

presented by out of the money short positions even in extreme market conditions. For example, in the illustration described above, the sliding scale short option adjustment would still have required additional margin of \$350.00 (equal to the margin interval of 35 points, times the index multiplier of 100, times 10%, the applicable percentage for a short put 25.7% out of the market) which is well in excess of the risk presented to OCC by the short puts in the SPX 11/97 700 series.

Under the proposed rule change, OCC will modify Rules 601 and 602 to provide that the short option adjustment to be applied to any unpaired short position will be determined using a percentage that OCC deems to be appropriate. A specific short option adjustment percentage will not be included in the rules.¹¹

OCC believes that this information provides appropriate flexibility to make adjustments to the sliding scales from time to time as OCC determines is warranted. OCC further believes that the proposed rule change is consistent with the approach taken in Rule 60(c)(1)(C)(1) and Rule 602(c)(1)(ii)(C)(1) which both permit OCC to use such formulas, assumptions, and data as it deems appropriate for purposes of calculating additional margin.

OCC believes that the proposed rule change is consistent with Section 17A of the Act¹² and the rules and regulations thereunder because it furthers the public interest by reducing the overcollateralization of certain short positions in deep out of the money options. In addition, OCC believes that the proposed rule change should remove an impediment to market liquidity while still providing OCC with appropriate protection to the risks presented by short out of the money option positions.

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

OCC does not believe that the proposed rule change would impose any burden on competition.

¹¹ A schedule of the sliding scales that OCC intends to use initially is attached as Exhibit A to its filing, which is available for inspection at the Commission's Public Reference Room and through OCC. OCC will always specify a minimum short option adjustment percentage. OCC will inform its members of the initial schedule of the sliding scales through an Important Notice and will notify its members of any changes to the schedule.

¹² 15 U.S.C. 78q-1.

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

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

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

Within thirty-five 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 ninety 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 OCC 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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR-OCC-98-11 and should be submitted by January 12, 1999.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-33911 Filed 12-22-98; 8:45 am]

BILLING CODE 8010-01-M

¹³ 17 CFR 200-30(a) (12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40798; File No. SR-Phlx-98-45]

Self-Regulatory Organizations: Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Proposing To Adopt New Rule 949 Respecting Purchase, Sale, Transfer, and Posting of Membership Transactions

December 16, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 5, 1998, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 15, 1998, the Exchange submitted an amendment to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new Rule 949 respecting the purchase, sale, transfer and posting of membership transactions. The proposed rule change codifies procedures for conducting the market for Exchange memberships and provides that private transactions may only be undertaken under certain specified circumstances. Below is the text of the proposed rule change. Additions are italicized.

Rule 949 Purchase, Sale, Transfer and Posting of Membership Transactions

A. Public Sales and Membership Market Procedures. A membership may be purchased by an approved applicant, an existing member organization or an approved lessor through the Office of the Secretary of the Exchange in accordance with Exchange procedures. A bid stating the price to be paid shall be submitted in writing to the Office of the Secretary by an approved applicant, member organization or approved

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Letter from Murray L. Ross, Vice President and Secretary, Exchange, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, SEC, dated December 14, 1998 ("Amendment No. 1). Amendment No. 1 corrected grammatical errors in the proposed rule language.

lessor. Any bid shall be in increments of five hundred dollars (\$500). The Office of the Secretary shall file all bids according to the highest price and the earliest submission date. The highest bid with the earliest submission date shall be posted and published in the Secretary's Bulletin of the Exchange.

All bids remain in effect for six months unless written revocation thereof is received by the Office of the Secretary. When a bid filed in accordance with the provisions of this rule is matched with an offer filed in accordance with the provisions of this rule neither can be changed or withdrawn. Not later than the fourteenth day following the matching of the bid and offer, the purchaser shall deliver a certified or cashier's check to the Office of the Secretary, made payable to the Exchange, covering the purchase price of the membership.

