

Exchange now proposes to eliminate the minimum original listing fee for closed-end funds, and to also eliminate the one time charge of \$36,800 for such funds. Closed-end funds will pay original listing fees based on the number of shares issued according to the per share schedule applicable to listed companies generally as set forth in Section 902.02 of the Manual. Any fund which listed during the 2001 calendar year will receive a credit against its continuing annual fee for the 2002 calendar year representing the difference between the amount paid according to the current original listing fee schedule and the proposed schedule. In addition, the Exchange proposes to implement a \$1 million annual cap on the amount of continuing annual listing fees payable by any one family of closed-end funds. The Exchange has traditionally differentiated with respect to fees among classes of issuers—such as closed end funds and structured (derivative) products. More specifically, this fee modification was influenced by the concern that funds, because they tend to be clustered in a limited number of “families,” could have been viewed from a certain perspective as bearing fees that were potentially somewhat high when compared to the fees paid by traditional business corporations.⁵

All the fee changes proposed above will become effective at the beginning of the 2002 calendar year.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) ⁶ that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes 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

Because the foregoing proposed rule: (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 or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act ⁷ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁸ At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such rule change of 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 proposal 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 NYSE. All submissions should refer to SR-NYSE-2001-48 and should be submitted by January 2, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45125; File No. SR-Phlx-2001-95]

Self-Regulatory Organizations; Notice of Filing for Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. To Extend a Pilot Program for the Volume Weighted Average Price Trading (VWAP) System

December 4, 2001.

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 November 6, 2001, the Philadelphia Stock Exchange, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 15, 2001, the Exchange amended the proposal.³ The Exchange filed this proposal under Section 19(b)(3)(A) of the Act,⁴ and Rule 19b-4(f)(6)⁵ thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to extend through November 30, 2002 its pilot program for the Volume Weighted Average Price Trading (VWAP) System (“vwap” system or “System”) (“Pilot”).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See November 14, 2001 letter from Murray L. Ross, Vice President and Secretary, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation (“Division”), Commission (“Amendment No. 1”). In Amendment No. 1, the Phlx converted the proposed rule change to a non-controversial filing. See Rule 19b-4(f)(6). 17 CFR 240.19b-4(f)(6).

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6). The Phlx requested that the Commission waive the 5-day pre-filing notice requirement, and the 30-day operative delay. See Amendment No. 1.

FR 37715, July 19, 2001. This was done while the Exchange considered further what changes were appropriate in its closed-end fund fee schedule. This \$1.25 million cap will expire by its own terms at the end of 2001.

⁵ See note 3, *supra*.

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

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 Exchange 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.

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

I. Purpose

The Exchange proposes to extend the Pilot through November 30, 2002. The Pilot was established in SR-Phlx-96-14.⁶ The only substantive change the Phlx proposes at this time is to extend the pilot program through November 30, 2002.⁷ The text of the proposed rule change is available at the Phlx and at the Commission.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act⁸ in general, and in particular, with Section 6(b)(5),⁹ in that it is designed 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 Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

⁶ See Securities Exchange Act Release No. 41210 (March 24, 1999), 64 FR 15857 (April 1, 1999). See also Securities Exchange Act Release Nos. 42701 (April 19, 2000), 65 FR 24529 (April 26, 2000) (SR-Phlx-00-26) and 43477 (October 23, 2000), 65 FR 64734 (October 30, 2000) (SR-Phlx-00-84) (extending pilot through November 1, 2000 and November 30, 2001, respectively).

⁷ See December 3, 2001 telephone conversation between Murray L. Ross, Vice President and Secretary, Phlx, and Joseph Morra, Special Counsel, Division, Commission.

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and
- (iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

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.

The Exchange has requested that the Commission waive the 5-day pre-filing notice requirement, and accelerate the operative date. The Commission finds good cause to waive the pre-filing notice requirement, and to designate the proposal to be both effective and operative upon filing because such designation is consistent with the protection of investors and the public interest. Waiver of these requirements will allow the Pilot to continue uninterrupted through November 30, 2002. For these reasons, the Commission finds good cause to designate that the proposal is both effective and operative upon filing with the Commission.¹²

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 Exchange. All submissions should refer to file number SR-Phlx-2001-95, and should be submitted by January 2, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Jonathan G. Katz,
Secretary.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-290 (Sub-No. 230X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Raleigh County, WV

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 1.5-mile line of railroad between milepost AM-0.0 at Amigo and milepost AM-1.5 at Devils Fork, in Raleigh County, WV.¹ The line traverses United States Postal Service Zip Code 25911.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic, if there is any, can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with

¹³ 17 CFR 200.30-3(a)(12).

¹ NSR notes that authority to discontinue operations on the line was granted by the former Interstate Commerce Commission. See *Norfolk and Western Railway Company—Discontinuance Exemption—in Wyoming County, WV*, Docket No. AB-290 (Sub-No. 88X) (ICC served June 18, 1990). The June 18, 1990 notice described the 1.5-mile discontinuance of the line as being located in Wyoming County, WV. By facsimile filed on December 4, 2001, NSR advised the Board that the line is located in Raleigh County, WV, as correctly identified in the present notice, and not Wyoming County, WV, as previously indicated in the notice of June 18, 1990.