arguments concerning the foregoing. 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 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 Phlx. All submissions should refer to File No. SR-PHLX-94-70 and should be submitted by February 2, 1995.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission believes that the Phlx's proposal to extend the effectiveness of the Phlx OTC/UTP Pilot Program and accompanying rules with respect to UTP in OTC securities is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>5</sup> Specifically, the Commission believes that the proposed rule change is consistent with Sections 6(b)(5), 11A and 12(f) of the Act.<sup>6</sup>

In 1985, the Commission published its policy to extend UTP to national securities exchanges in certain OTC securities provided certain terms and conditions are satisfied.<sup>7</sup> The Commission's policy stated that UTP approval would be conditioned, in part,

<sup>7</sup> See Securities Exchange Act Release No. 22412 (September 16, 1985), 50 FR 38640.

on the approval of a plan to consolidate and disseminate exchange and OTC quotation data and transaction data upon which UTP is granted. As noted above, in 1990, the Commission approved the Plan which provides for the collection, consolidation, and dissemination of quotation and transaction information for Nasdaq/ NMS securities listed on an exchange or traded on an exchange pursuant to a grant of UTP.8 Transactions in securities pursuant to the Plan are and will continue to be reported in the consolidated transaction reporting system established under the Plan.

In the 1993 Phlx Pilot Order and the 1993 Phlx Pilot Extension Order, the Commission emphasized that Phlx specialists trading Nasdaq/NMS securities pursuant to the grant of UTP are subject to Plan requirements as well as the Phlx By-Laws and Rules. Moreover, the Commission stated its intent to monitor any potential abuse of the informational advantage that options traders could acquire from the Phlx equity floor with respect to securities traded under the Phlx OTC/UTP Pilot Program.

In extending the Phlx OTC/UTP Pilot Program for an additional six months, the Commission again emphasizes that, if the Exchange removes its temporary suspension of OTC/UTP on its trading floor, Phlx specialists trading Nasdaq/ NMS securities pursuant to UTP will continue to be subject to Plan requirements as well as the Phlx By-Laws and Rules. The Commission also will continue to monitor side-by-side trading concerns during this extension of the pilot procedures.

In approving the Plan, the Commission noted that the Plan should enhance market efficiency and fair competition, avoid investor confusion, and facilitate regulatory surveillance of concurrent exchange and OTC trading. The Commission has requested that the participants to the Plan submit evaluations to the Commission concerning the operation and status of OTC/UTP as it relates to these and other national market system objectives.<sup>9</sup>

In the present filing, the Phlx states that it has been operating its pilot program with no adverse consequences or developments that have a negative impact on the program. The Phlx also has attached a letter to the present filing which provides a detailed discussion of the status and operation of OTC/UTP under both the Phlx OTC/UTP Pilot Program and the Joint OTC/UTP Plan.<sup>10</sup> The evaluation does not report any negative impact to the securities markets caused by OTC/UTP, but does make certain recommendations concerning the overall status of, and issues raised by the Joint OTC/UTP Plan. The Commission will address those recommendations in the Commission's evaluation of the continued effectiveness of the Joint OTC/UTP Plan, which currently is scheduled to expire on January 12, 1995.

The Commission believes that it is appropriate to extend the Phlx OTC/ UTP Pilot Program for an additional six months while the Commission evaluates the overall program for OTC/UTP and any enhancements or changes to the program that may be necessary to further the purposes of the Act. In the interim, however, the Commission continues to believe that the Phlx OTC/ UTP Pilot Program, as limited by the Joint OTC/UTP Plan, generally furthers the objectives of a national market system and is consistent with the maintenance of fair and orderly markets and the protection of investors as required by Sections 6(b)(5), 11A and 12(f) of the Act.

## V. Conclusion

For the reasons stated above, the commission believes that it is appropriate to extend the Phlx OTC/ UTP Pilot Program for an additional six months.

The Commission finds good cause for approving the proposed rule change prior the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate in order to allow the Phlx to continue to have rules in place for OTC/UTP trading. Further, the Phlx OTC/UTP Pilot Program and the accompanying rules have been noticed previously in the **Federal Register** for the full statutory period, and the Commission received no comments on the proposal.<sup>11</sup>

It is therefore ordered, pursuant to Section 19(b)(2) <sup>12</sup> that the proposed rule change is hereby approved on a pilot basis through June 30, 1995.

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

<sup>&</sup>lt;sup>5</sup>For a more detailed discussion of the Commission's findings with respect to the Phlx OTC/UTP Pilot Program and its consistency with the Act, *see* 1992 Phlx Pilot Order and 1993 Phlx Pilot Extension Order, *supra* note 4.

<sup>615</sup> U.S.C. 78f(b)(5), 78k-1 (1988), and 781(f) (1988) (as amended October 22, 1994). Section 6(b)(5) requires, among other things, that the rules of an 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. Section 11A provides, among other things, that it is in the public interest and appropriate for the protection of investors to assure fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets. Section 12(f), as amended, provides, among other things, that exchanges may extend UTP to securities that are registered, but not listed on any exchange, provided that certain conditions are met.

<sup>&</sup>lt;sup>8</sup> See note 4, supra.

<sup>&</sup>lt;sup>9</sup> See 1992 Phlx Pilot Order and 1993 Phlx Pilot Extension Order, *supra* note 4. See also Joint OTC/ UTP Plan Order and Joint OTC/UTP Plan Extension Order, *supra* note 3.

<sup>&</sup>lt;sup>10</sup> See letter from William W. Uchimoto, First Vice President and General Counsel, Phlx, to Elizabeth Prout, Esq., Commission, dated December 21, 1994.

<sup>&</sup>lt;sup>11</sup> See supra note 4.

<sup>12 15</sup> U.S.C. 78s(b)(2) (1988).

<sup>13 17</sup> CFR 200.30-3(a)(12) (1991).