B. A membership may be sold by the owner through the market conducted by the Office of the Secretary in accordance with Exchange procedures. A written offer for sale stating the acceptable price shall be submitted to the Office of the Secretary. The Office of the Secretary shall file all such offers according to the lowest price and earliest submission date. The lowest offer with the earliest submission date shall be posted by the Office of the Secretary and published in the Secretary's Bulletin of the Exchange. All offers shall remain in effect for six months unless written revocation thereof is received by the Office of the Secretary. Any offer shall be in increments of five hundred dollars (\$500). When an offer filed in accordance with the provisions of this rule is matched with a bid filed in accordance with the provisions of this rule neither can be changed or withdrawn.

C. Confirmation of Sale by the Exchange. The sale of an Exchange membership shall be deemed negotiated and contracted at the time the filed bid and offer are matched in price and confirmed by the Office of the Secretary of the Exchange and shall be considered consummated upon the payment by the purchaser of the purchase price of the membership and associated initiation and transfer fees as well as other charges including pro-rated dues. In the event that the Exchange has not received payment of the sums due on the purchase of the membership within fourteen days after the contracted notice of arranged sale is given by the Office of the Secretary of the Exchange, the arranged sale shall be automatically canceled and the purchaser and seller restored thereby to their respective

status existing before the arranged sale. Neither the purchaser nor seller shall have, assert or maintain any rights, privileges or claims of any nature whatsoever against each other or against the Exchange, its members, member organizations, officers and employees, arising or resulting directly or indirectly from or by such cancellation.

D. Private Sales and Transfers. All Exchange privately negotiated sales and requests for transfer shall be posted and published in the Secretary's Bulletin of the Exchange. Any or all privately negotiated sales or requests for transfer must conform to one of the following provisions:

(1) The owner of a membership (whether or not such membership is registered for a member organization) is transferring such membership to a spouse, brother, sister, parent, child, grandchild or grandparent, provided the transferee is approved for membership or qualifies as an approved lessor:

(2) The owner of a membership is transferring such membership to a member organization which has succeeded, through statutory merger, exchange of stock or acquisition of assets to the business of the transferor:

(3) The owner of a membership is transferring such membership to a member organization in which the transferor will maintain a substantial interest, that is, an interest at least equal in value to the cost or market price of the membership, whichever is lower:

(4) The owner of a membership is transferring such membership to an individual or organization which is a partner, shareholder or member of the transferor as part or all of a liquidation, or distribution of the transferor,; or

(5) The owner of a membership is transferring such membership to a member, member organization or approved lessor as a privately arranged sale for monetary consideration that is not less than the posted bid nor greater than the posted offer filed with the Office of the Secretary of the Exchange.

Notwithstanding the foregoing, a transfer which conforms to one of the enumerated subparagraphs D 1 through 5 shall not become effective unless the transferor deposits with the Office of the Secretary an amount equal to the last sale of a membership, pursuant to paragraphs A, B and C of this rule, of the same rights and privileges as the membership being transferred. Said deposit shall be applied as through it were proceeds of a sale of a membership or its transfer for the purposes of By-Law Article XV. All other private sales shall be void.

E. Obligations of Terminating Members. Every member who sells or

transfers their membership pursuant to the provisions of these Rules must be current in all filings and payments of dues, fees and charges relating to that membership, including filing fees and charges required by the Securities and Exchange Commission and the Securities Investor Protection Corporation. If a member fails to make all such filings, or to pay all such dues, fees and charges, the Office of the Secretary of the Exchange may, notwithstanding other applicable provisions of these Rules, withhold distribution of the proceeds of the sale of said membership, or delay the effectiveness of the membership of the transferee, until such time as the failures have been remedied.

