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. 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 at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. 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-Phlx-95-32 and should be submitted by October 19, 1995.

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

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34–36257; File No. SR–PHLX– 95–31]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Compliance with Position and Exercise Limits for Non-PHLX Listed Options

September 20, 1995.

On March 22, 1995, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 to amend PHLX Rules 1001, "Position Limits," ³ and 1002, "Exercise Limits," ⁴ to require PHLX members who trade non-PHLX listed options and who are not members of the exchange where the options transactions are effected to comply with the applicable option position and exercise limits of the exchange where the options transactions are effected.

Notice of the proposed rule change appeared in the Federal Register on June 26, 1995.⁵ No comments were received on the proposed rule change.⁶

The PHLX states that the purpose of the proposal is to eliminate a loophole in position and exercise limit jurisdiction among the options exchanges. According to the Exchange, a PHLX member entering into an opening transaction on another exchange in an option not listed on the PHLX and who is not a member of the exchange where the transaction is effected escapes the jurisdiction of both the PHLX and the other exchange for purposes of position limit compliance. The loophole occurs because Exchange Rule 1001 applies only to options dealt in on the PHLX. At the same time, the exchange where the options transaction is effected cannot enforce its position limit rule against a non-member.

The PHLX believes that the proposed amendments to PHLX Rule 1001 should enable the PHLX to exercise jurisdiction over a PHLX member violating the position or exercise limits in non-PHLX listed equity and index options. In pursuing such position and exercise limit violations, the PHLX will apply the position and exercise limits of the other exchange, together with any

³ Position limits impose a ceiling on the number of option contracts which an investor or group of investors acting in concert may hold or write in each class of options on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls).

⁴ Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

 5 See Securities Exchange Act Release No. 35864 (June 19, 1995), 60 FR 33025.

⁶ On July 6, 1995, the PHLX clarified the text of its proposal by (1) deleting a reference to "stock" in PHLX Rule 1001; and (2) adding a reference in PHLX Rule 1002 to options not dealt in on the Exchange and noting that index option position and exercise limits are governed by PHLX Rules 1001A and 1002A. Letter from Gerald D. O'Connell, First Vice President, Market Regulation and Trading Operations, PHLX, to Michael Walinskas, Branch Chief, Office of Market Supervision, Division of Market Regulation, Commission, dated July 6, 1995 ("Amendment No. 1"). applicable exemption, interpretation or policy, to transactions in non-PHLX options by a PHLX member.⁷ When a PHLX member enters into an opening transaction on another exchange in a PHLX-listed option, the PHLX will continue to apply the position and exercise limits and exemptions set forth in the PHLX's rules.

The Exchange believes that the proposal is consistent with Section 6 of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to remove impediments to and perfect the mechanism of a free and open market as well as to protect investors and the public interest by expanding option exchange position and exercise limit jurisdiction to uniformly cover excessive transactions.

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(b)(5)⁸ in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. Specifically, the PHLX has noted that Exchange rules do not currently prohibit PHLX members from exceeding the position and exercise limits set by another exchange for non-PHLX listed option contracts. Thus, if the PHLX member is not a member of the exchange which lists the options, then neither the PHLX or the exchange that lists the options is able to enforce its position and exercise limits against the PHLX member. The proposal eliminates this loophole and strengthens the Exchange's rules by requiring a PHLX member who trades non-PHLX listed option contracts on another exchange, and who is not a member of that exchange, to comply with the option position and exercise limits set by the exchange where the transactions are effected.9

As the Commission has noted in the past,¹⁰ options position and exercise limits are intended to prevent the establishment of large options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the

¹15 U.S.C. 78s(b)(1) (1988).

^{2 17} CFR 240.19b-4 (1994).

⁷ The Commission notes that the position and exercise limits in equity options are uniform among all options markets.

⁸¹⁵ U.S.C. 78f(b)(5) (1988 & Supp. V 1993).

⁹ As noted above, the PHLX will also apply the exemptions, interpretations, and policies of the exchange where the options transactions are effected.

¹⁰ See, e.g., Securities Exchange Act Release No. 33283 (December 3, 1993), 58 FR 65204 (December 13, 1993) (order approving File No. SR-CBOE-93-43).