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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–26755 Filed 10–23–01; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–44631A; File No. SR–NASD–00–38]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Application of NASD Rules and Interpretive Materials to Exempted Securities; Corrections

October 17, 2001.

In FR Document No. 01–19700, beginning on page 41283, column 3, for Tuesday, August 7, 2001, a sentence was incorrectly stated. Specifically, footnote 10 should be revised to delete references to National Association of Securities Dealers, Inc. (''NASD'') Rule 2440, ''Fair Prices and Commissions,'' and to IM–2440, ''Mark-Up Policy.''

Footnote 10 is revised to read as follows:

[10] *See* Securities Exchange Act Release No. 37588 (August 20, 1996), 61 FR 44100 (August 27, 1996) (order approving File No. SR–NASD–95–39) (''1996 Order''). The 1996 Order approved the application of the following NASD rules to exempted securities, including government securities but not municipal securities: NASD Rule 2110, ''Standards of Commercial Honor and Principles of Trade;'' NASD Rule 2120, ''Use of Manipulative, Deceptive or Other Fraudulent Devices;'' NASD Rule 2210, ''Communications with the Public;'' IM–2210–2, ''Communications with the Public about Collateralized Mortgage Obligations;'' IM–2210–2, ''Communications with the Public about Variable Life Insurance and Variable Annuities;'' IM–2210–3, ''Use of Rankings in Investment Companies Advertisements and Sales Literature;'' NASD Rule 2250, ''Disclosure of Participation or Interest in Primary or Secondary Distribution;'' NASD Rule 2270, ''Disclosure of Financial Condition to Customers;'' NASD Rule 2310, ''Recommendations to Customers (Suitability);'' IM–2310–2, ''Fair Dealing with Customers;'' IM–2310–3, ''Suitability Obligations to Institutional Customers;'' NASD Rule 2320, ''Best Execution and Interpositioning;'' NASD Rule 2330, ''Customers' Securities or Funds;'' IM–2330, ''Segregation of Customers' Securities;'' NASD Rule 2340, ''Customer Account Statements;'' NASD Rule 2430, ''Charges for Services Performed;'' NASD Rule 2450, ''Installment or Partial Sales;'' NASD Rule 2510, ''Discretionary Accounts;'' NASD Rule 2520, ''Margin Accounts;'' NASD Rule 2521, ''Margin Requirements—Exception for Certain Members'' (formerly NASD Rule 2520(a); NASD Rule 2522, ''Definitions Related to Options, Currency Warrants Currency Index Warrants and Stock Index Warrants Transactions'' (formerly NASD Rule 2520(b); NASD Rule 2770, ''Disclosure of Price in Selling Agreements'' (applicable only to traditional underwriting arrangements); NASD Rule 2780, ''Solicitation of Purchases on an Exchange to Facilitate a Distribution of Securities;'' NASD Rule 2910, ''Disclosure of Financial Condition to Other Members;'' NASD Rule 3010, ''Supervision;'' NASD Rule 3020, ''Fidelity Bonds;'' NASD Rule 3030, ''Outside Business Activities of an Associated Person;'' NASD Rule 3040, ''Private Securities Transactions of an Associated Person;'' NASD Rule 3050, ''Transactions for or by Associated Persons;'' NASD Rule 3060, ''Influencing or Rewarding Employees of Others;'' NASD Rule 3070, ''Reporting Requirements;'' NASD Rule 3120, ''Use of Information Obtained in a Fiduciary Capacity;'' NASD Rule 3110, ''Books and Records;'' IM–3110, ''Customer Account Information;'' NASD Rule 3130, ''Regulation of Members Experiencing Financial and/or Operational Difficulties;'' IM–3130, ''Restrictions on a Member's Activity;'' NASD Rule 3131, ''Regulation of Activities of Section 15C Members Experiencing Financial and/or Operational Difficulties;'' NASD Rule 3140, ''Approval of Change in Exempt Status under SEC Rule 15c3–3;'' NASD Rule 3230, ''Clearing Agreements;'' NASD Rule 3310, ''Publication of Transactions and Quotations;'' IM–3310, ''Manipulative and Deceptive Quotations;'' NASD Rule 3320, ''Offers at Stated Prices;'' IM–3320, ''Firmness of Quotations;'' NASD Rule 3330, ''Payment Designed to Influence Market Prices, Other than Paid Advertising;'' NASD Rule 8110, ''Availability to Customers of Certificate, By-Laws, and Rules;'' NASD Rule 8120, ''Complaints by Public Against Members for Violations of Rules;'' NASD Rule 8130, ''Complaints by District Business Conduct Committees;'' NASD Rule 8140, ''Complaints by the Board of Governors;'' NASD Rule 8210, ''Reports and Inspections of Books for Purpose of Investigating Complaints;'' NASD Rule 8220, ''Suspension of Members for Failure to Furnish Information Duly Requested;'' NASD Rule 8310, ''Sanctions for Violation of the Rules;'' IM–8310–1, ''Effect of a Suspension, Revocation, or Bar;'' IM–8310–2, ''Release of Disciplinary Information;'' NASD Rule 8320, ''Payment of Fines, Other Monetary Sanctions, or Costs;'' and NASD Rule 8330, ''Cost of Proceedings.'' As discussed more fully below, Amendment No. 2 clarifies NASD Regulation's reasons for including NASD Rules 2521, 2522, 2910, 8220 (which was expanded to include current NASD Rules 8221 through 8227), and IM–8310–2 in its list of rules and interpretative materials applicable to exempted securities, including government securities, other than municipal securities. *See* Amendment No. 2, *supra* note 4.

