complete the Form, 31 funds that file on Form N–2 will each incur 1.5 additional burden hours, and 82 funds that file on Form N–2 will each incur 1.0 additional burden hour. It is estimated that five funds that file on Form N–3 will each incur 1.5 burden hours in addition to the time currently required to complete Form N–3, while 13 funds that file on Form N–3 will each incur 1.0 additional burden hour. Finally, it is estimated that 28 funds that file on Form N-4 will each incur 1.5 burden hours in addition to the time currently required to complete Form N–4, while 72 funds that file on Form N–4 will each incur 1.0 additional burden hour.

The estimates of burden hours set forth above are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the cost of SEC rules and forms.

General comments may be directed to the OMB Clearance Officer for the Securities and Exchange Commission at the address below. Comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, and to the Securities and Exchange Commission's Clearance Officer, Office of Information and Regulatory Affairs, Paperwork Reduction Act numbers 3235–0009 (for Regulation S–X), 3235–0307 (for Form N–1A), 3235–0026 (for Form N–2), 3235–0316 (for Form N–3), and 3235–0318 (for Form N–4), Office of Management and Budget, Room 3228, New Executive Office Building, Washington, D.C. 20543.

Dated: July 21, 1995.

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34–36020; File Nos. SR–CBOE–95–11; SR–PSE–95–04; SR–Phlx–95–12; SR–Amex–95–07]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval of Related Amendments by the Chicago Board Options Exchange, Inc., the Pacific Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc.; and Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change and Related Amendments by the American Stock Exchange, Inc., Relating to Listing Standards for Options on Securities Issued in Certain Corporate Restructuring Transactions

July 24, 1995.

I. Introduction

On January 26, February 13, February 15, and February 17 the Chicago Board Options Exchange, Inc. (''CBOE''), the Philadelphia Stock Exchange, Inc. (''Phlx''), the Pacific Stock Exchange, Inc. (''PSE''), and the American Stock Exchange, Inc. (''Amex'') (collectively the ''Exchanges''), respectively, 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] proposed rule changes to adopt listing standards for options on securities issued in certain corporate restructuring transactions.

On February 17, 1995, February 21, 1995, February 21, 1995 and July 11, 1995, the CBOE, PSE, Phlx and Amex, respectively, submitted to the Commission Amendment No. 1 to their proposed rule changes in order to make certain technical corrections to the text of the proposals.[3] On May 10, 1995, the CBOE submitted to the Commission Amendment No. 2 to its proposed rule change.[4] On June 13, 1995, the CBOE submitted to the Commission Amendment No. 3 to its proposed rule change.[5] On July 11, 1995, the Amex submitted to the Commission Amendment Nos. 2 and 3 to its proposed rule change.[6] On June 26, July 11 and July 11, 1995, the Phlx, PSE, and the Amex submitted to the Commission Amendment Nos. 2, 2, and 4, respectively, to their proposed rule changes.[7] On July 11, 1995, the Phlx submitted to the Commission Amendment No. 3 to its proposed rule changes.[8]

Notices of the CBOE, PSE and Phlx proposals and Amendment No. 1 to PSE's and Phlx's proposed rule changes were published for comment in the **Federal Register** on February 8, 1995, March 1, 1995 and March 1, 1995, respectively.[9] No comments were

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

[2] 17 CFR 240.19b–4.

[3] The CBOE, PSE, Phlx and Amex submitted identical revisions to their proposed rule changes in order to clarify that comparative asset values and revenues shall be derived from *the later of* the most recent annual or most recently available comparable interim financial statements of each of the respective issuers. *See* Letters from Michael Meyer, Attorney, Schiff, Hardin & Waite, dated February 17, 1995, Michael Pierson, Senior Attorney, PSE, dated February 21, 1995, and Michele Weisbaum, Associate General Counsel, Phlx, dated February 21, 1995, to Beth Stekler, Attorney, Office of Market Supervision (''OMS''), Division of Market Regulation (''Market Regulation''), Commission. *See also* Letter from Claire McGrath, Special Counsel, Amex, to Michael Walinskas, Branch Chief, OMS, Market Regulation, Commission, dated July 11, 1995 (''Amex Letter'') (collectively ''Amendment No. 1'').

