Dated: February 12, 2002.

**Mary M. Rose,**

*Chairperson, Federal Prevailing Rate Advisory Committee.*

[FR Doc. 02–4243 Filed 2–21–02; 8:45 am]

**BILLING CODE 6325–49–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45451 File No. SR–AMEX–2001–47]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange LLC Relating to Issuer Listing Standards and Procedures

February 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 July 16, 2001, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed Amendment No. 1 to its proposal on January 10, 2002 [3] and filed Amendment No. 2 to its proposal on February 13, 2002.[4] 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 Amex proposes to amend the Amex *Company Guide* to adopt (i) new listing standards relating to the authority of the Amex Committee on Securities in respect of its review of initial listings; (ii) new procedures that would impose definitive time limits with respect to how long a non-compliant company can retain its listing; (iii) substantive revisions to the initial and continued listing standards; and (iv) changes to the appeal procedures applicable to staff denials of initial listing applications and staff delisting determinations. The text of the proposed rule change is available at the principal offices of the Amex and at the Commission.

### 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*

1. Purpose

The Exchange is proposing certain enhancements to its initial and continued listing program. The Amex represents that the proposed changes, which are described below, are designed to provide issuers and investors greater clarity with respect to its listing qualification process, while preserving a degree of measured flexibility in the application of the listing standards and procedures.

The Exchange has also augmented its management reporting system to ensure that senior Exchange management is regularly alerted to any developing trends emerging from the listing qualifications process, with respect to outstanding listing applications, recently approved companies, and companies failing to meet or in jeopardy of failing to meet the continued listing standards. The management review will also encompass the continued status of companies approved pursuant to the proposed alternative standards as compared to those approved pursuant to the regular standards, which will also enable the staff to provide feedback to the Committee on Securities and the Board of Governors as to the effectiveness of these standards and the proposals contained herein.

*Initial Listing Approval Process*

Currently, the Exchange evaluates applicants for initial listing based on quantitative and qualitative guidelines, and the Exchange may exercise discretion by approving a listing applicant that does not fully satisfy each of the stated numerical guidelines.[5] This discretion may be exercised in two ways. First, the Listing Qualifications management has the authority to approve a company for initial listing on the basis of its ''substantial compliance'' with the applicable guidelines. Second, the Amex Committee on Securities (the ''Committee''), which the Exchange represents to be comprised of seasoned financial professionals, is authorized by the Amex Board of Governors to use its professional judgment in evaluating whether a particular issuer is appropriate for listing even though it does not fully comply with the numerical guidelines.

To provide issuers and investors with increased transparency and information regarding the manner in which securities are listed on the Amex, the Exchange is proposing the following:

1. Replace all references to listing ''guidelines'' with references to listing ''standards.'' [6]

2. Revise and clarify the authority of the Listing Qualifications Department management to approve a company for initial listing, to provide that it may approve a company under the following circumstances:

- The company satisfies new ''Initial Listing Standard 1'' (existing ''Regular Listing Guidelines'').
- The company satisfies new ''Initial Listing Standard 2'' (existing ''Alternate Listing Guidelines'').
- The company satisfies new ''Initial Listing Standard 3'' (new ''Market Capitalization'' standard discussed below).
- The company satisfies new ''Initial Listing Standard 4'' (new ''Currently Listed Securities'' standard discussed below).

3. Adopt new quantitative alternative minimum listing standards limiting the authority of Committee panels with respect to the review of initial listings determinations, such that a Committee panel would be able to approve a company that did not satisfy one of the regular initial listing standards only if (a) the company satisfies new

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Claudia Crowley, Assistant General Counsel-Listing Qualifications, Amex, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission (January 9, 2002) (''Amendment No. 1''). Amendment No. 1 supercedes and replaces the original 19b–4 filing in its entirety.