In addition, in FR Document No. 01–19700, beginning on page 41284, column 1, a sentence in footnote 12 was incorrectly stated. Specifically, footnote 12 should be changed to delete references to NASD Rule 2300 and to IM–8310 and to add a reference to IM–2522.

Footnote 12 is revised to read as follows:

[12] Specifically, NASD Rule 0116(b) states that, unless otherwise indicated within a particular provision, the following NASD rules and interpretative materials apply to transactions and business activities relating to exempted securities but not municipal securities, conducted by members and associated persons: 2110, 2120, 2210, IM–2210–1, IM–2210–2, IM–2210–3, 2250, 2270, 2310, IM–2310–2, IM–2310–3, 2320, 2330, IM–2330, 2340, 2430, 2450, 2510, 2520, 2521, 2522, IM–2522, 2770, 2780, 2820(g), 2910, 3010, 3020, 3030, 3040, 3050, 3060, 3070, 3110, IM–3110, 3120, 3130, IM–3130, 3131, 3140, 3230, 3310, IM–3310, 3320, IM–3320, 3330, 8110, 8120, 8210, 8221, 8222, 8223, 8224, 8225, 8226, 8227, 8310, IM–8310–1, IM–8310–2, 8320, and 8330. *See* Amendment No. 2, *supra* note 4.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–26728 Filed 10–23–01; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–44943; File No. SR–NYSE–2001–39]**

## Self-Regulatory Organizations; New York Stock Exchange, Inc., Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Rule 123

October 16, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–b–4 thereunder,[2] notice is hereby given that on October 8, 2001, the New York Stock Exchange, Inc. (''NYSE'' 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 NYSE. The text of the proposed rule change is available for inspection and copying at

[10] 17 CFR 200.30–3(a)(12).

[1] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

the places specified in Item IV below. 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 NYSE Rule 123. The text of the proposed rule change is available at the Office of the Secretary, NYSE, and at the Commission.

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

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change 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 and is set forth in Sections A, B, and C below.

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

1. Purpose

This proposed rule change was originally filed as a one-month pilot in SR–NYSE–2001–36.[3] With this proposed rule change, the NYSE seeks permanent approval to the amendments to NYSE Rule 123.

The Exchange has adopted requirements for the electronic capture of orders at the point of sale (front end systemic capture, or ''FESC'')[4] and at the point of receipt (order tracking system, or ''OTS''). The purpose of the requirements is to create a complete systemic record of orders handled by members and member organizations. The Exchange believes that these requirements will provide benefits both to the Exchange and members in terms of recordkeeping, surveillance and order processing.

However, due to the time sensitivity of bona fide arbitrage orders and orders to offset transactions made in error, the Exchange is proposing to carve out two exceptions to NYSE Rule 123(e). These orders may be initiated by a member on the Floor pursuant to SEC Rule 11a–1 and NYSE Rule 111, and a requirement that such orders be first entered into FESC may result in a lost arbitrage opportunity, or the covering of an error at additional loss to the member. With respect to bona fide arbitrage orders,[5] a member may execute such order before entering the order into FESC. However, such member must enter such order into FESC no later than 60 seconds after the execution of such order.

Similarly, with respect to orders to offset transactions made in error, a member may, upon discovering such error within the same trading session, effect an offsetting transaction without first entering such order into FESC. However, such member must enter such order into FESC no later than 60 seconds after the execution of such order.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act[6] 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 and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is designed to accomplish these ends by strengthening the Exchange's ability to surveil the Floor activities of members.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8] At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Commission notes that under Rule 19b–4(f)(6)(iii),[9] the proposal does not become operative for 30 days after date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing requirement and designate that the proposed rule change become operative immediately to permit the continued implementation of the amendments to NYSE Rule 123, as begun on September 10, 2001, for a one-month pilot. The NYSE believes it is consistent with investor protection and the public interest. In particular, the Exchange believes the proposed rule change will enable members to execute bona fide arbitrage orders and orders to offset transactions made in error quickly without having to enter the order into the FESC. The proposed rule will still require that these be entered into the FESC within 60 seconds after the execution of the respective order.

The Commission believes that it is consistent with the protection of investors and the public interest to waive the five-day pre-filing require and designate the proposed rule change

[3] *See* Securities Exchange Act Release No. 44783 (September 10, 2001), 66 FR 48304 (September 19, 2001).

[4] *See* Securities Exchange Act Release No. 43689 (December 7, 2000), 65 FR 79145 (December 18, 2000) (Order approving amendments to NYSE Rule 123 providing for the systemic capture of order information on the Exchange floor).

