receiving written notice, petition the Secretary of the Corporation for an appeal hearing. The Secretary, in turn, processes the petition and forwards the request, along with the documentary evidence, to the Corporation's Board Appeals Committee, which conducts a special hearing in order to make a final determination on the merits of the issuer's petition.

The Corporation does not currently impose a fee in connection with the appeal of delisting decisions, and consequently, there is no disincentive for frivolous appeals of the Corporation's delisting decisions. This, coupled with the fact that the Corporation expends significant resources in accommodating appeals, has caused the Corporation to incur expenses that it is not capable of recovering. Given the increasing costs associated with an appeal hearing, *i.e.*, the allocation of time incurred by the Corporation's Listing Qualifications Department, the Secretary of the Corporation, Corporation counsel and the Board Appeals Committee, the Exchange proposes to impose hearing fees in order to recoup some of its costs. Accordingly, the Corporation proposes to amend PCXE Rule 5.5(m) to require issuers to submit a fee of $2,500 in order to cover a portion of the cost of an appeal hearing. The proposed rule requires that the issuer submit the fee within five days of receiving written notice of the Corporation's decision to delist a security. During this time frame, the issuer will also be required to submit a written request for a hearing. If the issuer does not submit a hearing fee or a written statement by the time prescribed by the Corporation, the issuer will be deemed to have waived its right to appeal the delisting decision.

The Exchange believes that the proposed fee is fair and reasonable as it is intended to cover only a portion of the Corporation's expenses associated with the processing and hearing of delisting appeals.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b)[6] of the Act, in general, and section 6(b)(4) of the Act,[7] in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

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

The Exchange represents that the proposed rule change will impose no burden on competition.

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

The Exchange neither solicited nor received written comments with respect to the proposed rule change.

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 self-regulatory organization consents, the Commission will:

A. By order approve the 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–2002–05 and should be submitted by March 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3305 Filed 2–11–02; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45391; File No. SR–Phlx–2001–33]

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

February 4, 2002.

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 March 8, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On May 11, 2001, the Exchange filed Amendment No. 1 to the proposed rule change with the Commission.[3] On November 21, 2001, the Exchange filed Amendment No. 2 to the proposed rule change with the Commission.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 10, 2001 (''Amendment No. 1''). In Amendment No. 1, the Exchange amended the filing to request accelerated approval under section 19(b)(2) of the Act, as opposed to the proposal being immediately effective upon filing under 19(b)(C)(A) of the Act.

[4] *See* Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated November 21, 2001 (''Amendment No. 2''). In Amendment No. 2, the Exchange amended the proposal to clarify that (1) the proposed rule change pertains to an order of a size greater that the AUTO–X guarantee; (2) a single crowd participant may voice a bid or offer that is independent of the trading crowd's collective response; (3) orders under the proposed rule change would be allocated pursuant to Phlx Rule 1014(g); (4) other proposed rule changes have been submitted to further foster competitive quoting among market makers; and (5) the Exchange believes that the proposed rule change should not impact the Quote Rule or the priority of customer orders.

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

The Phlx proposes to adopt Phlx Rule 1033(a)(ii) and Options Floor Procedure Advice (''OFPA'') F–32 pertaining to the solicitation of quotations. The following is the text of the proposed rule change:

Additions are in *italics*.

Rule 1033 (a)(*i*) Size of Bid/Offer and Disseminated Size Guarantee. All bids or offers on the Floor for option contracts shall be deemed to be one 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. Responsibility for ensuring that customer orders are filled to a minimum of the disseminated size at the disseminated price is as set forth in Exchange Rules 1082 and 1015.

(ii) Solicitation of Quotations. In response to a floor broker's solicitation of a single bid or offer, the members of a trading crowd (including the specialist and ROTs) may discuss, negotiate and agree upon the price or prices at which an order of a size greater than the AUTO–X guarantee can be executed at that time, or the number of contracts that could be executed at a given price or prices. Notwithstanding the foregoing, a single crowd participant may voice a bid or offer independently from, and differently from, the members of a trading crowd (including the specialist and ROTs).

* * * * *

F–32 Solicitation of Quotations

In response to a floor broker's solicitation of a single bid or offer, the members of a trading crowd (including the specialist and ROTs) may discuss, negotiate and agree upon the price or prices at which an order of a size greater than the AUTO–X guarantee can be executed at that time, or the number of contracts that could be executed at a given price or prices. Notwithstanding the foregoing, a single crowd participant may voice a bid or offer independently from, and differently from, the members of a trading crowd (including the specialist and ROTs).

