[Marketplace] Rule[s 4310(c)(25)(G)(i)(d), 4320(e)(21)(G)(i)(d), and 4460(i)(1)(D) provide] *4350(i)(1)(D) provides* that shareholder approval is required for the issuance of common stock (or securities convertible into or exercisable for common stock) equal to 20 percent or more of the common stock or 20 percent or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock. Under [these] *this* rule[s], however, shareholder approval is not required for a ''public offering.''

The existing cross-reference section following Rule 4350(i), Shareholder Approval, is amended to reflect the renumbering of existing IM–4300 and additional cross-references are added as follows:

IM–[4300]*4350–1,* Future Priced Securities

IM–4350–2, Interpretative Material Regarding the use of Share Caps to Comply with Rule 4350(i)

IM–4350–3, Definition of Public Offering

* * * * *

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 NASD 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 NASD 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

NASD Rule 4350(i) limits the number of shares or voting power that can be issued or granted without shareholder approval prior to the issuance of certain securities. Generally, this limitation applies to issuances of 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance. Nasdaq has observed situations where issuers have attempted to cap the issuance of shares at below 20% but have also provided an alternative outcome based upon whether shareholder approval is obtained, such as a ''penalty'' or a ''sweetener.'' Nasdaq believes that in such situations the cap is defective because it has a coercive effect on the shareholder vote and, thus, may deprive shareholders of their ability to freely exercise their vote. Accordingly, Nasdaq will not accept a cap that defers the need for shareholder approval in such situations. Instead, if the terms of a transaction can change based upon the outcome of the shareholder vote, no shares may be issued prior to the approval of the shareholders. Issuers that engage in transactions with defective caps will be in violation of Nasdaq rules and will be subject to delisting. Accordingly, Nasdaq is proposing the adoption of interpretive material to clarify for issuers, their counsel, and investors Nasdaq's requirements pertaining to the use of share caps to comply with its shareholder approval rules.

Nasdaq is also proposing changes to conform existing rules and correct certain cross-references.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act[5] in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. As previously noted, Nasdaq is proposing to adopt this interpretative material to provide greater clarity and transparency for issuers, their counsel, and investors.

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

Nasdaq does not believe that the proposed rule change would result in 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

Written comments were neither solicited nor received.

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

Nasdaq has asserted that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule and, therefore, is immediately effective pursuant to Rule 19b–4(f)(1) under the Act.[6] At any time within 60 days of the filing of this 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal, 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 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 NASD. All submissions should refer to File No. SR–NASD–2002–20 and should be submitted by March 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–5431 Filed 3–6–02; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78o–3(b)(6).

[6] 17 CFR 240.19b–4(f)(1).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45487; File No. SR–NYSE–2002–10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Adopt NYSE Rule 445, Anti-Money Laundering Compliance Program

February 28, 2002.

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 February 27, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange

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

[2] 17 CFR 240.19b–4.

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 adopt new NYSE Rule 445, Anti-Money Laundering Compliance Program. The proposed Rule requires each member and member organization to develop and implement an anti-money laundering compliance program consistent with applicable provisions of the Bank Secrecy Act and the regulations thereunder. The text of the proposed rule change is below. Proposed new language is in italics.

Anti-Money Laundering Compliance Program

Rule 445. Each member organization and each member not associated with a member organization shall develop and implement a written anti-money laundering program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311, et seq.), and the implementing regulations promulgated thereunder by the Department of the Treasury. Each member organization's anti-money laundering program must be approved, in writing, by a member of senior management.

The anti-money laundering programs required by this Rule shall, at a minimum:

(1) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder;

(2) Establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder;

(3) Provide for independent testing for compliance to be conducted by member or member organization personnel or by a qualified outside party;

(4) Designate, and identify to the Exchange (by name, title, mailing address, e-mail address, telephone number, and facsimile number) a person or persons responsible for implementing and monitoring the day-to-day operations and internal controls of the program and provide prompt notification to the Exchange regarding any change in such designation(s); and

(5) Provide ongoing training for appropriate persons.

* * * * *

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

Background

On October 26, 2001, President Bush signed into law the USA PATRIOT Act (the ''PATRIOT Act''), which amends among other laws the Bank Secrecy Act as set forth in Title 31 of the United States Code (the ''Code''). The PATRIOT Act expands government powers to fight the war on terrorism and requires that financial institutions,[3] including broker-dealers, implement policies and procedures to that end.

Title III of the PATRIOT Act, separately known as the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 (''MLAA''), focuses on the requirement that financial institutions establish anti-money laundering monitoring and supervisory systems. Specifically, MLAA Section 352, which amends Section 5318(h) of the Code, requires each financial institution to establish Anti-Money Laundering Programs *by April 24, 2002* that include, at minimum: (1) the development of internal policies, procedures, and controls; (2) the designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs.