[4] Amendment No. 2 to CBOE's proposal makes certain technical changes and states that under narrowly defined circumstances, the CBOE may determine that the public ownership of shares and holder requirements for the Restructure Security are satisfied based on these same characteristics of the Original Security. *See* Letter from Michael Meyer, Attorney, Schiff Hardin & Waite, to Sharon Lawson, Assistant Director, OMS, Market Regulation, Commission, dated May 10, 1995 (''CBOE Amendment No. 2'').

[5] Amendment No. 3 to CBOE's proposed rule change makes further technical changes, and eliminates the reference to rights offerings in paragraph (c) of proposed new Interpretation and Policy .05 to CBOE Rule 5.3. *See* Letter from Michael Meyer, Attorney, Schiff Hardin & Waite, to Sharon Lawson, Assistant Director, OMS, Market Regulation, Commission, dated June 13, 1995 (''CBOE Amendment No. 3'').

[6] The Amex submitted Amendment No. 2 to its proposed rule change in order to delete any and all references to restructuring transactions involving shareholders other than existing shareholders of the issuer of the Original Security. The Amex also submitted Amendment No. 3 to its proposed rule change to correct a technical error in proposed rule 916.01(6) by properly referencing various commentaries. *See* Amex Letter, *supra* note 3.

[7] The Phlx, PSE, and Amex amended the text of their proposed rules to conform to the language filed by the CBOE. *See* Letter from Michele Weisbaum, Associate General Counsel, Phlx, to Michael Walinskas, OMS, Market Regulation, Commission, dated June 26, 1995 (''Phlx Amendment No. 2''), Letter from Michael Pierson, Senior Attorney, PSE, to John Ayanian, Attorney, OMS, Market Regulation, Commission, dated July 11, 1995 (''PSE Amendment No. 2''). *See also* Amex Letter, *supra* note 3.

[8] The Phlx submitted Amendment No. 3 to its proposed rule change to make certain technical clarifications, and to revise paragraph (b) of proposed new Commentary .05 to Phlx Rule 1009 to state that option contracts may not be initially listed for trading on a Restructure Security until shares of the Restructure Security are issued and outstanding and are the subject of trading that is not on a ''when issued'' basis. *See* Letter from Michele Weisbaum, Associate General Counsel, Phlx, to John Ayanian, Attorney, OMS, Market Regulation, Commission, dated July 11, 1995 (''Phlx Amendment No. 3'').

[9] *See* Securities Exchange Act Release Nos. 35315 (February 1, 1995), 60 FR 7598 (File No. SR–CBOE–

Continued

received on the proposals. This order approves the proposed rule changes by the CBOE, PSE, Phlx and Amex. The proposed rule change by the Amex, as amended, and certain amendments by the CBOE, PSE, and Phlx, have been approved on an accelerated basis.

II. Background

The Exchanges currently maintain uniform standards regarding the approval for listing of underlying securities for options trading.[10] Specifically, to be the subject of options trading, the underlying security must meet the following guidelines: (1) Trading volume in all markets of at least 2.4 million shares in the preceding twelve months (''Volume Test''); (2) market price per share of at least $7.50 for the majority of business days during the three calendar month period preceding the date of selection (''Price Test''); (3) a minimum public ownership of 7 million shares (''Public Ownership Requirement''); [11] and (4) a minimum of 2,000 holders (''Holder Requirement'').[12] An exchange must determine that a security satisfies the above requirements, as of the date it is selected for options trading (''selection date''), which is the date the exchange files for certification of the listing of the option with the Options Clearing Corporation (''OCC''). Depending upon the interest and response from other options exchanges, the exchange may begin options trading from three or five business days after the selection date.

The Exchanges have adopted maintenance criteria for withdrawal of approval of an underlying security subject to options trading.[13] A security previously approved for options transactions shall be deemed not to meet the guidelines for continued listing if (1) Trading volume in all markets is less than 1.8 million shares in the preceding twelve months (''Maintenance Volume Test''); (2) market price per share closes below $5.00 on a majority of business days during the preceding six calendar months (''Maintenance Price Test''); [14] (3) public ownership amounts to fewer than 6.3 million shares (''Maintenance Public Ownership Requirement''); or (4) there are fewer than 1,600 holders (''Maintenance Holder Requirement'').[15]

Both the initial and maintenance listing criteria are intended to ensure, among other things, that options are only traded on stocks with adequate depth and liquidity so that the options and their underlying components are not readily susceptible to manipulation.