F. Non-Responsibility of the Exchange. The Exchange and its officers, members and employees shall be subject to no liability in connection with any bid or offer of a membership, whether or not filed formally with the Exchange as provided herein, unless such liability results from negligence of the Exchange.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

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

1. Purpose.

The proposed rule codified procedures for conducting the market for Exchange memberships and provides that private transactions may only be undertaken under certain specified circumstances. The Exchange believes the proposed rule change will provide equity and openness to all who seek to purchase or sell a membership. The proposed rule provides that transactions must be posted, published and be for monetary consideration between the posted bid and offer between unrelated parties. The proposed rule change also permits sales between related entities, but requires publication in the Secretary's Bulletin. Therefore, both members and nonmembers will have access to information regarding all

transfers of memberships. Additionally, the Exchange will be protected by requiring that the proceeds of all sales will be available to the Exchange to satisfy any outstanding charges owed by the member.

The proposed rule provides that bids and offers must be made in writing, and submitted to the Office of the Secretary by an approved applicant, member organization, or approved lessor. Bids and offers may only be filed in \$500 increments. Additionally, the proposed rule codifies exiting Exchange practice of requiring payment for a membership by certified or cashier's check payable to the Exchange. Furthermore, the rule specifies that sale of a membership shall be deemed negotiated and contracted when the filed bid and offer are matched in price and confirmed by the Office of the Secretary, and consummated upon receipt of payment from the purchaser for the purchase price and other associated membership initiation, transfer and prorated dues and other fees.

Section D of the proposed rule sets forth the procedures to be followed in privately negotiated sales and requests for transfer. This section provides for posting of a deposit to the Exchange to cover potential claims that could be asserted pursuant to By-Law Article XV.⁴ Only those transactions that conform to Section D would be processed for transfer and all other private sales would be void.

The following outlines the provisions of the proposed new rule. Section A provides the procedures for making an offer to purchase a membership. Section B provides the procedure for an offer to sell a membership. Section C contains the guidelines for determining the time when membership sales are deemed negotiated and contracted and when membership sales are consummated. Section D contains five situations that are exempt from the procedures laid out in Sections A and B. Subsection 1 contains sales to certain named categories of family members. Subsection 2 concerns transfers to a firm which is the member's successor in interest. Subsection 4 concerns transfer involved in a dissolution of a members entity. Subsection 5 concerns other private transfers that occur within the bid and offer of the public market for memberships. Section E proscribes that all members selling a membership must be current on all dues, fees and other membership charges before the sale will

⁴ By-Law Article XV sets forth procedures for transferring memberships. Section 15-3 provides that proceeds are to be distributed according to a provided seniority list.

be consummated. Section F limits the liability of the Exchange to its own negligence in matters pertaining to membership transactions.

In summary, only these transactions that confirm to specified provisions of the proposed rule would be processed for transfer. All other private sales would be void. The proposed rule is substantially similar to and modeled after the provisions of the Pacific Exchange, Inc. Rules 1.21 and 1.22 and the Chicago Board Options Exchange, Inc. Rule 3.14(c). The proposed rule results from discussions with concerned members and Exchange staff in an effort to codify the best practices of other exchanges respecting procedures for conducting the market in memberships and confirming existing Exchange practices to the provisions of a new rule.

2. Basis

The Exchange believes the proposed rule change is consistent with Section 6 of the Act in general,⁵ and in particular with Section 6(b)(5)⁶ because it is designed to promote just and equitable principles of trade and protects investors and the public interest by providing codified procedures for conducting the market in Exchange memberships by the Office of the Secretary of the Exchange.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed

Rule Change Received From Members, Participants or Others

Written comments were not received in response to Circular 98-109 which notified the membership of the intent of the Board of Governors to propose a new rule concerning these matters.

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. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of PHLX. All submissions should refer to File No. SR-Phlx-98-45 and should be submitted by January 13, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-33982 Filed 12-22-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40802; File No. SR-Phlx-98-42]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Increasing Maximum OTX AUTO-X Order Size Eligibility

December 17, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 6, 1998, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).