

could be dismissed, exposing the claimant to additional costs, loss of fees, time and effort, and the risk of a lapsed statute of limitations.¹³ The commenter further expressed concern that such waivers might be vulnerable to a legal challenge, thereby impairing the finality of any award. The commenter asserted that the PCX faced little or no harm if it continued its arbitration program.

In response, the PCX noted that SR-PCX-2003-13 applies only to cases where arbitrators have been appointed.¹⁴ The PCX stated that none of the commenter's pending cases had arbitrators appointed, and that thus, approval of this proposal would not affect them. The PCX asserted that approval of this proposed rule change would permit other arbitrations to move forward in an expeditious manner. Finally, as noted above,¹⁵ PCX has stated that it will defer action on arbitrations where the parties do not sign waivers, but will address their administration in the companion rule filing, SR-PCX-2002-77, subject to approval by the SEC.

V. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 of the Act.¹⁶ Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, as well as to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.¹⁷ The Commission believes that the proposed rules are designed to provide investors with a mechanism to help resolve their disputes with broker-dealers in an expeditious manner, and are designed to help ensure the certainty and finality of arbitration awards.

The Commission further finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that this proposal would apply only to a defined set of arbitrations currently pending at the PCX—those where arbitrators have been appointed. Accelerated approval is appropriate in that it will allow these cases to move forward in an expeditious manner. The Commission further notes that PCX will defer action on any case where a party refuses to execute the required waivers, and that the administration of such cases will be addressed in another PCX rule filing, as stated above.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-PCX-2003-13) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47738; File No. SR-Phlx-2001-28]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Who Allocates Options Trades

April 25, 2003.

On March 9, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change relating to who allocates options trades.

On January 31, 2002, May 17, 2002, July 8, 2002, and March 12, 2003, Phlx submitted Amendment Nos. 1, 2, 3, and 4 to the proposed rule change, respectively.³ The proposed rule

change, as amended, was published for comment in the **Federal Register** on March 25, 2003.⁴ The Commission received no comments on the proposal.

The proposal would amend the Exchange's Option Floor Procedure Advice F-2 ("Advice F-2"), governing who is responsible for allocating, matching, and time stamping an options trade in specific situations, and for reporting the trade upon its execution. The proposal would also codify paragraph (a) of Advice F-2, as amended, in the Exchange's rules as new paragraph (vi) of Phlx Rule 1014(g).

The proposal specifies that, in trades involving a floor broker, the floor broker would be assigned the responsibility for allocating, matching, time stamping, and reporting, but provides that the floor broker would be permitted to delegate this responsibility to the specialist or an assistant under the specialist's supervision. The proposed rule change would also specify that, in all other cases where the specialist is a participant, the specialist or an assistant under the specialist's supervision would be required to allocate the trade. The responsibility for allocating trades in which neither the floor broker nor the specialist is a participant would remain the same under the proposed rule change. The proposal would also increase the fines for violation of the Exchange's rules on allocation and reporting of trades.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁵ and, in particular, the requirements of Section 6 of the Act⁶ and the rules and regulations thereunder. The Commission believes

from Richard S. Rudolph, Director and Counsel, to Nancy J. Sanow, Assistant Director, Division, Commission, dated May 16, 2002, July 5, 2002, and March 12, 2003 ("Amendment Nos. 2, 3, and 4").

The proposed rule change was submitted by Phlx pursuant to subparagraph IV.B.j. of the Commission's Order of September 11, 2000, which requires the Exchange (among other respondent options exchanges) to adopt new, or amend existing, rules to make express 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." Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000).

⁴ See Securities Exchange Act Release No. 47500 (March 13, 2003), 68 FR 14456.

⁵ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f.

¹³ The commenter noted that although an arbitration generally tolls the statute of limitations, this does not apply when an arbitration is dismissed.

¹⁴ See letters dated April 17 and 23, 2003 from Kathryn Beck, Senior Vice President, PCX, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission.

¹⁵ See n. 9, *supra*.

¹⁶ In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Edith Hallahan, First Vice President and Deputy General Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 30, 2002 ("Amendment No. 1"); and letters