike an exchange with a single specialist and no competing market makers, the Phlx's market structure requires that this activity be permitted so as to allow the Phlx to better compete with the other options exchanges and better serve the investing public.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>11</sup> in particular, in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest, and promote just and equitable principles of trade by enhancing the Exchange's ability to make competitive, fair and orderly markets. Moreover, the Exchange believes that the proposal responds to the needs of investors by facilitating prompt and efficient order execution, while promoting fair competition, consistent with Section 11A(a)(i) and (ii).<sup>12</sup>

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

<sup>9</sup> In assessing the competitive effects of a joint venture, the antitrust agencies regard the continued ability for individual members of the joint venture to compete against the venture as an important factor weighing toward its lawfulness. FTC/DOJ Antitrust Guidelines for Collaborations among Competitors at 19 ("In general, competitive concern likely is reduced to the extent that participants have actually continued to compete, either through separate, independent business operations or through membership in other collaborations, or are permitted to do so.").

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78k-1(a)(i) and (ii).

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

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

Within 35 days of the date of 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 Phlx consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-2001-33 and should be submitted by March 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>13</sup> 17 CFR 200.30-3(a)(12).

## **SMALL BUSINESS ADMINISTRATION**

### **[Declaration of Disaster #3391]**

#### **State of Tennessee**

Maury County and the contiguous Counties of Giles, Hickman, Lawrence, Lewis, Marshall and Williamson in the State of Tennessee constitute a disaster area due to damages caused by heavy rains and flooding that began on January 22, 2002 and continued through January 25, 2002. Applications for loans for physical damage may be filed until the close of business on April 8, 2002 and for economic injury until the close of business on November 6, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere .....	6.625
Homeowners Without Credit Available Elsewhere .....	3.312
Businesses With Credit Available Elsewhere .....	7.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere .....	3.500
Others (Including Non-Profit Organizations) With Credit Available Elsewhere .....	6.375
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere ...	3.500

The number assigned to this disaster for physical damage is 339106 and for economic injury the number is 904200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 6, 2002.

**Hector V. Barreto,**  
*Administrator.*

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## **SMALL BUSINESS ADMINISTRATION**

### **[License No.: 05/05-0219]**

#### **Capital Fund, Inc.; Notice of Surrender of License**

Notice is hereby given that *Capital Fund, Inc.*, located at P.O. Box 80225, Lansing, MI 48908-0225, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Capital Fund, Inc. was licensed by the