the proposed limit of 25,000-contracts and 20,000-contracts for options on the most actively traded, widely held securities, permits the Commission to avoid placing unnecessary restraints on those options where the manipulative potential is the least and the need for increased positions likely is the greatest. Accordingly, the Commission believes that the additional position and exercise limit tiers is warranted.

The Commission believes that the proposed additions to the NASD's position and exercise limit tiers appears to be both appropriate and consistent with the Commission's gradual, evolutionary approach. There are no ideal position limits in the sense that options positions of any given size can be stated conclusively to be free of any manipulative concerns. The Commission, however, is relying on the absence of discernible manipulation problems under the current framework as an indicator that the proposed additional limit tiers are justified.

The Commission does not believe that the addition of the two new higher limit tiers will have any adverse effects on the options markets. In approving the initial two-tiered position limit system, the Commission stated that it did not believe that requiring traders to keep track of two limits rather than one was burdensome or confusing or would lead to accidental violations.[15] The Commission does not believe that a change from the current three tiers to five tiers should change this conclusion.

The Commission believes that although position and exercise limits for options must be sufficient to protect the options and related markets from disruptions by manipulations, the limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent market makers from adequately meeting their obligations to maintain a fair and orderly market. The Commission believes that the NASD's proposal is a reasonable and appropriately tailored effort to accommodate the identified needs of options market participants. In this regard it is important to note that the proposals only add higher position and exercise limit tiers for classes of options involving the most liquid stocks. As a result, the proposal affects only a small number of equity option classes that are traded. In addition, based on the NASD's experience, the Commission believes that the proposed additional limit tiers should result in little or no additional risk to the marketplace.[16]

The Commission finds good cause to approve the proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Specifically, by accelerating the approval of the NASD's rule proposal, the Commission is conforming the NASD's position and exercise limits with those levels recently approved for the options exchanges.[17] Accelerated approval of the proposed rule change will thereby provide for the desired uniformity for position and exercise limits within the exchange traded options market. Any other course of action could lead to unnecessary investor confusion. In addition, the CBOE's proposal was noticed for the entire twenty-one day comment period and generated no negative responses.[18] Accordingly, the Commission believes that it is consistent with Section 15A(b)(6) of the Act to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2)[19] of the Act that the proposed rule change (File No. SR–NASD–95–55) is hereby approved on an accelerated basis.

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

Margaret H. McFarland,

Deputy Secretary.

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[15] In this regard, the Commission notes that the options exchanges and the NASD routinely review the trading characteristics of the underlying stocks to determine the appropriate position and exercise limit tiers for the option classes.

[16] The Commission notes that to the extent the potential for manipulation increases because of the additional tiers, the Commission believes the NASD's surveillance programs will be adequate to detect as well as to deter attempted manipulative activity. The Commission will, of course, continue to monitor the NASD's surveillance programs to ensure that problems do not arise.

[17] See *supra* note 4.

[18] *Id.*

[19] 15 U.S.C. 78s(b)(2) (1988).

[20] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36756; File No. SR–NYSE–95–45]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Additions to ''List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A''

January 22, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on December 28, 1995, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change consists of revisions to the ''List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A'' (the Rule 476A Violations List) by adding to the List: (1) misstatements or omission of fact on any submission filed with the Exchange as provided in NYSE Rule 476(a)(10); (2) failure to comply with the requirements of NYSE Rule 95 with respect to its order identification requirements or prohibition of transactions by members on the Floor involving discretion; and (3) failure to comply with certain requirements for execution of block cross transactions under NYSE Rule 127. The Exchange believes it is appropriate to make the failure to comply with the provisions of the above-named rules subject to the possible imposition of a fine under Rule 476A procedures.[1]

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 self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] Concurrently with the proposed rule change, the Exchange is seeking to amend its Rule 19d–1(c)(2) reporting plan for Rule 476A violations (''Minor Rule Violation Plan'') to include the items proposed for addition to the list of rules subject to Rule 476A. *See* letter from Daniel Parker Odell, Assistant Secretary, NYSE, to Glen Barrentine, Team Leader, Division of Market Regulation, SEC, dated December 27, 1995.

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

1. Purpose

Rule 476A [2] provides that the Exchange may impose a fine, not to exceed $5,000, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules.