[4] *See* letter from Claudia Crowley, Assistant General Counsel-Listing Qualifications, Amex, to Florence Harmon, Senior Special Counsel, Division, Commission (February 13, 2002) (''Amendment No. 2''). In Amendment No. 2, the Exchange corrected various typographical errors, elaborated on the augmentation of its management reporting system, clarified the procedures by which an issuer would be considered under the Alternative Listing Standards, and added inadvertently omitted rule language.

[5] Section 101 of the Amex *Company Guide* provides that factors other than the specified guidelines will be considered in evaluating listing eligibility, and an application may be approved even if the company does not meet all of the numerical guidelines.

[6] This change would also apply to references to continued listing guidelines.

alternative quantitative listing standards; (b) a Committee panel makes an affirmative finding that there are mitigating factors that warrant listing pursuant to the alternative standards; and (c) the company issues a press release disclosing the fact that it had been approved pursuant to the alternative listing standards. Committee panels would not have authority to approve companies below the ''floor'' established by the new alternative quantitative listing standards specified below: [7]

Alternative A

Stockholders' equity of at least $3,000,000
Pre-tax income of at least $500,000 in its last fiscal year, or in two of its last three fiscal years
Aggregate Market Value of Publicly Held Shares—$2,000,000
Distribution—400,000 shares publicly held and 600 public shareholders, or
800,000 shares publicly held and 300 public shareholders
Price—Minimum market price of $2 per share

Alternative B

Stockholders' equity of at least $3,000,000.
Aggregate Market Value of Publicly Held Shares—$10,000,000
Distribution—400,000 shares publicly held and 600 public shareholders, or
800,000 shares publicly held and 300 public shareholders
History of Operations—Two years
Price—Minimum market price of $2 per share

*Continued Listing Process*

To strengthen the Exchange's continued listing program, the Exchange is proposing to adopt revised procedures that would impose definitive time limits with respect to how long a company that has fallen below the continued listing standards can remain listed pending corrective action.[8] The new procedures would provide as follows:

• A company that falls out of compliance with the continued listing standards will be given an opportunity to submit a business plan to the Listing Qualifications Department detailing the action it proposes to take to bring it into compliance with continued listing standards within 18 months.

• If the Listing Qualifications Department management determines that the company has made a reasonable demonstration of an ability to regain compliance within 18 months, the plan will be accepted. The company would be able to continue its listing for up to 18 months if it issues a press release indicating that it is not in compliance with the continued listing standard and that it has been granted an 18 month extension.[9]

• The Listing Qualifications Department will closely monitor the company's compliance with the plan during the 18-month extension period, and the company will be subject to delisting if it does not show progress consistent with its business plan, if further deterioration occurs or based on public interest concerns.

• At the conclusion of the 18-month extension period, the staff will initiate delisting proceedings if the company has not regained compliance with the continued listing standards.[10]

• All staff delisting proceedings can be appealed to a Committee panel; however, the Committee panel will not have the authority to continue the company's listing unless it determines that the company has regained compliance with the continued listing standards.[11]

*Other Changes*

The Amex is also proposing to adopt certain new initial and continued listing standards that are necessary and appropriate for the Exchange to administer its listing qualifications function in a more fair, efficient and transparent manner.

With respect to initial listing, the Amex is proposing to adopt two new sets of standards—a ''market capitalization'' standard and a ''currently listed securities'' standard—in addition to the two currently existing standards. Under the ''market capitalization'' standard, a company would be eligible for initial listing if it meets the following standards:

Shareholders' Equity—$4 million
Total Value of Market Capitalization—$50 million
Market Value of Public Float—$15 million
Public Float/Public Stockholders—$500,000/800 or
$1 million/400 or
$500,000/400 (plus average daily volume of 2,000 shares).

The ''currently listed securities'' standard would provide that a company which is currently listed on the New York Stock Exchange or Nasdaq National Market and fully satisfies the Amex continued listing standards will qualify for initial listing.

