

upon receipt to an exchange or association-sponsored system that complies with the requirements of the rule with respect to that order. Because other market centers do not require the publication of certain orders that a CHX specialist must currently display under CHX Article XX, Rule 7 (e.g. block size orders), a CHX specialist may not deliver such orders to those other market centers for automatic relief from the requirements of CHX Article XX, Rule 7, despite the fact that such practice is permissible under Rule 11Ac1-4. The proposed modifications would, among other things, allow a CHX specialist to safely transfer such orders to other market centers that are subject to the requirements of Rule 11Ac1-4. As such, the proposed rule change would make CHX Article XX, Rule 7 more consistent with the requirements of Rule 11Ac1-4.

The proposal would also eliminate in CHX Article XX, Rule 7, Interpretation and Policy .01, a reference to the mark sense terminal, an Exchange facility that is no longer operational.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act⁹ 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 burden on competition.

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

No written comments were either solicited or received.

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 CHX 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 CHX. All submissions should refer to File No. SR-CHX-99-18 and should be submitted by January 2, 2002.

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

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45121; File No. SR-NYSE-2001-48]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Exchange Fees

December 3, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,¹ ("Act") and Rule 19b-4 thereunder,² notice is hereby given that on December 3, 2001,³ the New York Stock Exchange,

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On December 3, 2001, the Commission received a letter from the NYSE explaining its rationale for the proposed rule filing. The proposed rule change

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 the NYSE. 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 NYSE proposes to amend Section 902.02 of the Listed Company Manual ("Manual") to provide that the one-time fee and the minimum fee shall not apply to original listings of closed-end funds, and to implement a \$1 million cap on the continuing annual fees payable by any one family of closed-end funds.

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. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections, A, B, and C below.

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

1. Purpose

Currently, there are over 380 closed-end funds listed on the Exchange. Many of these funds represent multiple listings from a family of funds such as Nuveen, Morgan Stanley Van Kampen or Merrill Lynch. This year the Exchange has carefully reviewed the original and continuing annual listing fees charged to closed-end funds listed on the Exchange, particularly focusing on how those fees affect the fund families that comprise such a larger part of the closed-end fund listings.

Currently, closed-end funds pay original listing fees based on the same schedule applicable to regular listed companies, with some modest relief in terms of the minimum original fee.⁴ The

is treated as filed on the date that the letter was received. See letter from James Duffy, Senior Vice President & Associate General Counsel, Office of the General Counsel, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 21, 2001.

⁴ In addition, on July 23rd of this year the Exchange implemented a temporary cap of \$1.25 million on the aggregate listing fees payable by any one fund family during 2001, although without refund for any family that had exceeded that level prior to the implementation of the cap. See Exchange Act Release No. 44554, July 13, 2001, 66

⁹ 15 U.S.C. 78f(b)(5).

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 Act⁷ 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).