

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-2002-20 and should be submitted by June 27, 2002.

IV. Commission's Finding and Order Granting Accelerated Approval of a Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of Sections 6 of the Act⁵ and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes that the proposal is consistent with Section 6(b)(4) of the Act,⁶ because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.⁷

The Commission finds that the NYSE's proposed flat fee of \$5,000 to issuers for an additional class of common stock is reasonable and equitable in that it allows other classes of common stock, in addition to tracking stocks, to benefit from a fixed initial listing fee in lieu of a per-share initial fee schedule. The Commission also believes that the proposal is consistent with the treatment that has been afforded to tracking stocks, a type of additional class of common stock, and should help the Exchange to be more competitive and responsive to alternate capitalization structures of its listed companies.

The NYSE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register** to enable its listed companies engaged in transactions to benefit from the broadened flat fee for the listing of an additional class of common stock as quickly as possible. The Commission agrees that the approval of this request would enable issuers to promptly benefit from the proposed rule change. As noted above, the Commission has previously approved an initial flat fee of \$5,000 for tracking stocks, a class of common stock, and therefore finds this proposal substantially similar, and consistent with the prior NYSE filing.⁸

Accordingly, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NYSE-2002-20) is hereby approved on an accelerated basis.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-14204 Filed 6-5-02; 8:45 am]

BILLING CODE 8010-01-U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46008; File No. SR-Phlx-2002-24]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Exchange's Emergency Committee

May 30, 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 April 24, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On May 20, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and approving the proposal on an accelerated basis.

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

The Phlx proposes to amend Exchange Rule 98, Emergency Committee ("Committee"), to expand the composition of the Committee to

include the Exchange's Off-Floor Vice Chairman, and to adopt previously amended text of the pilot program regarding Exchange Rule 98 on a permanent basis.

Below is the text of the proposed rule change, as amended. Proposed new language is *italicized*.

* * * * *

Emergency Committee

Rule 98. An Emergency Committee, consisting of the Chairman of the Board of Governors, the On-Floor Vice Chairman the Exchange, *the Off-Floor Vice Chairman of the Exchange*, and the Chairmen of the Floor Procedure, Options and Foreign Currency Options Committees, shall be established and authorized to determine the existence of extraordinary market conditions or other emergencies. When the Committee determines that such an emergency condition exists, the Committee may take any action regarding the following: (1) Operation of PACE, AUTOM, or any other Exchange quotation, transaction, reporting, execution, order routing or other systems or facility; (2) operation of, and trading on, any Exchange floor; (3) trading in any securities traded on the Exchange; and (4) the operation of members' or member organizations' offices or systems. Any member of the Emergency Committee may request the Committee to determine whether an emergency condition exists. If the Committee determines that such an emergency exists and takes action, the Committee shall prepare a report of this matter and submit it promptly to the Securities and Exchange Commission and submit it to the Board of Governors at the Board's next regular meeting.

* * * * *

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 III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(4).

⁷ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ See note 3, *supra*.

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 This notice, representing Amendment No. 1, replaces the original Rule 19b-4 filing in its entirety.

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

1. Purpose

The Exchange proposes to expand the composition of the Committee to include the Exchange's Off-Floor Vice Chairman, and to affect such expansion, and the previous amendments to Exchange Rule 98, on a permanent basis.

a. *Background.* On December 23, 1999, the Commission approved amendments to Exchange Rule 98, which updated the composition of the Committee to reflect the current governance structure of the Exchange, on a 120-day pilot basis.⁴ The pilot was then extended through August 21, 2000;⁵ through November 17, 2000;⁶ through April 30, 2001;⁷ through July 31, 2001;⁸ through November 30, 2001;⁹ and again through May 30, 2002.¹⁰

The Exchange originally proposed to amend Exchange Rule 98 by updating the composition of the Committee to correspond with previous revisions to the Exchange's governance structure,¹¹ and by deleting a provision authorizing the Committee to take action regarding CENTRAMART, an equity order reporting system that is no longer used on the Exchange Equity Floor.

The Committee was formed in 1989¹² prior to the aforementioned changes to the Exchange's governance structure. In

⁴ See Securities Exchange Act Release No. 42272 (December 23, 1999), 65 FR 153 (January 3, 2000) (SR-Phlx-99-42) ("Original Pilot").

⁵ See Securities Exchange Act Release No. 42898 (June 5, 2000), 65 FR 36879 (June 12, 2000) (SR-Phlx-2000-41).

⁶ See Securities Exchange Act Release No. 43169 (August 17, 2000), 65 FR 51888 (August 25, 2000) (SR-Phlx-2000-76). On July 14, 2000, the Exchange filed a proposed rule change (SR-Phlx-00-63) to effect the amendments on a permanent basis. In the proposal, the Exchange discussed its views as to whether the Committee structure ensured that all Exchange interests both on and off the floor were fairly represented. Because the Committee was considering further changes to the Committee, SR-Phlx-00-63 was withdrawn on June 15, 2001.

