

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b)¹² of the Act in general and furthers the objectives of section 6(b)(5),¹³ in particular, in that it is designed to perfect the mechanism of a free and open market and a national market system, protect investors and the public interest and promote just and equitable principles of trade. According to the PHLX, the proposal would achieve this by allowing the listing of \$1 strike price intervals, thereby stimulating customer interest in options overlying the lowest tier of stocks and creating greater trading opportunities and flexibility and providing customers with the ability to more closely tailor investment strategies to the precise movement of the underlying stocks.

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 No written comments were solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-PHLX-2002-55 and should be submitted by June 8, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of 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.¹⁴ In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,¹⁵ which requires, among other things, that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Commission believes that the proposed listing of one point strike price intervals in selected equity options on a pilot basis should provide investors with more flexibility in the trading of equity options overlying stocks trading at more than \$3 but less than \$20, thereby furthering the public interest by allowing investors to establish equity options positions that are better tailored to meet their investment objectives. The Commission also believes that the Exchange's limited Pilot Program strikes a reasonable balance between the Exchange's desire to accommodate market participants by offering a wide array of investment opportunities and the need to avoid unnecessary proliferation of options series. The Commission expects the Exchange to monitor the applicable equity options activity closely to detect any proliferation of illiquid options series resulting from the narrower strike price intervals and to act promptly to remedy this situation should it occur. In addition, the Commission requests that the PHLX monitor the trading volume associated with the additional options series listed as a result of the Pilot Program and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

As noted above, the Commission is approving the PHLX's proposal on a pilot basis. In the event that PHLX proposes to extend the Pilot Program beyond June 5, 2004, expand the number of options eligible for inclusion in the Pilot Program, or seek permanent approval of the Pilot Program, it should submit a Pilot Program report to the

Commission along with the filing of such proposal.¹⁶ The report must cover the entire time the Pilot Program was in effect, and must include: (1) Data and written analysis on the open interest and trading volume for options (at all strike price intervals) selected for the Pilot Program; (2) delisted options series (for all strike price intervals) for all options selected for the Pilot Program; (3) an assessment of the appropriateness of \$1 strike price intervals for the options the PHLX selected for the Pilot Program; (4) an assessment of the impact of the Pilot Program on the capacity of the PHLX's, OPRA's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the Pilot Program and how the PHLX addressed them; (6) any complaints that the PHLX received during the operation of the Pilot Program and how the PHLX addressed them; and (7) any additional information that would help to assess the operation of the Pilot Program.

The Commission finds good cause for approving the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The PHLX's Pilot Program is identical to a CBOE pilot program ("CBOE Pilot") that the Commission approved.¹⁷ Notice of the CBOE Pilot was published for comment¹⁸ and the Commission received one comment letter, which supported the CBOE's proposal. Accordingly, the Commission believes that the proposal raises no issues of regulatory concern and that there is good cause, consistent with sections 6(b)(5) and 19(b) of the Act,¹⁹ to approve the PHLX's proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²⁰ that the proposed rule change (SR-PHLX-2002-55) and Amendment Nos. 1, 2, and 3 thereto are hereby approved, on an accelerated basis and as a pilot program, through June 5, 2004.

¹⁶ The Commission expects the PHLX to submit a proposed rule change at least 60 days before the expiration of the Pilot Program in the event the PHLX wishes to extend, expand, or seek permanent approval of the Pilot Program.

¹⁷ See Securities Exchange Act Release No. 47991 (June 5, 2003) (order approving File No. SR-CBOE-2001-60).

¹⁸ See Securities Exchange Act Release No. 47753 (April 29, 2003), 68 FR 23784 (May 5, 2003).

¹⁹ 15 U.S.C. 78f(b)(5) and 78s(b).

²⁰ 15 U.S.C. 78s(b)(2).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁵ 15 U.S.C. 78f(b)(5).