III. Description of the Proposals

The Exchanges propose to amend their rules to facilitate the earlier listing of options on securities issued in certain corporate restructuring transactions. The proposals will apply to securities (''Restructure Security'') issued by a public company to existing shareholders, with existing publicly traded shares subject to options trading, in connection with certain ''restructuring transactions.''[16]

Under the current standards, an exchange is generally precluded from listing eligible options on newly issued securities for at least three months, given that the guidelines require three months of price history to determine if the underlying security meets the Price Test. Additionally, an exchange may only list eligible options on newly issued securities, if the underlying security meets the Volume Test which requires trading volume in all markets of at least 2.4 million shares in the preceding twelve months. The proposed rule changes, however, would facilitate the earlier listing of options on a Restructure Security by permitting an exchange to determine whether a Restructure Security satisfies the Volume Test and Price Test by reference to the trading volume and market price history of an outstanding equity security (''Original Security'') previously issued by the issuer of the Restructure Security, or affiliate thereof. In addition, the Exchanges propose specific criteria for evaluating the distribution of shares of a Restructure Security for purposes of meeting the Public Ownership and Holder Requirements. To the extent that the initial options listing requirements are satisfied based upon these ''lookback'' provisions to the Original Security and the other provisions of the proposal, then an exchange will permit options trading to begin on the ex-date for the transaction.[17]

Before an exchange may invoke this proposed ''lookback'' provision and utilize the volume and price of the Original Security for purposes of meeting the options eligibility criteria for the Restructure Security, the Restructure Security must first satisfy one of four alternate conditions. The first three alternate conditions are intended to ensure that the trading volume and market price history of the Original Security represent a reasonable surrogate for determining the likely future trading volume and price data of the Restructure Security. Under these conditions either, (a) the aggregate market value of the Restructure Security, (b) the aggregate book value of the assets attributed to the business represented by the Restructure Security (minimum $50 million) or (c) the revenues attributed to the business represented by the Restructure Security (minimum $50 million) must exceed one of two stated percentages of the same measure for the Original Security.[18] The threshold percentages will be 25% if the applicable measure determined with respect of the Original Security represents an interest in the combined enterprise prior to the restructuring transaction, and 33⅓% if the applicable measure determined with respect of the Original Security represents an interest in the remainder

95–11); 35410 (February 22, 1995), 60 FR 11158 (File No. SR–PSE–95–04 and Amendment No. 1); and 35409 (February 22, 1995), 60 FR 11159 (File No. SR–Phlx–95–12 and Amendment No. 1).

[10] *See* Amex Rule 915; CBOE rule 5.3; PSE Rule 3.6; Phlx Rule 1009; and NYSE Rule 715.

[11] Shares that are owned by persons required to report their stock holdings under Section 16(a) of the Act (*i.e.*, directors, officers, and 10% beneficial owners) are excluded from this calculation.

[12] This proposal addresses price, volume, public ownership, and holder requirements specifically. For a Restructure Security to meet initial listing requirements, however, it must additionally comply with all requirements set forth by the Exchanges in their options eligibility rules. For example, the security must be registered, and listed on a national securities exchange, or traded through the facilities of a national securities association and reported as a ''national market system'' (''NMS'') security as set forth in Rule 11Aa3–1 under the Act, and the issuer must be in compliance with any applicable requirements of the Act. *See supra* note 10.

[13] *See* Amex Rule 916; CBOE Rule 5.4; PSE Rule 3.7; Phlx Rule 1010; and NYSE Rule 716.

[14] Additional criteria permits the underlying security under certain circumstances to trade as low as $3.00 for a temporary period of time. *See* Id.

[15] This proposal addresses maintenance criteria for market price and trading volume specifically. For a Restructure Security to meet maintenance requirements for an underlying security subject to options trading, however, it must additionally comply with all requirements set forth by the Exchanges in their options eligibility rules. *See supra* note 13.

[16] The proposal defines a ''restructuring transaction'' as a spin-off, reorganization, recapitalization, restructuring or similar corporate transaction.

[17] Option contracts may not be initially listed for trading in respect of a Restructure Security until the ex-date. The ex-date occurs at such time when shares of the Restructure Security become issued and outstanding and are the subject of trading that are not on a ''when issued'' basis or in any other way contingent on the issuance or distribution of the shares. *See e.g.*, Phlx Amendment No. 3, *supra* note 8.