⁷ See Securities Exchange Act Release No. 43614 (November 22, 2000), 65 FR 75332 (December 1, 2000) (SR-Phlx-00-101).

⁸ See Securities Exchange Act Release No. 44245 (May 1, 2001), 66 FR 23961 (May 10, 2001) (SR-Phlx-2001-44).

⁹ See Securities Exchange Act Release No. 44653 (August 3, 2001), 66 FR 43289 (August 17, 2001) (SR-Phlx-2001-70).

¹⁰ See Securities Exchange Act Release No. 45192 (December 26, 2001), 67 FR 1386 (January 10, 2002) (SR-Phlx-2001-106).

¹¹ See Securities Exchange Act Release No. 38960 (August 22, 1997), 62 FR 45904 (August 29, 1997) (SR-Phlx-97-31).

¹² See Securities Exchange Act Release No. 26858 (May 22, 1989), 54 FR 23007 (May 30, 1989) (SR-Phlx-88-36).

the Original Pilot, approved by the Commission, the Exchange deleted the word "President" from the rule, as the Exchange no longer has a "President," and included the Exchange's On-Floor Vice Chairman¹³ as a member of the Committee.

b. *The Instant Proposal.* The current pilot program specifies the composition of the Committee to include the following individuals: the Chairman of the Board of Governors; the On-Floor Vice Chairman of the Board of Governors; and the Chairmen of the Options Committee, the Floor Procedure Committee, and the Foreign Currency Options Committee, respectively.

The Exchange represents that the proposed addition of the Off-Floor Vice Chairman to the Committee is in response to Commission comments concerning the expansion of the Committee to include off-floor representation in the decision-making process in emergency situations. Since off-floor interests would certainly be affected by any decision made by the Committee regarding the operation of the Exchange, the Exchange believes that the addition of the Off-Floor Vice Chairman would provide representation of those interests sufficient to satisfy the Commission's concerns.

The Exchange represents that meetings of the Committee shall be held at such times and places as the Committee may designate, meetings of the Committee shall be held on the call of any member of the Committee. The Exchange will use best efforts to attempt to give notice thereof by making such reasonable efforts as circumstances may permit to notify each Committee member of the meeting. Such notification may be oral, written or by publication, specifying the purposes thereof. Failure of any member of the Committee to receive actual notice of a meeting of the Committee shall not affect the power of the Committee members present at such meeting to exercise the powers of the Committee.

The Exchange represents that four out of six members of the Committee (including the proposed addition of the Off-Floor Vice Chairman) shall be sufficient to constitute a quorum for any meeting of the Committee. In the event of a vacancy on the Committee, a quorum would be a majority of all Committee members then in office.¹⁴

¹³ See Exchange By-Law, Article IV, Section 4-2.

¹⁴ Exchange By-law Article X, Section 10-3 provides, in relevant part, that each Standing Committee and Special Committee shall determine the manner and form in which its proceedings shall be conducted, and shall make such regulations for its government as it shall deem proper and may act at a meeting or without a meeting, and through a

Finally, in accordance with current Exchange Rule 98, any action taken by the Committee shall be reported and submitted promptly to the Commission and to the Exchange's Board of Governors at its next regular meeting following such action.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act¹⁵ in general, and with Section 6(b)(5) in particular,¹⁶ in that designed to perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest, by permanently updating the composition of the Committee to reflect the current governance structure of the Exchange, and by adding off-floor representation to the Committee by making the Exchange's Off-Floor Vice Chairman a permanent member of the Committee. The Exchange also believes that the proposed rule change, as amended, is consistent with the Act because it continues to provide a regular procedure for the Exchange to take necessary and appropriate action to respond to emergencies.¹⁷

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

The Exchange did not receive or solicit any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

quorum composed of a majority of all its members then in office. Except as otherwise specifically provided in the by-laws or rules, the decision of a majority of those present at a meeting at which a quorum is present, or the decision of a majority of those participating when at least a quorum participates, shall be the decision of the Committee.

¹⁵ 15 U.S.C. 78f.

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ Previously, the Exchange has described "extraordinary market or emergency conditions" as among other things, a declaration of war, a presidential assassination, an electrical blackout, or events such as the 1987 market break or other highly volatile trading conditions that require intervention for the market's continued efficient operation. See letter from William W. Uchimoto, General Counsel, Phlx, to Sharon L. Itkin, Esquire, Division of Market Regulation, Commission, dated March 15, 1989.