With respect to continued listing, the Amex is proposing to revise Section 1003(a)(iii) of the *Company Guide* to provide that a company will continue to qualify for listing, even if it has sustained losses from continuing operations and/or net losses in its five most recent fiscal years, if it has stockholders' equity of at least $6 million. Currently, a company that has sustained such losses is subject to delisting regardless of its stockholders' equity. The Amex believes that this change is appropriate, in that a company which is able to maintain significant shareholders' equity should be able to continue its listing notwithstanding five or more years of losses. The Amex notes that many development stage and research oriented companies often take a number of years to reach profitability. Although not all these companies become profitable, the ability to raise capital, as evidenced by significant shareholders' equity, is often an indication of a company's strength.

In addition, the Amex is proposing to modify the market value of public float continued listing standard contained in Section 1003(b)(i)(C) of the *Company Guide,* to provide that a company will not be considered below continued listing standards unless the aggregate market value of its shares publicly held is less than $1,000,000 for more than ninety consecutive days. Currently, a literal reading of the provision would result in a listed company technically falling below the requirement if the market value of its public float fell below $1,000,000 for even one day. In view of the volatility of the markets, the Amex believes it is appropriate to evaluate this listing standard over a period of time.

[7] *See* proposed section 1203(c) of the Amex *Company Guide*.

[8] The Exchange's internal procedures now require analysts to review all company filings within 30 days of issuance to evaluate the issuer's compliance with the Exchange's continued listing standards. Telephone discussion between Claudia Crowley, Assistant General Counsel-Listing Qualifications, Amex, and Florence E. Harmon, Senior Special Counsel, Division, Commission (February 12, 2002).

[9] If a company submits a plan that is not accepted, the staff would initiate delisting proceedings, which the company could appeal to the Committee panel. The Committee panel would have the authority to direct the Listing Qualifications Department management to accept the plan only if it finds that the plan does make a reasonable demonstration of an ability to regain compliance with the continued listing standards within 18 months.

[10] The Exchange does not view the one-year probation period as an extension of the 18-month plan period. Telephone discussion between Claudia Crowley, Assistant General Counsel-Listing Qualifications, Amex, and Florence E. Harmon, Senior Special Counsel, Division, Commission (February 14, 2002).

[11] Adverse Committee panel decisions could be appealed by the company to the full Committee whose decisions are subject to a call for review by the Amex Board of Governors.

*Appeal Procedures Background*

In late 2000, in connection with the Nasdaq demutualization, the Amex reintegrated the Listing Qualifications function. Prior to the reintegration, the Amex adopted new procedures applicable to the review of initial listing determinations, modeled on existing Nasdaq listing and delisting procedures.[12] These procedures have been in effect since November 2000. The Amex believes that they have provided increased transparency and clarity to listing applicants with respect to the Amex decision-making process. For example, in the case of initial listings, the staff no longer determines which applications the Committee reviews. Instead, an issuer whose application is denied by the staff has the right to appeal the denial to a subcommittee of the Committee.

According to the Amex, experience with the procedures indicates, however, that changes to certain elements of the procedures might enhance the process in light of the Amex's business objectives and regulatory responsibilities. The Amex is proposing revisions to the delisting hearing procedures to bring them more in line with the listing hearing procedures.[13]

As noted above, in late 2000, the Amex adopted new procedures with respect to the review of staff denials of initial listing applications. These procedures, which are contained in Part 12 of the *Company Guide*, provide an issuer whose listing application has been denied by the staff the right to appeal the staff decision to a subcommittee of the Committee composed of at least two Committee members. A subcommittee's decision to approve an applicant is dispositive, and the issuer will be listed upon such approval by the subcommittee (unless the decision specifies otherwise). An issuer can appeal an adverse subcommittee decision to the Amex Adjudicatory Council (''Adjudicatory Council'') within 15 days of the decision. The Adjudicatory Council also has the right to call any subcommittee decision for review within 45 days of the decision.