[18] Aggregate market value will be based on share prices that are either (a) all closing prices in the primary market on the last business day preceding the selection date or (b) all opening prices in the primary market on the selection date. The aggregate market value of the Restructure Security may be determined from ''when issued'' prices, if available.

Asset values and revenues will be derived from the later of (a) the most recent annual financial statements or (b) the most recent interim financial statements of the respective issuers covering a period of not less than three months. Such financial statements may be audited or unaudited and may be pro forma.

of the enterprise after the restructuring transaction. The fourth alternate condition is that the aggregate market value represented by the Restructure Security be at least $500 million. This condition is based on the Exchanges' view that even if a Restructure Security does not meet the comparative tests outlined above, a Restructure Security with an aggregate market value of 4500 million, by virtue of its absolute size, represents a substantial portion of the Original Security, and thus should qualify for the ''lookback'' provision.

If any one of the four conditions set forth above is satisfied, a Restructure Security will qualify for the ''lookback'' provision. Under the ''lookback'' provision, a Restructure Security may be eligible for options trading immediately upon its issuance provided the following requirements are satisfied. First, the Restructure Security must satisfy the options Volume and Price Tests. Under the proposals, an exchange may be permitted to determine whether a Restructure Security satisfies the Volume and Price Tests by reference to the trading volume and market price history of the Original Security. Under the proposed rule change, the trading volume and market price history of the Original Security that occurs *prior to the restructuring ex-date* can be used for these calculations (emphasis added).[19] Volume and price data may be derived from ''when issued'' trading in the Restructure Security. However, once an exchange uses ''when issued'' volume or prices for the Restructure Security to satisfy the relevant guidelines, it may not use the Original Security for that purpose on any subsequent trading day. In addition, both the trading volume and market price history of the Original Security must be used, if either is so used.

Additionally, an exchange must determine whether a Restructure Security will satisfy the Public Ownership and Holder Requirements. This determination will either be based on facts and circumstances that will exist on the intended date for listing the option, or based on assumptions that are permitted under the proposal. Because the shares of the Restructure Security are to be issued or distributed to the shareholders of the issuer of the Original Security, the Exchanges propose that these requirements may be satisfied based upon the exchange's knowledge of the existing number of outstanding shares and holders of the Original Security.

The Exchanges further proposes that if a Restructure Security is to be listed on an exchange or in an automatic quotation system that subjects it to an initial listing requirement of no less than 2,000 holders, then the options exchange may assume that the Holder Requirement will be satisfied. Similarly, if a Restructure Security is to be listed on an exchange or in an automatic quotation system subject to an initial listing requirement of no less than public ownership of 7 million shares, then the options exchange may assume that Public Ownership Requirement will be satisfied. Additionally, if an exchange determines that at least 40 million shares of a Restructure Security will be issued and outstanding in a restructuring transaction, then it may assume that the Restructure Security will satisfy both the Public Ownership and Holder Requirements.[20]

An exchange, however, shall not rely on the above assumptions if, after reasonable investigation, it determines that either the public ownership of shares or the holder requirement, in fact, will not be satisfied on the intended date for listing the option. In addition, pursuant to the proposal, other exchanges will have the opportunity to challenge the certification by demonstrating that the Restructure Security will not meet the initial listing criteria with respect to public ownership and holders.

Finally, the proposal will adopt a similar ''lookback'' provision for the Maintenance Volume Test and the Maintenance Price Test. Specifically, for purposes of satisfying these requirements, the trading volume and market price history of the Original Security, as well as any ''when issued'' trading in the Restructure Security, can be used for such calculations, provided that they are only used for determining price and volume history for the period prior to commencement of trading in the Restructure Security.

IV. Commission Finding and Conclusions

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular with the requirements of Section 6(b)(5),[21] in that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

The Commission believes that it is necessary for securities to meet certain minimum standards regarding both the quality of the issuer and the quality of the market for a particular security to become options eligible. These standards are imposed to ensure that those issuers upon whose securities options are to be traded are financially sound companies whose trading volume, market price, number of holders, and public ownership of shares are substantial enough to ensure adequate depth and liquidity to sustain options trading that is not readily susceptible to manipulation. The Commission also recognizes that under current equity options listing criteria, existing shareholders of an issuer that becomes involved in a restructuring transaction, may be precluded for a significant period from employing an adequate hedging strategy involving options on any newly acquired Restructure Security received in connection with such transaction.