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-Phlx-2002-24 and should be submitted by June 27, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Exchange has requested that the Commission approve the proposed rule change, as amended, on an accelerated basis, and that the Commission permanently approve the pilot program related to Exchange Rule 98. 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 exchange.¹⁸ In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national securities system, and protect investors and the public interest.¹⁹ Specifically, the Commission believes that the proposed rule change, as amended, is consistent with the requirements of the Act, by fostering investor and public interest and promoting just and equitable principles of trade, for several reasons. First, it conforms the composition of the Committee to structural amendments that were made to the Exchange's governance structure and eliminates outdated references that may be confusing. Secondly, it adds the Off-

Floor Vice Chairman to the Committee, which should help to ensure that the Committee represents Exchange interests both on and off the floor. Finally, it addresses quorum requirements to ensure that the Committee will be able to meet and can operate in times of emergency.

The Commission notes that the Exchange originally amended Exchange Rule 98 relating to its Committee, in December 1999, as part of a Year 2000 contingency plan designed by the Exchange's Year 2000 Task Force. The Commission approved the Exchange's amendment to the rule on a pilot basis,²⁰ and noted that the amended rule gave the Committee the power to act only in true emergency situations. The pilot program was extended several times, the current extension scheduled to expire on May 30, 2002, as the Exchange and the Commission considered changes to the composition of the Committee to ensure fair representation of all Exchange interests. In this instant proposal, the Exchange believes that, by adding the Off-Floor Vice President to the Committee to represent off-floor Exchange interests, it will address these concerns. The Commission notes that, under the amended proposal being approved in this order, the Committee will consist of the Chairman of the Board of Governors, the On-Floor Vice Chairman the Exchange, the Off-Floor Vice Chairman of the Exchange, and the Chairmen of the Floor Procedure, Options and Foreign Currency Options Committees.²¹

In approving the original pilot and extending it several times, the Commission requested that the Phlx consider whether the overall Committee structure ensures that all Exchange interests are fairly represented. The Commission noted that it would be concerned about a Committee structure dominated by one Exchange interest (*e.g.*, on-floor interest). In light of September 11, 2001, the establishment of a permanent emergency committee that can convene and meet quickly to make decisions has become critical.

²⁰ See Original Pilot, *supra* note 4. In the approval order, the Commission requested that the Exchange examine the operation of the Committee to ensure that the Committee is not dominated by any one Exchange interest (*i.e.*, on-floor or off-floor interest). The Commission requested that the Exchange report back to the Commission on its views as to whether the Committee structure ensures that all Exchange interests are fairly represented by the Committee.

²¹ Under the terms of the pilot program, the Exchange also amended Exchange Rule 98 in minor respects, including deleting of the term "President," including the Exchange's On-Floor Vice Chairman to the Committee, and deleting reference to CENTRAMART.

Consequently, while the Committee represents a variety of on-floor interests, the addition of the Off-Floor Vice Chairman as a member of the Committee should help to create a more balanced Committee of both on and off-floor interests that should ensure that Exchange members are adequately represented in times of emergency.

The Commission further believes that the Exchange has adequate procedures in place for calling meetings of the Committee, specifically quorum requirements for calling a Committee meeting and for implementing a Committee decision. The Commission notes, in this regard, that the quorum requirements of four out of six members should ensure the Committee can convene and take action in times of emergency. Further, consistent with the Exchange's Bylaws, in the event of a vacancy, a quorum would be a majority of all Committee members then in office. In addition, in recognition that it may be hard to convene the Committee in the event of an emergency, the Exchange has stated its commitment to use best efforts to give notice to each Committee member of the meeting. Finally, the Commission notes that, in accordance with Exchange Rule 98, any action taken by the Committee shall be immediately reported to the Commission and to the Exchange's Board of Governors.

The Commission finds good cause, pursuant to section 19(b)(2) of the Act,²² for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission recognizes that no comments were received on the Original Pilot or during the duration of the pilot program. The Commission therefore believes that granting accelerated approval to the proposed rule change, as amended, as well as permanent approval to the amended pilot program is appropriate and will ensure that the Committee remains in place to take necessary and appropriate action to respond to extraordinary market conditions or other emergency situations.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²³ that the proposed rule change (SR-Phlx-2002-24), as amended, is hereby approved on an accelerated basis.

²² 15 U.S.C. 78s(b)(2).