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

In its filing with the Commission, the Phlx included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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 purpose of the proposed rule change is to adopt Phlx Rule 1033(a)(ii) and OFPA F–32, which would permit the members of a trading crowd (including the specialist and Registered Options Traders (''ROTs'')) to discuss, negotiate and agree upon the price or prices at which an order of a size greater than the AUTO–X guarantee can be executed at that time, or the number of contracts that can be executed at a given price or prices in response to a floor broker's request. The proposal is intended to codify and expressly permit a collective response by trading crowd members.[5]

Ordinarily, in meeting their obligation to make fair and orderly markets, Phlx specialists and ROTs make independent business decisions concerning what market to quote at a particular point in time, in lieu of discussing or agreeing with other members of the trading crowd on what should be the market for a particular option. In order to make fair and orderly markets and to respond efficiently to the needs of investors, however, the Phlx believes that there are circumstances where some coordination among ROTs and specialists is both necessary and beneficial.

For example, when a request for a market to buy or sell a large number of options contracts is presented by the floor broker to the trading crowd, the customer on whose behalf the request is made typically wants to know promptly at what single price all of the options represented by the request may be bought or sold. However, such large trades typically require more liquidity than any single ROT or the specialist is able to provide. Coordinated efforts of the trading crowd are, thus, necessary to respond to such a request and to fill any resulting order to buy or sell the option at a single price. In this regard, borrowing a phrase from corporate principles, the Phlx believes that the trading crowd is properly viewed as a ''joint venture,'' in which the resources of the individual crowd members are combined to produce the necessary liquidity to respond to the needs of investors and to compete effectively with other options exchanges.

When an options order exceeds the size that individual trading crowd members can execute, the Phlx believes that the trading crowd must act as a joint venture or single economic unit. In this situation, the trading crowd must reach agreement on the price they will offer because the customer desires a single price. Significantly, in the Exchange's view, the antitrust laws permit competitors to collaborate to produce and sell a product that they could not otherwise offer individually.[6] In fact, such activity is pro-competitive because it increases output and increases the number of competitors.[7]

Moreover, under the proposed rule change, Phlx Rule 1033(a)(ii) and OFPA F–32 would not force members of the trading crowd into the ''joint venture,'' and would not preclude price competition among members of the crowd or competition between a single crowd member and the rest of the crowd.[8] If any one ROT is willing to execute a trade at a price better than the

[5] On September 11, 2000, the Commission issued an order in relation to the settlement of *In the Matter of Certain Activities of Options Exchanges,* which requires the Exchange (as well as the other options exchanges) to implement certain undertakings. One such undertaking to adopt new, or amend existing, rules to include any practice or procedure whereby market makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class, or the allocation of orders in that option class. This proposed rule change is intended to effect the changes required by this undertaking. *See* Section IV.B.j. of Securities Exchange Act Release No. 43268 (September 11, 2000) (''Order'').

[6] *See, e.g., NCAA* v. *Board of Regents,* 468 U.S. 85, 101 (1984) (recognizing that horizontal restraint on competition was essential to make the product available at all); *Broadcast Music, Inc.* v. *CBS,* 441 U.S. 1, 23 (1979) (''Joint ventures and other cooperative arrangements are also not usually unlawful, at least not as price-fixing schemes, where the agreement on price is necessary to market the product at all.''); and *SCFC ILC, Inc.* v. *Visa USA, Inc.,* 36 F.3d 958, 964 (10th Cir. 1994), *cert. denied.,* 115 S. Ct. 2600 (1995) (''horizontal restraint may be essential to create the product in the first instance'').

[7] The Phlx believes that the Antitrust Division of the Department of Justice and the Federal Trade Commission, agencies expert in competition analysis, also recognize this result. *See* FTC/DOJ Antitrust Guidelines for Collaborations among Competitors (April 2000) at 14, reprinted in *Antitrust Rep.,* April 2000 (also available at *www.ftc.gov.*) (''Competitor collaborations may involve agreements jointly to sell, distribute, or promote goods and services that are either jointly or individually produced. Such agreements may be pro-competitive, for example, where a combination of complementary assets enables products more quickly and efficiently to reach the marketplace.'').

[8] *See* note 4, *supra.* Amendment No. 2 amends the proposed rule language to clarify that individual trading crowd members can voice bids or offers that are independent of the trading crowds collective response and also indicates that other proposed rule changes have been submitted to the Commission to foster competitive pricing.

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.[9] 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,[10] in general, and furthers the objectives of Section 6(b)(5),[11] 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).[12]

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.

[9] 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.'').

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

[11] 15 U.S.C. 78f(b)(5).

[12] 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.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–3303 Filed 2–11–02; 8:45 am]

BILLING CODE 8010–01–P

[13] 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 9O4200.

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

Dated: February 6, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–3374 Filed 2–11–02; 8:45 am]

BILLING CODE 8025–01–P

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