Accordingly, to determine whether the earlier listing of options overlying a Restructure Security is reasonable, the Commission must balance the benefits of providing adequate hedging strategies to shareholders of the issuer of the Restructure Security, and the risks of approving certain securities for options trading before such securities actually satisfy the options eligibility criteria, which currently, for newly issued securities, can not occur, at the very least, prior to three months after the security begins trading.[22] The Commission believes that the proposed limited exception to established equity options listing procedure strikes such a reasonable balance.

As discussed in more detail below, the Commission believes that the conditions of the new rule will help to ensure that only those securities that are most likely to have adequate depth and liquidity will be eligible for options trading prior to the establishment of a recognized trading history. Additionally, by facilitating the earlier listing of options on a Restructure Security, the Commission believes that investors formerly holding the Original Security, upon which options are currently traded, should be able to

[19] *See supra* Section II.

[20] According to the CBOE, for most restructuring transactions, it should be possible to know or to deduce from publicly available information on the distribution of the Restructure Security (or a worst case estimate of the number of shares that will be publicly held and the number of shareholders) upon completion of the restructuring transaction. As proposed, an exchange could make the necessary determination prior to the ex-date and could certify the Restructure Security for options trading on that basis. *See* Letter from Michael Meyer, Attorney, Schiff Hardin & Waite, to Sharon Lawson, Assistant Director, OMS, Market Regulation, dated January 25, 1995 (''CBOE Letter'').

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

[22] *See supra* Section II.

better hedge the risk of their newly acquired stock position in the Restructure Security.[23]

Despite the benefits of the proposal, the Commission believes that the proposal should only apply to restructuring transactions that involve financially sound and sufficiently large companies. The Commission believes that the Exchanges have addressed this concern by adding conditions to the proposal that require that Restructure Security to either satisfy certain comparative test (comparing the Restructure Security, or its related business with that of the Original Security, or its related business),[24] or meet a very high aggregate market value standard ($500 million).

The Commission believes that if one of the comparative tests is satisfied, the Restructure Security should adequately resemble the Original Security to qualify for the ''lookback'' provision. Under the ''lookback'' provision, a Restructure Security will be able to satisfy the Volume and Price Tests if the trading volume and market price history of the Restructure Security, together with the trading volume and market price history of the Original Security occurring prior to the ex-date, meet the existing related requirements. Moreover, the Commission believes that, given the limited scope of the proposal, it is appropriate to conclude that a Restructure Security with an aggregate market value of at least $500 million appropriately qualifies for the ''lookback'' provision.

The Commission also believes that it is appropriate for an exchange to count ''when issued'' trading in the Restructure Security when determining if the Restructure Security will satisfy the Volume and Price Tests set forth in the initial options listing requirements. However, once an exchange begins to use ''when issued'' volume or price history for the Restructure Security to satisfy the Volume or Price Tests, it may not use the Original Security for such purposes on any subsequent trading day. In addition, both the trading volume and market price history of the Original Security must be used, if either is so used. For example, if in order to satisfy the Volume Test for a Restructure Security for which the ex-date is expected to be February 1, 1996, an exchange may elect to base its determination on the trading volume of the Original Security from February 1, 1995 through December 27, 1995, and then utilize the trading volume in the when-issued market for the Restructure Security from December 28, 1995 through January 31, 1996, in determining whether options covering the Restructure Security may be listed on the February 1 ex-date. Under this example, after December 28, 1995, only when-issued trading data for the Restructure Security may be used in determining whether it meets the Volume and Price Tests. An exchange, however, would be permitted to use the volume and price history of the Original Security throughout the entire period prior to February 1, 1996, provided that it did not rely on any when-issued trading data during that period.

The Commission notes that an exchange shall not use trading history relating to the Original Security after the ex-date to meet the initial options listing requirements for the option contracts overlying the Restructure Security. Additionally, the condition that option contracts overlying a Restructure Security shall not be initially listed for trading until such time as shares of the Restructure Security are issued and outstanding and are the subject of trading that is not on a ''when issued'' basis or in any other way contingent on the issuance or distribution of the shares will ensure that options will only be traded a Restructure Security when it is certain the security is actually issued and outstanding.

