

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45838; File No. SR-NYSE-2001-40]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 and Amendment No. 2 Thereto, Regarding Method of Delivery of Annual Reports and Proxy Materials

April 26, 2002.

On October 11, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("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 specify that annual reports and proxy materials should be distributed in such format and by such methods as are permitted or required by applicable law and regulations (including any interpretations thereof by the Commission). On January 15, 2002,³ and March 5, 2002,⁴ the Exchange amended the proposal to make technical changes to its rule text.

The proposed rule change, as amended, was published for comment in the **Federal Register** on March 27, 2002.⁵ The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁶ and, in particular, the requirements of Section 6 of the Act⁷ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act⁸ because it requires the Exchange's members to distribute annual reports and proxy materials in a manner that is consistent with federal securities laws. The Commission

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

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NYSE-2001-40), as amended, be, and hereby is, approved.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45824; File No. SR-Phlx-2001-63]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating to New Product Allocations

April 25, 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 June 18, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" 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 Phlx. On February 28, 2002, Phlx submitted Amendment No. 1 to the proposed rule change.³ On April 5, 2002, Phlx

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Linda C. Christie, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 26, 2002 ("Amendment No. 1"). In Amendment No. 1, Phlx: (1) proposed a definition of "new product"; (2) proposed a definition of "operating company" for purposes of the proposed rule change; (3) described the Exchange's current criteria for its Equity Allocation, Evaluation and Securities Committee's and the Options Allocation, Evaluation and Securities Committee's (collectively "Committees") consideration when allocating equity books and options classes and that these criteria would still apply if the proposed changes are approved; (4) represented that a specialist unit must be an eligible specialist unit to be allocated a new product under the proposed changes; (5) asserted that Phlx Rule 1023 may operate to prevent

submitted Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Phlx proposes to amend Phlx Rule 511(b), Allocations, to permit the Committees to allocate a new product to a specialist unit that develops such new product or is instrumental in developing or bringing such new product to the Exchange without soliciting applications from any other specialist units.

The proposal would also permit the Committees, as a condition to allocating a book for any equity, option, or futures product that involves the licensing or other acquisition of an index, trademark, tradename, patent or other intellectual property, to: (1) Require a specialist unit to indemnify the Exchange and/or any third party against any potential liabilities associated with the product; (2) require a specialist unit to agree to pay the Exchange and/or any third party any amounts related to the product or use of the product; and (3) enter into any necessary agreements or undertakings with the Exchange and/or third party concerning the intellectual property, however, no such agreement or undertaking may confer any ownership or proprietary rights upon the specialist unit with respect to the intellectual property or the book.

The text of the proposed rule change follows. Additions are italicized.

* * * * *

Specialist Performance Evaluation

Rule 511

(a) No change.

(b) Allocations.

* * * * *

(i) *New⁵ Product Specialist Unit Allocation. When an eligible specialist*

specialist from entering into certain types of business transactions; and (6) elaborated on the purpose behind the proposed changes involving licensing or acquisition of an index, trademark, tradename, patent, or other intellectual property.

⁴ See letter from Linda C. Christie, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated April 4, 2002 ("Amendment No. 2"). In Amendment No. 2, Phlx removed rule text stating that the proposed changes would take effect notwithstanding anything to the contrary in Phlx Rules 500 through 526 and amended rule text to clarify that the proposed definition of new product would only apply for purposes of proposed Phlx Rule 511(b).

⁵ The Commission notes that the proposed rule text will follow the current text of Phlx Rule 511(b). Telephone conversation between Linda S. Christie, Counsel, Phlx, and Frank N. Genco, Division, Commission, on April 19, 2002.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, from Darla C. Stuckey, Corporate Secretary, NYSE, dated January 11, 2002 ("Amendment No. 1").

⁴ See letter to Nancy Sanow, Assistant Director, Division, Commission, from Darla C. Stuckey, Corporate Secretary, NYSE, dated March 4, 2002 ("Amendment No. 2").

⁵ See Securities Exchange Act Release No. 45602 (March 20, 2002), 67 FR 14756.

⁶ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(5).