The new process has operated relatively smoothly, and has, as noted above, provided increased transparency to listing applicants. The experience of the Committee and Amex staff with the new procedures has, however, revealed certain inconsistencies. For example, the Adjudicatory Council's right to call for review listing decisions by a subcommittee of the Committee could be awkward in the case of an issuer whose securities have already been listed and begun trading. In theory, because the Adjudicatory Council has up to 45 days to call a decision for review, it would be possible for the Adjudicatory Council to reverse a subcommittee decision and deny a listing application in the case of a company whose securities had already been trading for some time. In addition, the Adjudicatory Council's responsibility to review appeals and exercise its call for review authority is burdensome in combination with its other responsibilities to the Board.

The procedures now applicable to the review of staff delisting determinations, which are contained in Section 1010 of the Amex *Company Guide*, are different and do not parallel the initial listing appeal procedures. The Committee hears appeals of staff delisting determinations, but the Committee does not have dispositive authority and acts solely as a fact-finding body for the Board. The Committee's recommendations and findings are forwarded to the Adjudicatory Council, to which the Board has delegated its authority to make delisting determinations. Because the Committee lacks dispositive authority, and transcripts and other relevant information must be forwarded to the Adjudicatory Council for review and decision-making, the delisting decision process can take a significant amount of time to complete. Throughout the process—until the final decision by the Adjudicatory Council—the securities in question will generally continue trading on the Exchange unless a disclosure issue or public interest concern warrants a trading halt.[14]

*Proposed Changes*

The proposed changes make adjustments to the procedures applicable to the review of initial listing determinations and revise the procedures applicable to the review of delisting determinations to conform to them to initial listing procedures.

The proposal provides issuers with the right to appeal a staff determination to deny initial or continued listing to a panel of at least three members of the Committee. The issuer has the right to appeal an adverse panel's decision to the full Committee.

A panel decision will be dispositive with respect to both listing and delisting decisions. In the case of an appeal of an initial listing denial, this means that if the panel determines to ''reverse'' the staff determination, the issuer's securities will be approved for listing and listed at the convenience of the issuer. In the case of an appeal of a delisting determination, the delisting action will be stayed pending the outcome of the panel's review. Following a panel determination to delist, trading in the company's securities will be suspended. If the company does not appeal the panel's decision to the full committee, its securities will be delisted following the expiration of the appeal period, in accordance with Section 12 of the Act[15] and the rules promulgated thereunder. If the company does appeal to the full Committee, the suspension will continue until there is a final decision (either by the full Committee or the Board based on its ''call for review''), in which case the securities will be either delisted or the suspension will be lifted, depending on the outcome.

With respect to an initial listing application in which the company appeals an adverse panel decision to the full Committee, if the Committee ''reverses'' the panel decision and approves the listing, in order to avoid potential market disruptions and investor confusion, the securities will not begin trading unless and until the Board has declined to call such decision for review.[16]

While issuers will be able to request either an oral or written hearing at the panel level, appeals to the full Committee will be based on the written record only unless the Committee determines, in its sole discretion, to hold a hearing. All decisions of the full Committee will also be subject to a discretionary ''call for review'' by the Amex Board of Governors.[17] If the Board

[12] *See* Securities Exchange Act Release No. 43308 (September 20, 2000), 65 FR 58136 (September 27, 2000) (SR–Amex–00–12).

[13] In this regard, in February 2001 Amex Chairman Salvatore F. Sodano established the Chairman's Advisory Council on Listing Qualifications (''Advisory Council''). The Advisory Council, which was composed of prominent securities industry professionals, was charged with conducting a review of the Amex procedures and policies relating to the equity listing functions. The Advisory Council's primary goal was to conduct a review of and make recommendations with respect to the process for appealing initial listing and delisting decisions. In this regard, the Advisory Council, in consultation with Amex senior management, developed the proposal described herein.