[5] In Securities Exchange Act Release No. 15533 (January 29, 1979), 44 FR 6084 January 31, 1979), the Commission defined ''bona fide arbitrage'' as an ''activity undertaken by market professionals in which essentially contemporaneous purchases and sales are effected in order to 'lock in' a gross profit or spread resulting from a current differential in pricing.'' The Commission further stated that it ''understands that many transactions currently being undertaken by those who are regularly engaged in arbitrage involve some limited, intentional delay (usually a matter of minutes or hours but sometimes, under extraordinary circumstances, as long as a day or even two days) in between the transaction in which the first leg of the arbitrage is established and the subsequent transaction in which the second, offsetting, leg is completed.'' With respect to the latter, each ''leg'' of an arbitrage would be considered an ''order'' for purposes of the bona fide arbitrage exception under Exchange Rule 123(e). Thus, a member would be required to enter such order into FESC no later than 60 seconds after the execution of each ''leg'' of the arbitrage.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6)(iii).

[9] 17 CFR 240.19b–4(f)(6).

immediately operative.[10] Accelerating the operative date and waiving the pre-filing requirement will permit the Exchange to continue implementation of NYSE Rule 123(e) without interruption. For this reason, the Commission finds good cause to designate that the proposed rule change become operative immediately.

## 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 20549–0609.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the File No. SR–NYSE–2001–39 and should be submitted by November 14, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–26729 Filed 10–23–01; 8:45 am]

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[10] For purposes of accelerating the operative date of this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–44947; File No. SR–Phlx–2001–90]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Registration Fees for Registered Representatives

October 17, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on October 5, 2001, the Philadelphia Stock Exchange, Inc. (''Plx'' and ''Exchange'') filed with the Securities and Exchange Commission (the ''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

Pursuant to Rule 19b–4 under the Act, the Phlx proposes to amend its fee schedule for Registered Representative registration. Specifically, the Phlx proposes to increase the initial Registered Representative registration fee from $45 to $55 and to increase both the maintenance and transfer registration fee for Registered Representatives from $45 to $50. The proposed effective date of the increase is January 1, 2002.

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

**Phlx Fee Schedule**

* * * * *

**Registered Representative Registration**

| | Delections | New text |
|---|---|---|
| Initial ..... | [$45.00] | *$55.00* |
| Maintenance ..... | [1] 45.00] | [1] *50.00* |
| Transfer ..... | [45.00] | *50.00* |

[1] Annual.

### 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 Items IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

[2] 17 CFR 240.19b–4.

*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 increase the Exchange's initial Registered Representative registration fee from $45 to $55 and to increase its maintenance and transfer Registered Representative registration fee from $45 to $50. These fees, which were adopted in 1993,[3] and subsequently adjusted in 1995;[4] 1997,[5] 1999 [6] and 2000 [7] are payable by member organizations that apply for, maintain, and transfer Registered Representative registration.[8] The Proposed fee increases will be effective January 1, 2002. The Phlx intends that, on its behalf, the National Association of Securities Dealers, Inc. (''NASD'') will bill for the year 2002 fees in November 2001 and will thereafter collect the fees for the Exchanges.[9] The proposed fees will apply to year 2002 registrations. Any initial registration in 2001 will continue to be subject to the current $45 initial registration fee. Any maintenance and transfer fees incurred for calendar year 2001 will continue to be subject to the $45 maintenance or transfer fee. The purpose of the proposed rule change is to address the increased costs associated with maintaining surveillance and regulatory programs in an increasingly sophisticated trading environment. The Exchange continues to believe that strong surveillance and regulatory

[3] *See* Securities Exchange Act Release No. 32833 (September 14, 1993), 58 FR 48922 (September 20, 1993) (order approving File No. SR–Phlx–93–24).

[4] *See* Securities Exchange Act Release No. 36348 (October 14, 1993), 58 FR 48922 (September 20, 1993) (order approving File No. SR–Phlx–93–24).

[5] *See* Securities Exchange Act Release No. 39044 (September 10, 1997), 62 FR 48914 (September 17, 1997) (notice of filing and immediate effectiveness of File No. SR–Phlx–97–41).

[6] *See* Securities Exchange Act Release No. 42122 (November 10, 1999), 64 FR 63098 (November 18, 1999) (notice of filing and immediate effectiveness of File No. SR–Phlx–99–34).

[7] *See* Securities Exchange Act Release No. 43547 (November 13, 2000), 65 FR 69980 (November 21, 2000) (notice of filing and immediate effectiveness of File No. SR–Phlx–00–95).

[8] The Phlx originally implemented the fees to offset regulatory costs based on the number of Registered Representative registrations maintained by member organizations.

[9] The Exchange has represented that initial, transfer, and maintenance Registered Representative registration fees traditionally have been billed and collected by the NASD. Under the proposal, as noted above, the NASD will continue to bill for and collect these fees. Telephone conversation between Murray L. Ross, Vice President and Security, Phlx, to Yvonne Fraticelli, Special Counsel, Division of Market Regulation, Commission, on October 15, 2001.