The purpose of the Rule 476A procedure is to provide for a response to a rule violation when a meaningful sanction is appropriate but when initiation of a disciplinary proceeding under Rule 476 is not suitable because such a proceeding would be more costly and time-consuming than would be warranted given the minor nature of the violation. Rule 476A provides for an appropriate response to minor violations of certain Exchange rules while preserving the due process rights of the party accused through specified, required procedures. The list of rules, which are eligible for 476A procedures, specifies those rule violations that may be the subject of fines under the rule and also includes a schedule of fines.

In SR–NYSE–84–27, which initially set forth the provisions and procedures of Rule 476A, the Exchange indicated it would amend the list of rules from time to time, as it considered appropriate, in order to phase in the implementation of Rule 476A as experience with it was gained .

The Exchange is presently seeking approval to add to the 476A List of Rules subject to possible imposition of fines under Rule 476A procedures the failure by members or member organizations to adhere to certain procedures under NYSE Rule 127 for execution of block cross transactions at a price that is outside of the NYSE best bid or offer.[3] Specifically, the Exchange would view the failure to fulfill the requirement to satisfy public limit orders at the clean-up price when a position is established or increased for a member's or member organization's proprietary account as one type of violation for which a fine pursuant to Rule 476A might be imposed.[4] In addition, failure to utilize the procedure of NYSE Rule 127 to satisfy all better-priced limit orders when effecting block crosses outside the currently quoted market would also be considered a violation for which a fine pursuant to Rule 476A might be imposed.

The Exchange is also seeking to add to the 476A List failure by members or member organizations to follow the procedures of NYSE Rule 95 with respect to prohibition of transactions by members on the Floor involving discretion as to (1) choice of security, (2) total amount of security to be bought or sold, or (3) whether a transaction is to be a purchase or a sale. The Exchange is also seeking to add to the 476A List of failure to appropriately identify a liquidating order pursuant to NYSE Rule 95(c) (all liquidating orders effected pursuant to Rule 95(c) must be marked on the Floor as ''BC'' in the case of an order covering a short position or ''SLQ'' in the case of the sell order liquidating a long position).

The Exchange is also seeking to add to the 476A List misstatements or omissions of fact on applications for membership approval, financial statements, reports or other submissions filed with the Exchange as provided in NYSE Rule 476(a)(10). The Exchange would be careful to distinguish misstatements or omissions of facts from willfully made false or misleading statements and omissions of material fact, as a finding by the Exchange of conduct in the latter two categories could cause an individual or entity to be subject to a statutory disqualification as defined in Section 3(a)(39)(F) of the Act. Moreover, in appropriate circumstances (*e.g.*, findings of a pattern of misstatements or omissions), the Exchange would not use the procedures under Rule 476A to address the conduct.

While the Exchange, upon investigation, may determine that a violation of these procedures is a minor violation of the type which is properly addressed by the procedures adopted under Rule 476A, in those instances where investigation reveals a more serious violation of the above-described rules, the Exchange will provide an appropriate regulatory response.

2. Statutory Basis

The proposed rule change will advance the objectives of Section 6(b)(6) of the Act in that it will provide a procedure whereby member organizations can be ''appropriately disciplined'' in those instances when a rule violation is minor in nature, but a sanction more serious than a warning or cautionary letter is appropriate. The proposed rule change provides a fair procedure for imposing such sanctions, in accordance with the requirements of Sections 6(b)(7) and 6(d)(1) of the Act.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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 or Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such other 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 self-regulatory organization consents, the Commission will:

(A) by order approve the 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the

