

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 the filings will also be available for inspection and copying at the principal offices of Amex and Phlx, respectively. All submissions should refer to File Nos. SR-Amex-2001-80 and SR-Phlx-2001-86 and should be October 12, 2001.

IV. Commission Findings and Order Granting Accelerated Approval of the Proposed Rule Changes

The Commission notes that the proposed rule changes were submitted in response to the emergency situation that resulted from the September 11, 2001 attacks on the World Trade Center in New York City. On September 11, 2001, the U.S. equities and options markets determined not to open in light of the attacks that morning. The U.S. equities and options markets remained closed throughout the remainder of that week. As a result of the attacks, the Amex facilities were damaged and, at this time, cannot be reopened. The Amex and Phlx have worked to accommodate the opening of trading of Amex options and to accommodate trading by Amex members.²³

The Commission notes that Amex TAPS that are granted temporary access to the Phlx will only be permitted to trade on the Phlx those securities that the TAP traded on the Amex, and to act in those capacities that are authorized by Phlx and that are comparable to capacities that the TAP has been authorized to act on the Amex.

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.²⁴ Specifically, the Commission finds that the proposed rule changes are consistent with section 6(b)(5) of the Act,²⁵ which requires, among other things, that the rules of an exchange be designed to foster

cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the arrangements between the Amex and Phlx to permit the trading of Amex products on the Phlx by Amex members will ensure that all Amex options products will be available for trading by market participants when trading resumes in the U.S. markets. The Commission also believes that the arrangements allowing Amex specialists and Amex ROTs to make markets on the Phlx in the options for which they made markets on Amex should ensure that Amex options have a similar level of liquidity as was the case on September 10, 2001. Further, the Commission believes that permitting Amex floor brokers to act as floor brokers in the options for which they acted as floor brokers on Amex should ensure that the orders directed to Phlx for Amex options are handled efficiently. The Commission considers to be appropriate the arrangement whereby the Phlx will be responsible for ensuring compliance of Amex members trading on the Phlx floor with Phlx trading rules, while Amex will be responsible for ensuring that its members comply with member qualification and financial responsibility rules. In this regard, the Commission notes that it is important that the Amex and the Phlx continue to closely coordinate and cooperate to ensure that Amex members temporarily trading on the Phlx are adequately surveilled and that their financial condition is monitored.

The Commission is satisfied that the arrangements worked out between Amex and Phlx will enable continuous, liquid markets to be maintained for Amex options in an exchange environment while maintaining the usual investor protection safeguards. This is especially important in light of the upcoming options expiration on September 21, 2001.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of the notice of filing in the **Federal Register**. The Commission believes that it is necessary to approve the proposed rule changes on an accelerated basis to provide a trading venue for Amex options, which market participants would otherwise not be able to trade until Amex's New York facilities are reopened, and to provide a

higher level of liquidity in those products than would be available without permitting Amex members temporary access to the Phlx.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,²⁶ that the proposed rule changes (SR-Amex-2001-80 and SR-Phlx-2001-86) are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority:²⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[(Release No. 34-44807; File No. SR-Amex-2001-67)]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC to Codify Current Audit Trail and Trade Comparison Requirements and to Make Other Technical Amendments to the Exchange's Audit Trail Rules

September 17, 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 August 28, 2001, the American Stock exchange LLC ("Amex" 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 Exchange. 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 Exchange proposes to amend Amex Rule 719: (1) To codify current audit trail and trade comparison requirements, (2) to clarify that Amex Rule 719 applies to all Amex securities, and (3) to delete rule language to the implementation of T+1 comparison.

The text of the proposed rule change appears below. New text is in *italics*; deletions are in *brackets*.

²⁶ 15 U.S.C. 78s(b)(2).

²⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²³ The Commission notes that the Phlx and the Amex have, of necessity, had discussions, understandings and agreements concerning the listing of non-Phlx Amex options on the Phlx in order to facilitate the establishment of the arrangements described in this Order outside the framework permitted by the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934. This Order approves such discussions, understandings, and agreements.

²⁴ In approving these proposals, the Commission has considered their impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²⁵ 15 U.S.C. 78f(b)(5).

[Next Day] Comparison of Exchange Transactions

Rule 719

(a) Notwithstanding any other rule to the contrary, [on and after February 26, 1990,] each transaction effected on the Exchange shall be compared or otherwise closed out by the close of business on the Exchange on the business day following the day of the contract.

(b) The provisions of paragraph (a) above shall apply regardless of whether the transaction has been submitted to a registered clearing agency for comparison or settlement, but such provisions shall apply only to contracts for "regular way", "next day" and "seller's option", settlement on alternative delivery periods, and settlement in *Options Clearing Corporation issued securities, stocks, rights, warrants, "when issued" and "when distributed" securities, bonds, and other securities admitted to dealings*. [The provisions of paragraph (a) shall apply to contracts in listed bonds on and after October 21, 1994.]

(c) To facilitate [next day] comparison of transactions effected on the Exchange as provided for in paragraph (a) above, by such time following any such transaction as the Exchange may prescribe (*but in no event more than two hours after execution*), each member or member organization which is a party to the contract shall submit, or cause to be submitted, such trade data as may be required by the Exchange or the registered clearing agency it selects in such form as the Exchange or the registered clearing agency shall prescribe, to:

(i) The registered clearing agency it selects; or

(ii) Such facility as the Exchange may develop and implement to facilitate comparison of transactions effected on the Exchange; and,

(iii) In the case where the registered clearing agency will not be used to compare or settle the transactions, to the party or parties on the other side of the trade.

