

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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-99-77 and should be submitted by March 1, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42364; File No. SR-NYSE-99-14]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. Relating to Amendments to the Listed Company Manual

January 28, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 12, 1999, the New York Stock Exchange, Inc. ("NYSE" 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. On October 25, 1999, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> On December 16, 1999, the Exchange submitted Amendment No. 2.<sup>4</sup> 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 amendments to the Listed Company Manual ("Manual") to: (1) Implement regulatory reviews of key personnel associated with listing applicants; (2) codify the Exchange's procedures regarding supplemental listing applications for companies identified as being below continued listing standards; and (3) amend its disclosure requirements for listed companies late in filing their form 10-K or annual report. The text of the proposed rule change follows. New text is italicized. Deleted text is bracketed.

#### NYSE Listed Company Manual

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#### Section 3

##### Corporate Responsibility

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315.00 Regulatory Review of Listing Candidates and their Significant Related Individuals and Entities  
*Each listing applicant must provide the Exchange with a letter from counsel representing that, to the company's knowledge, no officer,\* board member, no non-institutional shareholder with greater than 10% ownership of the*

<sup>3</sup> In Amendment No. 1, the NYSE made several clarifications to the proposed rule change, incorporated appropriate provisions for Non-US issuers, and revised the procedures for the annual report requirement. See Letter to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), SEC, from James E. Buck, Senior Vice President and Secretary, NYSE, dated October 22, 1999 ("Amendment No. 1").

<sup>4</sup> In Amendment No. 2, the NYSE made several technical changes to the text of the proposed rule change and clarified that the supplemental listing application ("SLAP") provision applies to Non-U.S. issuers. See Letter to Richard Strasser, Assistant Director, Division, SEC, from James E. Buck, Senior Vice President and Secretary, NYSE, dated December 14, 1999 ("Amendment No. 2"). In Amendment No. 2, the Exchange also requested accelerated approval of the proposed rule change. The Exchange withdrew this request as per telephone conversation between Amy Bilbija, Counsel, NYSE, and Terri Evans, Special Counsel, and Heather Traeger, Attorney, Division, SEC, on January 4, 2000.

\* As such term is defined by the Securities and Exchange Commission in Rule 16a-1(f) under the Securities Exchange Act of 1934, or any successor rule.

*company has been convicted of a felony or misdemeanor relating to financial issues (e.g., embezzlement, fraud, theft) in the past ten years. In addition, the Exchange will review background materials available to its regarding the aforementioned individuals as part of the eligibility review process.*

\* \* \* \* \*

#### Section 7

##### Listing Applications

\* \* \* \* \*

##### 703.11 Supplemental Listing Process

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*(C) No supplemental listing applications will be approved for companies that have been identified as being below the Exchange's continued listing standards (see Para. 802.01) for issuances to new shareholders unless such issuance is determined to be consistent with an Exchange-approved plan (or its goals) pursuant to Para. 802.02 or Para. 802.03 as applicable.*

\* \* \* \* \*

#### Section 2

##### Disclosure and Reporting Material Information

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##### 203.00 Annual and Interim Reporting Requirements

##### 203.01 Annual Report Requirement

The Exchange requires that companies publish at least once a year and [submit] *distribute* to shareholders an annual report containing financial statements of the company and its consolidated subsidiaries prepared in conformity with generally accepted accounting principles. The company must distribute its annual report to its shareholders not later than [three months] *120 days (225 days for non-US issuers)* after the close of each fiscal year. [, but] *Notwithstanding the foregoing, domestic issuers must make this distribution at least fifteen days in advance of the annual meeting. (Non-US issuers are encouraged to do so when possible.)* When the annual report is mailed to shareholders, two copies should be sent to the Exchange together with advice as to the date of mailing to shareholders.

*Companies may satisfy the annual distribution requirement either by distributing an annual report to shareholders, or by distributing to shareholders to Form 10-K (or Form 20-F for Non-US issuers) filed with the SEC, with an indication that it is distributed in lieu of a separate annual report. When the annual report (or Form 10-K or Form 20-F) is mailed to shareholders, two copies should be sent to the*

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Exchange together with advice as to the date of mailing to shareholders. Distribution by electronic means (including by posting on the company's web site) will be effective only as to beneficial holders who have given their prior consent to receiving the report in that form. Such consent must be in writing, which may be in the form of electronic mail.