Proposed New NYSE Rule 445

Anti-Money Laundering Compliance Program: Procedural Requirements

Proposed new NYSE Rule 445, Anti-Money Laundering Compliance Program (''Program''), which was developed in collaboration with NASD Regulation, in discussion with the Department of the Treasury, and the Commission, incorporates MLAA Section 352 requirements and also requires: (1) that the Program be in writing and approved, in writing, by member organizations' senior management; (2) that a designated ''contact person'' or persons, primarily responsible for each member's or member organization's Program, be identified to the Exchange; and (3) that the Program's policies, procedures, and internal controls be reasonably designed to achieve compliance with applicable provisions of the Bank Secrecy Act and the implementing regulations thereunder, as they become effective.

Department of the Treasury Requirements: Filing of Suspicious Activity Reports

Further, proposed NYSE Rule 445 addresses members' and member organizations' obligation to establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) (''Reporting of Suspicious Transactions'') and the implementing regulations thereunder. This reflects the MLAA Section 356 directive that the Department of the Treasury (''Treasury'') publish such implementing regulations, specifically applicable to registered broker-dealers, in the **Federal Register** by specified dates.

Accordingly, the Financial Crimes Enforcement Network (''FinCEN''), through authority granted by the Secretary of the Treasury, filed proposed amendments[4] to the Bank Secrecy Act regulations on December 28, 2001. MLAA Section 356 requires publication of these regulations in final form not later than July 2, 2002.

Generally, FinCEN's proposed regulations require the filing of Suspicious Activity Reports (''SARs'') in a central location, to be determined by FinCEN, within a specified timeframe initiated by the detection of facts constituting a basis for the filing. Proposed reporting criteria stress the development of a sound risk-based program.

Ongoing Compliance

Proposed NYSE Rule 445 also highlights members' and member organizations' existing and ongoing

[3] As defined in 31 U.S.C. 5312(a)(2).

[4] ''Financial Crimes Enforcement Network; Proposed Amendments to the Bank Secrecy Act Regulations—Requirement of Brokers or Dealers in Securities to Report Suspicious Transactions;''—66 FR 67670 (December 31, 2001).

obligation to comply with applicable provisions of the Bank Secrecy Act and the implementing regulations thereunder, as they become effective.

Accordingly, and particularly in light of the PATRIOT Act amendments, members and member organizations should be cognizant of all existing and pending Bank Secrecy Act requirements. These include, but are not limited to:

(1) MLAA Section 313 (''Prohibition on United States Correspondent Accounts with Foreign Shell Banks'')—Effective 12/25/01, covered financial institutions operating in the United States must sever correspondent banking relationships with foreign ''shell banks'', *i.e.*, banks without a physical presence in any country, that are not affiliated with a bank that both has a physical presence in a country and is subject to supervision by a banking authority that regulates the affiliated bank.

(2) MLAA Section 312 (''Special Due Diligence for Correspondent Accounts and Private Banking Accounts'')—Effective 7/23/02, financial institutions must be prepared to apply ''* * * appropriate, specific, and, where necessary, enhanced, due diligence'' with respect to foreign private banking customers and international correspondent accounts.

(3) MLAA Section 326 (''Verification of Customer Identity'')—Effective 10/26/02, financial institutions must comply with a regulation issued by the Secretary of the Treasury requiring the implementation of ''reasonable procedures'' with respect to the verification of customer identification upon opening an account, maintaining records of information used for such verification, and the consultation of a government-provided list of known or suspected terrorists.

The Exchange will publish notifications to members and member organizations regarding the adoption and implementation of new regulations and address their responsibilities thereunder.

2. Statutory Basis

The NYSE believes the proposed rule change is 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 Sections 6(b)(5) of the Act.[5] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest.

The NYSE also believes the proposed rule change is consistent with Section 6(c)(3)(B) of the Act.[6] Under that Section, it is the Exchange's responsibility to prescribe standards for training, experience and competence for persons associated with Exchange members and member organizations. Pursuant to the statutory obligation, the Exchange has proposed this rule change in order to establish an additional mechanism for the administration of the Regulatory Element of the Continuing Education Program, which will enable registered persons to satisfy their continuing education obligations.

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

The Exchange believes that the proposal does not impose any burden on competition 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

Written comments were neither solicited nor received.

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 filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR–NYSE–2002–10 and should be submitted by March 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–P

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

[6] 15 U.S.C. 78f(c)(3)(B).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45484; File No. SR–Phlx–2001–40]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Broker-Dealer Access to AUTOM

February 27, 2002.

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 May 2, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 Phlx. On July 26, 2001, the Exchange filed Amendment No. 1 [3] with the Commission; on November 28, 2001, the Exchange filed Amendment No. 2 [4] with the

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

[2] 17 CFR 240.19b–4.

[3] *See* letter to Nancy J. Sanow, Senior Special Counsel, Division of Market Regulation (''Division''), SEC, from Richard S. Rudolph, Counsel, Phlx, dated July 25, 2001 (''Amendment No. 1''). In Amendment No. 1, the Phlx deleted unapproved rule language in Rule 1080(b)(i)(A)–(B) and reserved such sections for future use.

[4] *See* letter to Nancy J. Sanow, Senior Special Counsel, Division, SEC, from Richard S. Rudolph, Counsel, Phlx, dated November 28, 2001

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