(d) No change

* * * Commentary

.01 For purposes of paragraph (b) of this Rule 719, the term "registered clearing agency" shall have the same meaning as set forth in Rule 700, provided further that a clearing agency shall be deemed a "registered clearing agency" only if it has established rules and procedures to facilitate [next day] comparison of transactions as provided for in paragraph (a) of this Rule 719.

.02 *Regardless of whether or not a registered clearing agency is being used for comparison and/or settlement, each clearing member organization shall submit the following trade data and audit trail information with respect to contracts for securities entered into on the Exchange to a registered clearing agency in such form and within such time periods as may be described by the registered clearing agency or the Exchange:*

(1) *Name or identifying symbol of the security,*

(2) *The clearing firm's number of alpha symbol as may be used from time to time, in regard to its side of the contract,*

(3) *The executing broker's badge number or alpha symbol as may be used from time to time, in regard to its side of the contract,*

(4) *Trade date,*

(5) *The time the trade was executed,*

(6) *Number of shares or quantity of security,*

(7) *Transaction price,*

(8) *The clearing firm's number or alpha symbol as may be used from time to time, in regard to the contra side of the contract,*

(9) *The executing broker badge number or alpha symbol as may be used from time to time, in regard to the contra side of the contract,*

(10) *The terms of settlement,*

(11) *Specialist, registered trader, and market maker acronyms in regards to options transactions,*

(12) *Account type code—equities only. The current account type codes for equity transactions are as follows. Members should use the most restrictive account type code available. Thus, for example, members only should use the "A" account type code for an agency transaction when no other account type code accurately describes the trade. These codes may be changed from time to time as the Exchange may determine:*

S—Specialist principal transaction in a specialty security (regardless of the account or clearing member)

G—Registered Trader market maker transaction regardless of the clearing member

V—Amex Option Specialist or Market Maker transaction in an Amex "paired security" (regardless of the clearing member)

O—Proprietary transactions cleared for a competing market maker that is affiliated with the clearing member

T—Transactions cleared for the account of an unaffiliated member's competing market maker

R—Transactions cleared for the account of a non-member competing market maker

I—Transactions cleared for the account of an individual investor

E—Short exempt transactions cleared for the proprietary account of a clearing member organization or affiliated member/member organization

F—Short exempt transactions cleared for the proprietary account of an unaffiliated member/member organization

H—Short exempt transactions cleared for an individual customer account

B—Short exempt transactions cleared for all agency customer accounts

L—Short exempt transaction cleared for a competing market maker that is affiliated with the clearing member

X—Short exempt transaction cleared for the account of an unaffiliated member competing market maker

Z—Short exempt transaction cleared for the account of a non-member competing market maker

W—Proprietary transactions not specified above and cleared for the account of an unaffiliated member/member organization

A—Transactions cleared for all agency customer accounts

P—Transactions not specified above and cleared for the proprietary account of a clearing member organization or affiliated member/member organization New York Stock Exchange program trade audit trail account type codes as used from time to time also are acceptable.

(13) *Account type code—options only. The current account type codes for option transactions are as follows. Members should use the most restrictive account type code available. These codes may be changed from time to time as the Exchange may determine:*

S—Specialist principal transaction in a specialty security (regardless of the account or clearing member)

C—Transactions cleared for the account of an individual investor

F—Transactions cleared for the account of a broker-dealer that is not a registered market maker in the security

P—Registered trader market maker transaction regardless of the clearing member

N—Transactions cleared for the account of a non-member market maker

(14) *Such other information as the Exchange may from time to time require. Clearing members may not "summarize" multiple trades in the same security, executed at the same price with the same contra clearing firm as this results in degradation of the audit trail.*

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

In its filing with the Commission, Amex 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. Amex 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

Amex's requirements regarding the timely and accurate reporting of clearance and audit trail information into the comparison system currently are embodied in Information Circulars and are not codified in the Exchange's rules. The Exchange, accordingly, is proposing to amend Amex Rule 719 to codify both the time frame in which information must be submitted to comparison (within two hours of execution) and the specifics of the trade data and audit trail information to be submitted.

Amex believes that the prompt submission of trades to comparison reduces the financial risk to investors and broker-dealers of uncompleted transactions. Amex further believes that the provision of detailed audit trail information by the parties to Amex transactions allows the Exchange to better perform its market oversight functions.

The Exchange also is proposing to amend Amex Rule 719 to clarify that it applies to all Amex securities admitted to dealings. This will ensure that the rule applies to the new securities that the Exchange lists. The Exchange also is proposing to delete obsolete language in Amex Rule 719 related to the implementation of T+1 comparison in the early 1990s.

Amex has represented that the proposed rule change would not alter the Exchange's substantive requirements and would make these requirements more readily accessible to members.

2. Statutory Basis

Amex believes that the proposed rule change is consistent with Section 6(b) of the Act³ in general and furthers the

objectives of Section 6(b)(5)⁴ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, 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; and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

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

Amex believes that the proposed rule change would impose no 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 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 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 filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2001-67 and should be submitted by October 12, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44808; File No. SR-CBOE-2001-50]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchanges, Incorporated To Adopt Certain Intermarket Trading System-Related Terms and Conditions Regarding the Temporary Use by the American Stock Exchange LLC of the Facilities of the New York Stock Exchange, Inc.

September 17, 2001.

Pursuant to Section 19(b)(1) of the Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 17, 2001, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6)⁴ thereunder, which renders the proposal effective upon filing with the Commission.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 17 CFR 200.30-3(a)(12).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

⁵ The Exchange has asked the Commission to waive the five-day filing notice requirement and the 30-day operational delay, pursuant to Rule 19b-4(f)(6). 17 CFR 240.19b-4(f)(6). See September 17, 2001 letter from Angelo Evangelou, Attorney, Legal Division, CBOE to Belinda Blaine, Associated Director, Division of Market Regulation, SEC, and attachments.

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(5).