[2] Rule 476A was approved by the Commission on January 25, 1985. *See* Securities Exchange Act Release No. 21688 (Jan. 25, 1985), 50 FR 5025 (Feb. 5, 1985). For subsequent additions of rules to the Rule 476A Violations List *see, e.g.*, Securities Exchange Act Release Nos. 22037 (May 14, 1985), 50 FR 12213 (May 21, 1985); 22415 (Sept. 17, 1985), 50 FR 38600 (Sept. 23, 1985); 22490 (Oct. 2, 1985), 50 FR 41084 (Oct. 8, 1985); 23104 (Apr. 11, 1986), 51 FR 13307 (Apr. 18, 1986); 24935 (Oct. 22, 1987), 52 FR 23820 (Oct. 29, 1987), 25763 (May 27, 1988), 53 FR 20925 (June 7, 1988); 27878 (Apr. 4, 1990), 55 FR 13345 (Apr. 10, 1990); 28003 (May 9, 1990), 55 FR 20004 (May 14, 1990); 28505 (Oct. 2, 1990), 55 FR 41288 (Oct. 10, 1990); 28995 (Mar. 28, 1991), 56 FR 12967 (Mar. 28, 1991); 30280 (Jan. 22, 1992), 57 FR 3452 (Jan. 29, 1992); 30536 (Mar. 31, 1992), 57 FR 12357 (Apr. 9, 1992); 32421 (June 7, 1993), 58 FR 32973 (June 14, 1993); 33403 (Dec. 28, 1993), 59 FR 641 (Jan. 5, 1994); 33816 (Mar. 25, 1994), 59 FR 15471 (Apr. 1, 1994); 34230 (June 17, 1994), 59 FR 32727 (June 24, 1994).

[3] In Securities Exchange Act Release No. 35103 (Dec. 15, 1994), 59 FR 65835 (Dec. 21, 1994), the Commission approved amendments to NYSE Rule 127 involving revised procedures for handling such blocks.

[4] The Exchange would not seek to review a member's initial determination as to whether the member would incur excessive stock loss by satisfying all orders at the clean-up price. Given the member's initial determination as to which of NYSE Rule 127's procedures to use, the Exchange would regard the failure to adhere to the requirements of the rule to satisfy public orders limited to the clean-up price at that price before retaining stock for the member organization's proprietary account as a possible minor violation.

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, NW., Washington, DC 20549. 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. SR–NYSE–95–45 and should be submitted by February 20, 1996.

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

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34–36746; International Series Release No. 919; File No. SR–PHLX–95–13]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Modifications of the Position and Exercise Limits for Foreign Currency Options

January 19, 1996.

On March 10, 1995, as subsequently amended below, the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend PHLX Rules 1001, ''Position Limits,'' [3] and 1002, ''Exercise Limits,'' [4] to increase the position and exercise limits for all foreign currency options (''FCOs''), except for options on the Italian lira and the Spanish peseta, to 200,000 contracts.[5] The PHLX subsequently filed Amendment Nos. 1, 2,[6] and 3 [7] to the proposed rule change on April 5, 1995, May 2, 1995, and December 20, 1995, respectively.

Notice of the proposed rule change and Amendment Nos. 1 and 2 appeared in the Federal Register on May 16, 1995.[8] No comments were received on the proposal.

Currently, PHLX Rules 1001 and 1002 establish the following position and exercise limits for FCOs: (i) 150,000 contracts for FCOs which meet an annual trading volume of at least 3,500,000 contracts; and (ii) 100,000 contracts for all other FCOs traded on the PHLX. The PHLX proposes to amend Exchange Rules 1001 and 1002 to increase the position and exercise limits for all FCOs, except for options on the Italian lira and the Spanish peseta,[9] to 200,000 contracts.

PHLX FCO position and exercise limits were set initially at 10,000 contracts in 1982, when FCOs first began trading on the Exchange.[10] Since that time, the position and exercise limits have been raised four times.[11] In 1993, the Exchange filed a proposal to adopt a two-tiered approach to FCO position and exercise limits, which was approved by the Commission in September 1994.[12] According to the PHLX, many of the factors cited at that time continue to indicate that FCO position and exercise limits warrant an increase to 200,000 contracts. For example, the Chicago Mercantile Exchange (''CME'') substituted ''position accountability standards'' [13] for position limits for futures and futures options on certain foreign currencies.[14] As a result, the PHLX believes that the Exchange is placed at a serious competitive disadvantage.

In addition, the Exchange has commenced trading customized FCOs,[15] in which positions are aggregated with other FCO positions in the underlying currency; however, customized option trading volume is not included in the volume calculation to determine the applicable position limit under the current two-tiered system. In addition to customized options, there are also other FCO products that are aggregated for position and exercise limit purposes, including long-term, month-end, cash/spot, and American- and European-style FCOs.[16] According to the PHLX, FCO

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[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR § 240.19b-4 (1995).

[3] Position limits impose a ceiling on the number of option contracts which an investor or group of investors acting in concert may hold or write in each class of options on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls).