[14] The company will typically not be delisted until ten days after the Adjudicatory Council's decision, because Exchange Act Rule 12d2–2 requires the Exchange to file an application with the SEC to delist a security, which application becomes effective ten days after filing with the SEC. 17 CFR 240.12d2–2.

[15] 15 U.S.C. 78l.

[16] If the Board were to call such a Committee decision for review, the securities would be listed only if the Board affirmed the Committee decision.

[17] The Amex notes that an issuer may appeal to the SEC in accordance with Section 19 of the Exchange Act following final action by the

decision provides that the issuer's security or securities should be delisted, the Exchange will suspend trading in such security or securities as soon as practicable, if it has not already done so pursuant to Section 1204(d), and an application will be submitted by the Exchange staff to the Commission to strike the security or securities from listing and registration in accordance with Section 12 of the Act [18] and the rules promulgated thereunder. In the event that the Board was to ''reverse'' a full Committee decision, the issuer's listing status would be adjusted accordingly. Because panel decisions will be dispositive, as noted above, if trading in an issuer's securities were suspended pursuant to an adverse panel decision, the suspension would be lifted, as noted above, if the final decision (either by the Amex Board or the full Committee if the Board does not exercise its ''call for review'') reverses the panel's decision. Similarly, in the case of an initial listing application, the issuer's securities will be listed if the final decision reverses an adverse panel decision.

The proposal does not contemplate changes to the administration of the hearing process, and the Hearings staff of the Listing Qualifications Department will continue to administer the process. Amex staff attorneys will, as they do now, provide independent counsel to the panels and the full Committee with respect to relevant procedures, precedents and standards.[19]

Additionally, in order to recoup the costs associated with processing and conducting hearings in connections with issuer requests for review, the Amex will continue to charge a fee of $2,500 for an oral hearing and $1,500 for a written review. Thus an issuer requesting an oral hearing before a panel will be assessed a fee of $2,500, while an issuer requesting a written review by a panel will be assessed a fee of $1,500. Should the issuer appeal the panel's decision to the full Committee, it will be assessed an additional fee of $2,500. Issuers will not be charged fees in connection with a ''call for review'' by the Board of Governors.

The Amex believes that these proposed changes will provide appropriate due process to issuers, as well as increased efficiency to the listing and delisting processes in a number of respects:

- The Committee, which has extensive experience and expertise in evaluating listing issues, will be given greater responsibility with respect to listing determinations, while the Board, through its ''call for review'' rights, will retain ultimate oversight of the listing and delisting process as well as of listing matters in general.
- The delays currently inherent in the delisting process should be substantially reduced.
- The potentially disruptive impact of a ''call for review'' will be reduced since only decisions of the full Committee will be subject to ''call for review,'' as opposed to all subcommittee decisions, as is currently the case.
- The Committee will now follow the same review process for both listing and delisting determinations, rather than different processes for each.
- The burdens on the Adjudicatory Council will be reduced by the transfer to the Committee of the Council's existing areas of responsibility with respect to the listing qualifications process.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[20] in general, and Section 6(b)(5) of the Act,[21] in particular, which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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. More specifically, the Exchange believes that the proposed rule change will enable the Exchange to administer its listing program in a more fair, efficient and transparent manner that reflects the rapidly evolving changes in the economy and capital markets. Additionally, the Exchange believes that with respect to companies listed pursuant to the proposed Alternative Listing Standards, investors will derive the benefits inherent in an Amex listing of comprehensive regulation, transparent price discovery and trade reporting to facilitate best execution, and increased depth and liquidity resulting from the confluence of order flow found in an auction market environment.

*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**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such 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, including whether the proposed rule change 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 Exchange. All submissions should refer to File No.

Exchange, which would be either (a) the expiration of the Board of Governors' ''call for review'' period following an adverse decision by the full committee, or (b) an adverse decision by the Board of Governors. 15 U.S.C. 78s.

[18] 15 U.S.C. 78l.

