

and a few trades may be added, deleted or amended as late as a few weeks after trade date.<sup>6</sup> To ensure that subscribers to the report have access to those trades, the MSRB will make available each day an "updated" report containing all trades effected one month previously. This will enable subscribers to see the effect of changes reported by dealers after the one-week report was disseminated.

## 2. Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(I) of the Act, which authorizes the MSRB to adopt rules that provide for the operation and administration of the Board.

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

The MSRB does not believe that the proposed rule change will impose any burden on competition in that it applies equally to all dealers in municipal securities.

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

Written comments on the proposed rule change 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 self-regulatory organization 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. 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 submissions, 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 the filing will also be available for inspection and copying at the MSRB's principal offices. All submissions should refer to File No. SR-MSRB-2002-07 and should be submitted by August 7, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 46182; File No. SR-NYSE-2002-23]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Changes to Effective Dates for Certain Provisions of Recently Amended Rule 472 ("Communications With the Public")**

July 11, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 5, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. On July 9, 2002, the NYSE filed Amendment No. 1 to the proposed rules change.<sup>3</sup> The NYSE has designated the

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> In Amendment No. 1, NYSE provided associated persons until July 16, 2002 to submit plans for liquidation to their member or member organization's legal or compliance department. In Amendment No. 1, NYSE also corrected the several technical errors that appeared in its original filing. See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to James A. Brigagliano, Assistant Director, Division of Market Regulation,

proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule series under paragraph (f)(1) of Rule 19b-4 under the Act,<sup>4</sup> which renders the proposal effective upon filing Amendment No. 1 with the Commission. 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 is filing with the Commission a proposed rule change that would establish November 6, 2002 as the effective date for certain provisions of NYSE Rule 472 ("Communications with the Public").

First, the proposed rule change would establish, subject to certain conditions described below, November 6, 2002 as the effective date for Rule 472(b)(1), (2) and (3) for members or member organizations that over the three previous years, on average, have participated in 10 or fewer underwritings as manager or co-manager and generated \$5 million or less in gross investment banking revenues from those transactions. Rule 472(b)(1), (2) and (3), when effective, will prohibit associated persons, as defined in Rule 472.40 from being subject to the supervision or control of any employees of a member's or member organization's investment banking department, and will further require legal or compliance personnel to intermediate certain communications between the research department and either the investment banking department or the company that is the subject of a research report by the research department (referred to herein as the "subject company"). Those members or member organizations that meet the eligibility requirements outlined above for the delayed implementation date, would be required to disclose in research reports that they are delaying implementation of this Rule provision until November 6, 2002. Further, they would also be required to maintain records of communications that would otherwise be subject to the gatekeeper provisions of Rule 472(b)(2)(i) and (ii).

Second, the proposed rule change would establish November 6, 2002 as the effective date for Rule 472(k)(1)(ii) as applied to the receipt of compensation by a member's or member

Commission, dated July 9, 2002 ("Amendment No. 1").

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

<sup>6</sup> See Release No. 34-43060 (July 20, 2000), 65 FR 46188-46189 (July 27, 2000) at note 7.

Approximately one percent of the trades in the database have data submitted between one week and one month after trade date.

organization's foreign affiliates from a subject company. Rule 472(k)(1)(ii), when effective, will require members or member organizations to disclose in research reports all compensation received by it or its affiliates from a subject company for investment banking services in the past 12 months, or expected to be received in the next three months. Members and member organizations that delay implementation nevertheless would have to disclose in research reports that their foreign affiliates may (a) have managed or co-managed a public offering of the subject company's securities in the past 12 months; (b) have received compensation for investment banking services from the subject company in the last 12 months; or (c) expect to receive or intend to seek compensation for investment banking services from the subject company in the next three months. Members or member organizations that delay implementation of Rule 472(k)(1)(ii) must notify the Exchange, and must also disclose in research reports that, with regard to their foreign affiliates, they are not making the disclosures required by the Rule until November 6, 2002. Further, members and member organizations would remain responsible for complying with the Rule's provisions for investment banking compensation received by the member or member organization and those affiliates based in the United States.

Third, the proposed rule change would establish November 6, 2002, subject to certain conditions described below, as the effective date for Rule 472(e)(3) for those associated persons who must divest certain holdings to comply with their member's or member organization's more restrictive policy that prohibits an associated person's ownership of securities that they cover in research reports. Rule 472(e)(3), when effective, will prohibit an associated person from purchasing or selling a security in a manner contrary to the associated person's most recent published recommendation reflected in the member's or member organization's research report. The Exchange is proposing to delay implementation of Rule 472(e)(3) only for associated persons that meet the following conditions: (1) they are employed by a member or member organization that, as of July 9, 2002, has adopted a policy that bans research analysts' ownership of securities they cover and further requires complete divestiture of existing holdings in those securities; (2) they abide by a reasonable plan of liquidation under which all shares are

to be sold by November 6, 2002 and submit that plan to their member's or member organization's legal or compliance department no later than July 16, 2002; (3) they receive written approval of the liquidation plan from their member's or member organization's legal or compliance department; and (4) the member or member organization notifies the Exchange that they have approved plans that delay implementation of the provision.