A company that is unable to timely file its Form 10-K or Form 20-F with the SEC must notify the Exchange prior to the SEC filing deadline, explaining the reason for the delay and the anticipated filing date. The Exchange will evaluate the circumstances and the continued listing status of the company, and at a minimum will require the company to issue a press release indicating the delay, the reason for the delay and the anticipated filing date. In making its evaluation, the Exchange will consider whether the company has released or plans to release to the press information regarding its financial results for the fiscal year. Once the company does file its Form 10-K (Form 20-F) with the SEC, it must then distribute to shareholders an annual report or a Form 10-K (Form 20-F) in lieu thereof no later than 15 days (30 days for a non-US issuer) after the filing.

(A)-(E) Unchanged.

\* \* \* \* \*

[(F) Availability of Form 10-K When Annual Report is Delayed If distribution of the annual report to shareholders to be delayed more than two weeks even though the Form 10-K has been filed, the company should release to the financial press copies of the Form 10-K together with a statement advising that the annual report has been delayed and the reason for the delay, specifying the date when the annual report will be mailed and indicating that a copy of the Form 10-K is available to shareholders on request.]

\* \* \* \* \*

## 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 purpose of the proposed rule change is to implement several enhancements to the Exchange's procedures and oversight of listed companies. First, the Exchange proposes to institute a regulatory review procedure for listing applicants whereby Exchange staff would access media outlets, run Central Registration Depository checks, and consult with staff in the SEC's Division of Enforcement to identify any potential issues of concern regarding the applicant company's board members, officers (as the term "Officer" is defined in Section 16 of the Act), and non-institutional shareholders with an interest in excess of 10 percent. In addition, the Exchange will require each applicant company to submit a letter from inside or outside counsel representing that, to the company's knowledge, no officer, board member, or non-institutional shareholder with more than 10 percent ownership in the company has been convicted of a felony or misdemeanor relating to financial issues (e.g., embezzlement, fraud, or theft) in the past 10 years.

Second, the Exchange proposes to amend its procedures for processing SLAPs submitted for consideration by companies that have been identified as being below the Exchange's continued listing criteria.<sup>5</sup> Upon receipt of a SLAP from such a company, Exchange staff would first determine whether or not the SLAP is for an issuance to current shareholders (e.g., a stock split). If so, the application would be authorized. If, however, the SLAP is for an issuance to new shareholders, the application will be reviewed against the plan pursuant to which the company is operating to return to financial compliance with the Exchange's listing standards. If the proposed issuance is within the scope of the plan, or furthers the goals of the plan, it will be approved. Conversely, the Exchange will deny authorization if the proposed issuance is outside the scope of the plan or contradicts its goals. In this context, the Exchange recognizes that employee stock option plans, although rarely a specific element of a financial plan, are customarily in furtherance of the company's objectives in that they are adopted to facilitate equity-based compensation to employees and thus provide incentive

<sup>5</sup> This provision will apply to both U.S. and Non-U.S. issuers.

to employees to further the financial health of the company—a goal that is by its nature consistent with any approved plan.

Third, the Exchange proposes to amend its annual report requirements. The Exchange proposes to require that a company mail to shareholders by the specified date either an annual report or a Form 10-K (Form 20-F for Non-U.S. issuers) with an indication that is in lieu of the annual report.<sup>6</sup> Due to longer mailing and processing time, international companies will have a maximum period following the SEC filing deadlines of 45 days to mail either the annual report or Form 20-F (with an indication that it is in lieu of the annual report), where domestic issuers have 30 days.<sup>7</sup>

For companies that are unable to timely file a Form 10-K (or Form 20-F), the Exchange proposes to consider why the filing cannot be made, evaluate the continued listing status of the company in light of the specific facts presented, and require that the company issue a press release. Once the Form 10-K (or Form 20-F) is filed, the Exchange proposes to require a mailing of the Form 10-K (or Form 20-F) or an annual report to shareholders within 15 days (30 days for a Non-U.S. issuer).<sup>8</sup>

Additionally, the Exchange proposes to permit companies to distribute the annual reports or SEC forms electronically to beneficial holders who give prior written consent. Such consent must be in writing, which may be in the form of electronic mail.<sup>9</sup>

Failure to comply with these requirements will result in presentation of the company's situation to Exchange staff for appropriate action. Such action could include the determination to proceed with suspension of trading and application to the SEC to delist the security.