²³ *Id.*

¹⁸ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁹ 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-14138 Filed 6-5-02; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45996; File No. SR-Phlx-2002-13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Security Required for and Termination of Equity Trading Permits

May 29, 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 March 1, 2002, 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 and II below, which Items have been prepared by the Exchange. The Exchange filed Amendment No. 1 on April 2, 2002.³ 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

The Exchange proposes to amend paragraph (i) of Exchange Rule 23, *Equity Trading Permits* ("ETPs"), to provide that ETP organizations, which are also member organizations holding equitable title to a membership, would not be required to provide the required security and to add new subsection (i)(iv) of Exchange Rule 23 to provide that the proceeds of any transfer of a

membership by a member organization may be applied by the Exchange to satisfy any claims of the Exchange, Stock Clearing Corporation of Philadelphia ("SCCP"), or other member firms of the Exchange as described in Exchange By-Law 15-3 against the member organization's ETP holders. The Exchange also proposes to amend Exchange Rule 50, *Late Charge*, in order to allow the Exchange to terminate an ETP 14 days after the ETP holder is suspended. The text of the proposed rule change appears below. New text is in *italics*; deletions are in [brackets].

Rule 23

Equity Trading Permits.

(a)-(h) No Change.

(i) Security For Exchange Fees and Other Claims.

(i) Each ETP organization (*except any ETP organization which is also a member organization holding equitable title to a membership, legal title to which is held by an associated person of such member organization*) shall be required to provide security to the Exchange for the payment of any claims owed to the Exchange, *to Stock Clearing Corporation of Philadelphia, and to other member firms of the Exchange*, upon termination of any ETP issued to an individual affiliated with the ETP organization, as though such security were the proceeds from the transfer of a membership. This security may consist of:

(A) a deposit with the Exchange in the amount of \$50,000 to be held, together with all other such deposits made pursuant to this rule, in a segregated account, the proceeds of which may be applied by the Exchange upon termination of any ETP issued to an individual affiliated with such ETP organization in the same manner as proceeds of membership transfers under By-Law 15-3, and which may be invested by the Exchange in United States government obligations or any other investments which provide safety and liquidity of the principal invested, interest or income on which deposit shall be paid periodically by the Exchange to such ETP organization;

(B) an acceptable letter of credit from a financial institution acceptable to the Exchange, in the amount of \$50,000, proceeds of which may be applied by the Exchange upon termination of any ETP issued to an individual affiliated with such ETP organization in the same manner as proceeds of membership transfers under By-Law 15-3; or

(C) an acceptable guaranty by a financial institution acceptable to the Exchange guaranteeing the payment by

the ETP organization, upon termination of any ETP issued to any individual affiliated with such organization, of any claims listed in By-Law 15-3 up to \$50,000.

(ii) The security required to be provided pursuant to this rule shall not be calculated based upon the number of ETPs issued to affiliates of the ETP organization, but shall be the same amount regardless of the number of such ETPs issued to its affiliates. At such time as no ETP holders remain associated with the ETP organization, the proceeds of any remaining security may be applied by the Exchange in the same manner as proceeds of membership transfers under By-Law 15-3, and upon execution by the ETP holder and ETP organization of releases satisfactory to the Board of Governors.

(iii) The obligation to provide security pursuant to this rule shall not apply to ETP organizations which have been in good standing at the Exchange as member organizations, participant organizations, or ETP organizations for the previous year. Any security provided pursuant to this Rule 23(i) shall be returned at such time as the ETP organization shall have been in good standing as either a member organization, participant organization, or an ETP organization for one year.

(iv) *The proceeds of any transfer of a membership by a member organization may be applied by the Exchange to satisfy any claims of the Exchange, Stock Clearing Corporation of Philadelphia, or other member firms of the Exchange as described in By-Law 15-3 against the member organization's ETP holders.*

Rule 50. Late Charge

There shall be imposed upon any member, member organization, participant or participant organization or an employee thereof using the facilities or services of the Exchange, or enjoying any of the privileges therein, a late charge for dues, foreign currency options users' fees, fees, other charges, fines, and/or other monetary sanctions or other monies due and owed the Exchange and not paid within thirty (30) days after date of original invoice. The late charge is set at a rate of one and one half percent (1.5%) simple interest for each thirty-day period or fraction thereof, calculated on a daily basis, during which accounts payable to the Exchange remain outstanding. An account is not subject to a late charge until the unpaid balance remains outstanding at least thirty-one (31) days. The Finance Committee or its designee may waive the amount of the late charge, or a portion thereof, if the

²⁴ 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 Carla Behnfeldt, Director, Legal Department New Product Development Group, Phlx, to Christopher Solgan, Law Clerk, Division of Market Regulation ("Division"), Commission, dated April 2, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange amended the propose rule text to reflect amendments made under SR-Phlx-2002-19 filed pursuant to Section 19(b)(3)(a)(ii) of the Act and Rule 19b-4(f)(2) thereunder. In addition, the Exchange requested that, rather than being filed pursuant to Section 19(b)(3)(A)(ii) of the Act, under which it was originally filed, that the proposed rule change now be filed pursuant to Section 19(b)(3)(iii) of the Act and Rule 19b-4(b)(6) thereunder.