In addition to satisfying the Volume and Price Tests, a Restructure Security must also meet certain distribution requirements before an exchange can deem such security to be options eligible. Specifically, the Restructure Security must have 2,000 holders, and 7 million shares must be owned by persons not required to report their stock holdings under Section 16(a) of the Act to be options eligible. Under the most typical restructuring transaction, a spin-off to existing shareholders of the issuer of the Original Security, an exchange should be able to determine from publicly available information or otherwise reasonably deduce whether the Restructure Security will satisfy the 2,000 shareholders requirement and the public ownership of 7 million shares requirement.[25] As an example, if Issuer A, having public ownership of 10 million shares of common stock owned by 5,000 holders intends to effect a spin-off of a subsidiary, whereby one share of the subsidiary is issued to existing shareholders of Issuer A for each currently held outstanding share of Issuer A, immediately following the spin-off the former subsidiary will have public ownership of 10 million shares and 5,000 holders. As a result, the former subsidiary will satisfy both the public ownership of 7 million shares and 2,000 holder requirements.

As an alternative to the above, the proposal provides that an exchange may make certain limited assumptions based on facts and circumstances that will exist on the intended date for listing the options in order to determine the Public Ownership and Holder Requirements. First, if a Restructure Security is to be listed on an exchange or in an automatic quotation system that has, and applies to the Restructure Security, an initial listing requirement that the issuer have no less than 2,000 holders, the Commission believes that it is reasonable for an exchange to assume that its comparable option listing requirement will be satisfied. Second, if a Restructure Security is to be listed on an exchange or in an automatic quotation system that has, and applies to the Restructure Security, an initial listing requirement of no less than public ownership of 7 million shares, the Commission believes that it is reasonable for the an exchange to assume that its comparable option listing requirement will be satisfied.

The Commission notes that currently no exchange or automatic quotation system has a public ownership initial stock listing standard that is as stringent as those required under the options eligibility requirements. Moreover, a stock exchange may now be able to list stocks pursuant to alternate listing standards. For example, the Commission has recently approved alternate listing standards for companies listed on the New York Stock Exchange (''NYSE''), including, among other things, the distribution of shares.[26] Under these alternate listing standards, the NYSE is currently allowed to list certain companies with 500 shareholders that meet heightened requirements in other areas in lieu of its 2,200 total shareholder requirement.

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[23] Although the proposals do not specifically address it, the Commission understands that the application of the proposals is limited to instances where options are listed on the Original Security.

[24] *See supra* note 18 and accompanying text. The Commission notes that the Exchanges proposed that comparative asset values and revenues, when used to determine whether the above-mentioned conditions are satisfied, shall be derived ''from the later of the most recent annual or most recently available comparable interim *(not less than three months* financial statements.'' This provision means that the interim financial statements must cover a period of not less than three months.

[25] The Commission notes that ''public ownership of shares, as referred to herein, are shares that are owned by persons not required to report their stock holdings under Section 16(a) of the Act (*i.e.*, directors, officers, and 10% beneficial owners).

[26] *See* Paragraph 102.01 of the NYSE's Listed Company Manual. *See also* Securities Exchange Act Release No. 35571 (April 5, 1995), 60 FR 18649 (April 12, 1995) (order approving proposed rule change relating to domestic listing standards).

Therefore, the Exchanges should be careful to precisely determine which listing standards are being applied to the listing of the Restructure Security prior to making a determination as to whether the Restructure Security meets the corresponding options listing criteria.

Additionally, the proposal provides that if at least 40 million shares of a Restructure Security will be issued and outstanding in a restructuring transaction, an exchange may assume that the Restructure Security will satisfy both the public ownership of shares and holder requirements. The Commission believes this is appropriate because it appears unlikely that a Restructure Security with at least 40 million issued and outstanding shares, will have fewer than 2,000 holders or less than 7 million shares owned by persons not required to report holdings under Section 16(a) the Act.

The Commission believes that concerns associated with the ability of an exchange to make important listing decisions based on assumptions rather than confirmed facts are alleviated by the crucial provision contained in the proposal that an exchange shall not rely on the above assumptions if, after a reasonable investigation, it determines that either the public ownership of shares or the holder requirement, in fact, will not be satisfied on the intended date for listing the option. At the very least, an exchange should investigate the basis for its assumptions regarding the public ownership of shares and number of shareholders just prior to selecting the option and just prior to trading the option, utilizing a worst case analysis in making its assumptions that the Restructure Security will meet these listing standards upon completion of the restructuring transaction.[27]

In addition, other exchanges will continue to have the opportunity to challenge the certification by demonstrating that the Restructure Security will not meet the initial listing criteria with respect to public ownership and holders. The Commission believes that this provision provides an important check and should help to ensure that no unqualified securities are listed for options trading.

