

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change, as amended, (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interests, the proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6)¹⁵ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁶ normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁷ the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. The Exchange seeks to have the proposed rule change, as amended, become operative on or before January 11, 2002, in order to allow the Pilot to continue in effect on an uninterrupted basis. In addition, under Rule 19b-4(f)(6)(iii), the Exchange is required to provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter time as designated by the Commission. The Commission waived this five-day pre-notice requirement for this proposed rule change.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change, as amended, to extend the Pilot through March 11, 2002, become operative on January 11, 2002. The Commission notes that unless the Pilot is extended, the Pilot will expire and the provisions of sections 312.01, 312.03, and 312.04 of the Exchange's Listed Company Manual that were amended in the Pilot will revert to those in effect prior to June 4, 1999. The Commission believes that such a result could lead to confusion.

The commission recognizes that the Pilot has generated many comment letters from commenters that do not support the NYSE's definition of "broadly-based" stock option plans under the Pilot.¹⁸ The Commission also notes that many commenters were

critical of the NYSE's existing rules on broadly-based plans prior to the adoption of the original Pilot. As noted above, if the Pilot is not extended, the rules prior to the Pilot will go into effect. The proposed rule change, as amended, merely extends the duration of the Pilot for only a short period of time and does not deal with the substantive issues presented by the Pilot itself.

Based on these reasons, the Commission believes that it is consistent with the protection of investors and the public interest that the proposed rule change, as amended, to extend the Pilot through March 11, 2002, become operative on January 11, 2002.¹⁹ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. 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 filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the File No. SR-NYSE-2002-03 and should be submitted by February 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45274; File No. SR-NYSE-202-04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., to Reset the Implementation Date for Exchange Rules 134, 407A, and 411, Relating to Error Accounts Procedures

January 14, 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 January 7, 2002, the New York Stock Exchange, Inc. ("NYSE" 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change seeks to extend the Exchange-imposed implementation date for Rules 134, 407A, and 411 (relating to members' error accounts and error account procedures) from January 7, 2002 to February 4, 2002.

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

In its filing with the Commission, the NYSE included statements concerning the purpose of and 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.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ *Id.*

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

¹⁸ See Original Pilot Approval Order, note 4 *supra*.

¹⁹ For purposes only of accelerating the operative date of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

1. Purpose

The Commission recently approved amendments to Rules 134, 407A, and 411 relating to members' error accounts and error account procedures. The Exchange had intended to implement these changes on January 7, 2002.³ However, feedback from several members and member organizations indicated that they will need additional time to implement procedures, including automatic surveillance procedures, to fully comply with the provisions of Rules 134, 407A, and 411. Therefore, the Exchange proposes to change the implementation date from January 7, 2002 to February 4, 2002.

2. Statutory Basis

The NYSE states that the basis for the proposed rule change is the requirement under section 6(b)(5) of the Act⁴ that an exchange have rules that are designated to promote just and equitable principles of trade, 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.

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

The NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NYSE has designated the proposed rule change as constituting a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of the NYSE rules to which it relates,⁵ which renders the proposal effective upon

filing with the Commission pursuant to section 19(b)(3)(A) of the Act⁶ and Rule 19b-4(f)(3) thereunder.⁷

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether it 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 at the NYSE. All submissions should refer to File No. SR-NYSE-2002-04, and should be submitted by February 8, 2002.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45254; File Nos. SR-Phlx-00-02 and SR-Phlx-00-03]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Changes by the Philadelphia Stock Exchange, Inc. Relating to Equity Trading Permits and Notice and Order Granting Accelerated Approval to Amendments No. 3 Thereto

January 9, 2002.

I. Introduction

On January 12, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to 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 its Certificate of Incorporation to add a new article authorizing the Board of Governors to issue Equity Trading Permits ("ETPs").³ The Exchange filed amendments to the proposed rule change on May 30, 2000⁴ and July 12, 2000.⁵ The proposed rule change was published for comment in the **Federal Register** on September 1, 2000.⁶ On December 17, 2001, the Exchange filed Amendment No. 3 to the proposal.⁷

Also on January 12, 2000, the Exchange submitted to the Commission, pursuant to Section 19(b)(1) of the Act⁸ and Rule 19b-4 thereunder,⁹ a proposed

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ SR-Phlx-00-02.

⁴ See Letter from Carla Behnfeldt, Counsel, Phlx, to Sonia Patton, Staff Attorney, Division of Market Regulation ("Division"), Commission, dated May 25, 2000.

⁵ See Letter from Carla Behnfeldt, Counsel, Phlx, to Sonia Patton, Staff Attorney, Division, Commission, dated July 11, 2000.

⁶ See Securities Exchange Act Release No. 43211 (August 25, 2000), 65 FR 53251.

⁷ See Letter from Mark I. Salvacion, Director and Counsel, Phlx, to Belinda Blaine, Associate Director, Division, Commission, dated December 14, 2001 ("Amendment No. 3 to SR-Phlx-00-02"). In Amendment No. 3, the Exchange amended the Certificate of Incorporation to: (1) Provide that permit holders may serve on, or nominate candidates for the Board of Governors or Committees; and (2) clarify that permit holders are not members of the Exchange for purposes of Delaware General Corporate Law ("DGCL") and shall have no rights or privileges conferred upon members of a nonstock corporation solely by DGCL. In Amendment No. 3, the Exchange also represented that the Board of Governors will appoint a qualified ETP holder, or associated person thereof, to the Exchange's Business Conduct Committee at the next annual appointment of Business Conduct Committee members, presently scheduled for March 2002. Lastly, the Exchange stated that it has authorized the Board of Governors to issue only 75 permits.

⁸ 15 U.S.C. 78s(b)(1).

⁹ 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 44769 (September 6, 2001), 66 FR 44710 (September 13, 2001) (approval order concerning File No. SR-NYSE-99-25).

⁴ 15 U.S.C. 78f(b)(5).

⁵ See letter from Darla C. Stuckey, NYSE, to Katherine A. England, assistant director, Division of Market Regulation, Commission, dated January 9, 2002.

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(3).

⁸ 17 CFR 200.30-3(a)(12).