#### 2. Statutory Basis

The Exchange believes that the basis under the Act for the proposed rule change is the requirement under section 6(b)(5)<sup>10</sup> that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market

<sup>6</sup> See Amendment No. 1, *supra* note 3. Domestic companies are required to submit their annual filings on Form 10-K to the SEC within 90 days of the fiscal year end. International companies are required to submit their annual filings on Form 20-F within 180 days of the fiscal year end.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> 15 U.S.C. 78f(b)(5).

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 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*

No written comments were solicited or received with respect to 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 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, including whether the proposed rule change, as amended, 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 at 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. SR-NYSE-99-14 and should be submitted by March 1, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42377; File No. SR-Phlx-99-24]

#### **Self-Regulatory Organizations; Notice of Withdrawal of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Establishment of a Fee to Members for Receiving On-Line Options Information**

February 2, 2000.

On June 29, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> to adopt a fee for the transmission to members of option trade information on a real-time trade basis. Notice of the proposed rule change was published on August 12, 1999, in the **Federal Register**, to solicit comments from interested persons.<sup>3</sup> On December 28, 1999, the Exchange withdrew the proposed rule change.<sup>4</sup>

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 00-2966 Filed 2-8-00; 8:45 am]  
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### UNITED STATES SENTENCING COMMISSION

#### **Sentencing Guidelines for United States Courts**

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of finalized policy development agenda.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 41711 (August 5, 1999), 64 FR 44073.

<sup>4</sup> See Letter from John Dayton, Counsel, Phlx, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation, SEC, dated December 23, 1999.

<sup>5</sup> 17 CFR 200.30-3(a)(12).

**SUMMARY:** As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, and in accordance with Rule 5.2 of its Rules of Practice and Procedure, the Commission proposed, in December 1999, certain priorities as the focus of its policy development work, including amendments to guidelines, policy statements, and commentary, for the amendment cycle ending May 1, 2000. The Commission was reconstituted in November 1999, in the middle of that amendment cycle. Due to the resulting constraints of an abbreviated amendment cycle, the Commission has proposed as its priorities for the amendment cycle ending May 1, 2000 only those items the Commission might be able to conclude by its statutory deadline of May 1.

The Commission published a notice of these proposed priorities in the **Federal Register** on December 8, 1999. See 64 FR 68,715, Dec. 8, 1999. After reviewing public comment received pursuant to this notice, the Commission has decided to limit its current policy development priorities principally to the following areas: (i) Implementation of legislative directives and other high priority crime legislation enacted by the 105th Congress for which guideline amendments were not developed or finalized by the previous Commission; and (ii) resolution of a limited number of high priority circuit conflicts in guideline interpretation, with the goal of enhancing the consistency with which the guidelines are applied.

**FOR FURTHER INFORMATION CONTACT:** Michael Courlander, Public Affairs Officer, Telephone: (202) 502-4590.

**SUPPLEMENTARY INFORMATION:** Priorities."The specific policy development issues that comprise the Commission's finalized agenda are as follows—

#### **I. Legislative Directives**

The Commission has identified the implementation of the following directives as a priority for this amendment cycle:

(A) The No Electronic Theft (NET) Act of 1997—Congress directed the Commission, under emergency amendment authority, to ensure that: (1) The guideline penalties for intellectual property offenses are sufficiently stringent to deter those crimes; and (2) the guidelines pertaining to intellectual property offenses provide for consideration of the retail value and quantity of infringed items.

(B) The Telemarketing Fraud Prevention Act of 1998—Congress