The Commission also believes that it is appropriate for an exchange to apply the ''lookback'' provision, to determine if a Restructure Security will satisfy the Maintenance Volume and Price Tests. The Commission believes that it is appropriate to use the trading volume and market price history of the Original Security, as well as any ''when issued'' trading in the Restructure Security for such calculations, provided that they are only used for determining price and volume history for the period prior to commencement of trading in the Restructure Security.

The Commission notes that because the Maintenance Volume and Price Test are calculated on a rolling forward basis, ''when issued'' trading history for the Restructure Security or trading history for the Original Security prior to the ex-date may be used for maintenance calculations for no more than twelve months after the ex-date for the Restructure Security with respect to the Maintenance Volume Test, and for no more than six months after the ex-date for the Restructure Security with respect to the Maintenance Price Test. For example, if in order to satisfy the Maintenance Volume Test for a Restructure Security on November 1, 1995, for which the ex-date is September 1, 1995, an exchange may elect to base its determination on the trading volume of the Original Security from November 1, 1994 through August 1, 1995, the trading volume in the when-issued market for the Restructure Security from August 2, 1995 through August 31, 1995, but must use the trading volume in the Restructure Security from September 1, 1995 through November 1, 1995. Similarly, in order to satisfy the Maintenance Price Test for the same Restructure Security on November 1, 1995, an exchange may elect to base its determination on the trading price of the Original Security from August 1, 1995 through August 15, 1995, the trading price in the when-issued market for the Restructure Security from August 16, 1995 through August 31, 1995, but must use the trading price in the Restructure Security form September 1, 1995 through November 1, 1995.

The Commission notes that the Exchanges' proposals only permit them to avail themselves of the accelerated listing procedures for a traditional restructuring transaction that is limited to the distribution of shares to existing shareholders of the issuer of the Original Security. Accordingly, the Commission notes that this proposal does not address or apply to restructuring transactions that involve a sale of such securities to the general public, including, but not limited to, initial public offerings or secondary offerings. The Commission is approving the current proposal based, in part, on the need for investors and other market participants with combined stock/option positions in an Original Security to be able to maintain their positions immediately following a restructuring transaction. Otherwise, holders of the Original Security might be temporarily prevented (until the Restructure Security independently satisfies the options listing criteria) from adequately hedging their involuntarily received new positions in the Restructure Security.

The Commission also notes that this proposal does not address or apply to restructuring transactions that involve a sale of such securities in a rights offering to existing holders of the Original Security. The Commission believes that the contingencies in the terms of such an offering make it too difficult to determine whether the number of subscribers for such an offering would be adequate to meet the Pubic Ownership and Holder Requirements and therefore such an offering does not justify the immediate availability of options for the underlying security.

The Commission believes that any future exchange proposing to expand the scope of this proposal beyond that of restructuring transactions involving distributions of securities to existing shareholders or expanding the rule to include rights offerings must address potential concerns associated with being able to adequately determine the minimum number of publicly owned shares and holders of the Restructure Security that will exist on the intended date for listing the options in order to justify accelerated availability of options trading.

The Commission finds good cause for approving the proposed rule change by the Amex prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Specifically, the Commission notes that the Amex's proposed rule change is substantively similar to those proposed by the CBOE, PSE, and Phlx. The Amex rule change proposal raises no issues that are not raised by the other exchanges. Additionally, the Commission notes that the CBOE, PSE, and Phlx proposals were subject to a full notice and comment period, and no comments were received, Accordingly, the Commission believes that it is consistent with section 6(b)(5) of the Act to approve Amex's proposed rule change, as amended, on an accelerated basis.

The Commission also finds good cause for approving identical Amendment No. 1 to the proposed rule changes from the CBOE and Amex prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** This amendment clarifies that comparative asset values

[27] *See e.g.* CBOE Letter, *supra* note 20.

and revenues shall be derived from *the later of* the most recent annual or most recently available comparable interim financial statements of each of the respective issuers. The Commission believes that this amendment helps to clarify the method of determining comparative asset values and revenues and contains only minor variations from the original proposals. Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) of the Act to approve Amendment No. 1 to CBOE's and Amex's proposed rule changes on an accelerated basis.