[4] Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

[5] *See* note 7, *infra*, and accompanying text.

[6] On April 5, 1995, the PHLX submitted a revised version of the text of the proposed rule change, which amends the text to indicate that the proposed position and exercise limit for FCOs is 200,000 contracts. *See* Letter from Edith Hallahan, Special Counsel, Regulatory Services, to Michael Walinskas, Branch Chief, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, dated April 5, 1995 (''Amendment No. 1''). On April 26, 1995, the PHLX amended PHLX Rule 1001, Commentary .05(c), to (1) replace references to the current FCO position limits with references to the proposed FCO position limit; (2) designate current paragraph (c) as paragraph (b), in order to reflect the deletion of current paragraph (b); and (3) provide that the position and exercise limit for customized and non-customized contracts on the German mark/Japanese yen cross-rate and the British pound/German mark cross-rate options, as well as for cross-rate options traded pursuant to PHLX Rule 1069, ''Customized Foreign Currency Options,'' is 200,000 contracts. *See* Letter from Edith Hallahan, Special Counsel, Regulatory Services, PHLX, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated April 26, 1995 (''Amendment No. 2'').

[7] The PHLX amended its proposal to provide that options on the Italian lira and the Spanish peseta will continue to be subject to their current position and exercise limits of 100,000 contracts. The Exchange also indicated that, under the proposal, the aggregation principles provided in PHLX Rule 1001 will continue to apply. *See* Letter from Gerald D. O'Connell, First Vice President, Market Regulation and Trading Operations, PHLX, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated December 20, 1995 (''Amendment No. 3'').

[8] *See* Securities Exchange Act Release No. 35688 (May 8, 1995), 60 FR 26062.

[9] As noted above, the position and exercise limits for options on the Italian lira and the Spanish peseta will continue to be 100,000 contracts. *See* Amendment No. 3, *supra* note 7.

[10] *See* Securities Exchange Act Release no. 19313 (October 14, 1982), 47 FR 46946 (October 21, 1982) (order approving File No. SR–PHLX–81–4).

[11] *See* Securities Exchange Act Release Nos. 21676 (January 18, 1985), 50 FR 3859 (January 28, 1985) (order approving File No. SR–PHLX–84–18 (increasing position limits from 10,000 to 25,000 contracts); 22479 (September 27, 1985), 50 FR 41276 (October 9, 1985) (order approving File No. SR–PHLX–85–22) (increasing position limits to 50,000 contracts); 23710 (October 15, 1986), 51 FR 37691 (October 23, 1986) (order approving File No. SR–PHLX–86–24) (increasing position limits to 100,000 contracts); and 34712 (September 23, 1994), 59 FR 50307 (October 3, 1994) (order approving File No. SR–PHLX–93–13) (adopting position limit of 150,000 contracts for FCOs with annual trading volume of at least 3,500,000 contracts).

[12] *See* Securities Exchange Act Release No. 34712, *supra* note 10.

[13] Position accountability standards require traders who own or control positions in excess of established limits to provide to the exchange, upon request, information regarding the nature of the position and the trading strategy employed.

[14] *See* Letter from Jean A. Webb, Secretary, Commodity Futures trading Commission (''CFTC''), to Todd E. Petzel, Senior Vice President, Research, and Chief Economist, CME, dated January 2, 1992. *See also* Speculative Position Limits—Exemption from CFTC Rule 1.61; CME Proposed Amendments to Rules 3902.D, 5001.E, 3010.F, 3012.F, 3013.F, 3015.F, 4604, and Deletion of Rules 3902.F, 5001.G, 3010.H., 3012.H, 3013.H, and 3015.H.

[15] *See* Securities Exchange Act Release No. 34925 (November 1, 1994), 59 FR 55720 (November 8, 1994) (order approving File No. SR–PHLX–94–18).

[16] *See e.g.*, Securities Exchange Act Release Nos. 30672 (May 6, 1992), 57 FR 20546 (May 13, 1992) (order approving File No. SR–PHLX–91–30) (aggregating long-term FCOs); 30945 (July 21, 1992), 57 FR 33381 (July 28, 1992) (order approving File No. SR–PHLX–92–13) (aggregating month-end FCOs); 33732 (March 8, 1994), 59 FR 12023 (March