[19] At the Exchange's request, the Commission replaced the word ''guidelines'' with the word ''standards.'' Telephone discussion between Claudia Crowley, Assistant General Counsel—Listing Qualifications, Amex, and Christopher B. Stone, Attorney Advisor, Division, Commission (January 31, 2002).

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

SR–AMEX–2001–47 and should be submitted by March 15, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–4231 Filed 2–21–02; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45452; File No. SR–NYSE–2001–49]**

## Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Amending New York Stock Exchange Rule 902 (Off-Hours Trading Orders)

February 15, 2002.

On December 11, 2001, the New York Stock Exchange, Inc. (''NYSE'') filed with the Securities and Exchange Commission (''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 amending NYSE Rule 902, Off-Hours Trading Orders, to permit the submission of member to member coupled orders in Crossing Session I in order to close out error positions.

The proposed rule change was published for comment in the **Federal Register** on January 14, 2002.[3] The Commission received no comments on the proposal.

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,[4] and, in particular, the requirements of section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act.[6] Section 6(b)(5)[7] requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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.

The Commission believes that the proposed rule change promotes the objectives of this section of the Act. Specifically, the proposed rule change allows the submission of member to member coupled orders during Crossing Session I, when they normally would not be permitted, for the limited purpose of closing out error positions.[8] The Commission believes that this limited exception will foster cooperation and coordination with persons engaged in facilitating transactions in securities and remove impediments to and perfect the mechanism of a free and open market and a national market system by removing an impediment to closing out error positions. Moreover, the Commission believes that it is generally in the public interest to facilitate the closing out of error positions.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–NYSE–2001–49) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–4233 Filed 2–21–02; 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45442; File No. SR–Phlx–2001–115]**

## Self-Regulatory Organizations; Order Granting Accelerated Approval to a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Volume Thresholds for the Options Specialist Shortfall Fee and Corresponding Shortfall Credit

February 13, 2002.

### I. Introduction

On December 20, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''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 schedule of dues, fees and charges to increase the requisite volume thresholds associated with the options specialist 10 percent deficit fee (''shortfall fee'') and corresponding options specialist 10 percent shortfall credit (''shortfall credit''). The Exchange also proposed to amend the definition of a Top 120 Option, clarify who is eligible to receive the shortfall credit and make other minor, technical amendments to its fee schedule. On January 15, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3]

The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on January 28, 2002.[4] The comment period was for fifteen days and expired on February 12, 2002. No comments were received regarding the proposed rule change, as amended. This order approves the proposed rule change, as amended, on an accelerated basis.

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[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45251 (January 8, 2002), 67 FR 1793.

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

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

[8] The NYSE confirmed that the new exception to NYSE Rule 902(a)(ii) (embodied in proposed NYSE Rule 902(a)(ii)(C)) is subject to NYSE Rule 906, Impact of Trading Halts on Off-Hours Trading, and, therefore, the proposed exception does not permit trading of a security that is subject to a trading halt under NYSE Rule 906 (a) or (b). Telephone discussion between Donald Siemer, Director Rule Development, Market Surveillance Division, NYSE, and Christopher B. Stone, Attorney Advisor, Division of Market Regulation, Commission (January 7, 2002).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Cynthia K. Hoekstra, Counsel, Phlx, to Kelly Riley, Senior Special Counsel, Division of Market Regulation, Commission, dated January 14, 2002 (''Amendment No. 1''). In Amendment No. 1, the Exchange expanded the statutory basis of the proposed rule change to include section 6(b)(4) of the Act. In addition, the Exchange requested that the proposed rule change be filed pursuant to section 19(b)(2), rather than section 19(b)(3)(A)(ii), of the Act. Finally, the Exchange requested that the proposed fee be approved as of January 2, 2002, and that the proposed rule change be approved on an accelerated basis in order to permit the Exchange to invoice its January fees in a timely manner by the middle of February.

[4] *See* Securities Exchange Act Release No. 45322 (January 22, 2002), 67 FR 3927.