The Commission finds good cause for approving Amendments Nos. 2 and 3 to the Amex's proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Amendment No. 2 to Amex's proposal addresses the scope of transactions qualifying for the proposed equity options listing criteria by deleting any and all references to restructuring transactions involving shareholders other than existing shareholders of the issuer of the Original Security. This amendment ensures that the accelerated options listing procedures as proposed by the exchanges, apply only to a restructuring transaction involving existing shareholders of the issuer of the Original Security. The Commission believes that Amendment No. 2 to Amex's proposal effectively narrows the scope, and accurately reflects the original intent, of the proposed rule change. Amendment No. 3 to Amex's proposal corrects a technical error in proposed rule 916.01(6) by properly referencing various commentaries. The Commission does not believe the amendment raises any new or unique regulatory issues. Therefore, the Commission believes it is consistent with Sections 6(b)(5) of the Act to approve Amendment Nos. 2 and 3 to Amex's proposal on an accelerated basis.

The Commission finds good cause for approving Amendments Nos. 2 and 3 to the CBOE's proposed rule changes, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Specifically, Amendment No. 2, to CBOE's proposal makes certain technical changes to clarify the meaning of the proposed rule changes to achieve greater uniformity with the language of the other exchanges, and to properly reflect the original intent of the proposed rule change. Additionally, Amendment No. 2 to CBOE's proposal states that under narrowly defined circumstances, the CBOE may determine that the public ownership of shares and holder requirements are satisfied based on these same characteristics in respect of the Original Security. Amendment No. 3 to CBOE's proposed rule changes makes further technical changes, and eliminates the reference to rights offerings in paragraph (c) of proposed new Interpretation and Policy .05 to CBOE Rule 5.3. The Commission does not believe these amendments raise any new or unique regulatory issues. In particular, the Commission believes that the amendments clarify the meaning, and reflect the scope of the proposed rule change, as originally intended. Therefore, the Commission believes it is consistent with Sections 6(b)(5) of the Act to approve Amendments Nos. 2 and 3 to CBOE's proposed rule changes, respectively, on an accelerated basis.

The Commission finds good cause for approving Amendments Nos. 2, 2, and 4 to the Phlx's, PSE's, and Amex's proposed rule changes, respectively, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** These amendments merely conform the Phlx's, PSE's, and Amex's proposed rule changes to Amendment Nos. 2 and 3 to CBOE's proposal. The Commission does not believe the amendments raised any new or unique regulatory issues. Therefore, the Commission believes it is consistent with Sections 6(b)(5) of the Act to approve Amendments Nos. 2, 2 and 4 to Phlx's, PSE's, and Amex's proposed rule changes, respectively, on an accelerated basis.

The Commission finds good cause for approving Amendment No. 3 to the Phlx's proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 3 to Phlx's proposal makes certain technical clarifications and revises paragraph (b) of proposed new Commentary .05 to Phlx Rule 1009 to state that option contracts may not be initially listed for trading on a Restructure Security until shares of the Restructure Security are issued and outstanding and are the subject of trading that is not on a ''when issued'' basis. Because Phlx Amendment No. 3 merely reverses an unintended amendment to the proposed rule change as originally filed, the Commission does not believe the amendment raises any new or unique regulatory issues. Therefore, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 3 to Phlx's proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning the Amex proposal Amendments Nos. 1, 2, 3 and 4 to Amex's proposal; CBOE Amendment Nos. 1, 2 and 3; Phlx Amendment Nos. 2 and 3; and PSE Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal offices of the Exchanges. All submissions should refer to SR–CBOE–95–11; SR–PSE–95–04; SR–Phlx–95–12; and SR–Amex–95–07 and should be submitted by August 21, 1995.

V. Conclusion

Based on the above findings, the Commission believes the proposals are consistent with Section 6(b)(5) of the Act by facilitating transactions in securities while at the same time ensuring continued protection of investors. As noted above, the strict conditions of the rule should help to identify for accelerated options eligibility only those Restructure Securities that will have adequate depth and liquidity to support options trading. At the same time it will provide investors with a better opportunity to hedge their positions in both the Original and the Restructure Security.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule changes (SR–CBOE–95–11; SR–PSE–95–04; SR–Phlx–95–12; and SR–Amex–95–07), as amended, are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

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[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).