## 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. 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

The Exchange is filing the proposed rule change to establish November 6, 2002 as the effective date for: (a) Rule 472(b)(1), (2) and (3), subject to certain conditions, for members and member organizations that over the previous three years, on average, have participated in 10 or fewer underwritings as manager or co-manager and generated \$5 million or less in gross investment banking revenues from those transactions; (b) Rule 472(k)(1)(ii) as applied to the receipt of compensation by a member's or member organization's foreign affiliates from a subject company; and (c) Rule 472(e)(3), subject to certain conditions, for those associated persons who must divest certain holdings to comply with their member's or member organization's more restrictive policy that prohibits an associated person's ownership of securities they cover.

On May 10, 2002, the Commission approved amendments to NYSE Rules 351 and 472, which place prohibitions and/or restrictions on Investment Banking Department, Research Department and Subject Company relationships and communications and impose new disclosure requirements on

members and member organizations and their associated persons.<sup>5</sup>

At the same time, the Commission also approved a staggered implementation period for the Rules. Most provisions of the Rules become effective on July 9, 2002, including those that restrict supervision and control of associated persons by the investment banking department and those that require disclosure of investment banking compensation received from a subject company.

The "gatekeeper" provisions, described below, become effective September 9, 2002, and Rule 472(k)(1)(i)a.—a requirement to disclose firm ownership of subject company securities—becomes effective on November 6, 2002.

#### Small Firm Relief

The Rules contain provisions that generally restrict the relationship between the research and investment banking departments, including "gatekeeper" provisions that require a legal or compliance person to intermediate certain communications between the research and investment banking departments. Rule 472(b)(1) prohibits an associated person (also referred to throughout this filing as a "research analyst") from being under the control or supervision of any employee of the investment banking department.

Rule 472(b)(1) also prohibits the investment banking department from reviewing or approving any research report prior to distribution. Rule 472(b)(2) creates an exception to the prohibitions of (b)(1) to allow investment banking personnel to review a research report prior to publication to verify the factual information contained therein and to screen for potential conflicts of interest. Any permissible written communications must be made through an authorized legal or compliance official or copied to such official. Oral communications must be made through, or in the presence of, an authorized legal or compliance official and must be documented.

Similarly, Rule 472(b)(3) restricts communications between a member or member organization and the subject company of a research report, except that a member or member organization may submit sections of the research report to the subject company to verify factual accuracy and may notify the subject company of a ratings change after the "close of trading" on the

<sup>5</sup> See Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34968 (May 16, 2002) ("May 10th order").

business day preceding the announcement of the ratings change. Submissions to the subject company may not include the research summary, the rating or the price target, and a complete draft of the research report must be provided beforehand to legal or compliance personnel. Finally, any change to a rating or price target after review by the subject company must first receive written authorization from a legal or compliance official.

As the Commission noted in its May 10th order, several commenters argued that the "gatekeeper" provisions would impose significant costs, especially for smaller firms that may have to hire additional personnel to comply with the requirements. Commenters also noted that personnel often wear multiple hats in smaller firms, thereby causing a greater burden to comply with the restriction on supervision and control by investment banking personnel over research analysts. These comments raised the prospect that the Rules might force some firms out of the investment banking or research business and/or reduce important sources of capital and research coverage for smaller companies.

The NYSE is sensitive to the issues confronted by small firms and, as the Commission's May 10th order noted, along with NASD, is reviewing the issue to explore possible exemptions or accommodations that might be made while preserving the purposes of the Rules. To that end, and in order to provide time to review those issues, the Exchange is proposing to delay implementation of Rules 472(b)(1), (2), and (3) until November 6, 2002 for members and member organizations that over the previous three years, on average, have participated in 10 or fewer underwritings as manager or co-manager and generated \$5 million or less in gross investment banking revenues from those transactions.

Those members or member organizations that meet the eligibility requirements outlined above for the delayed implementation date, would be required to disclose in research reports that they are delaying implementation of this Rule provision until November 6, 2002. Further, they would also be required to maintain records of communications that would otherwise be subject to the "gatekeeper" provisions of Rules 472(b)(2)(i) and (ii). The Exchange believes that for these members and member organizations, provided they comply with the conditions described, the temporary relief from these provisions will not adversely impact the spirit and intent of the Rule initiative.

#### Receipt of Investment Banking Compensation by Foreign Affiliates

Rule 472(k)(1)(ii) requires a member or member organization to disclose in research reports if the member or member organization or its affiliates: (a) managed or co-managed a public offering of the subject company's securities in the past 12 months; (b) received compensation for investment banking services from the subject company in the past 12 months; or (c) expects to receive or intends to seek compensation for investment banking services from the subject company in the next 3 months.

The Exchange understands that members and member organizations are setting up systems that can track the information required by this provision of the Rule. However, members and member organizations, particularly those with global operations and foreign affiliates, have informed the Exchange that the scope of their operations make it impossible to have systems in place by July 9, 2002, to track all investment banking compensation received by their foreign affiliates.

The Exchange recognizes that the tracking of investment banking compensation received by foreign affiliates requires significant resources, and therefore believes it is appropriate to allow members and member organizations additional time to set up systems to enable compliance with the Rule. Accordingly, NYSE is proposing to delay the implementation date for Rule 472(k)(1)(ii) until November 6, 2002, only as it relates to investment banking compensation received by members' and member organizations' foreign affiliates. Members and member organizations would remain responsible for complying with the Rule's provisions for investment banking compensation received by the member or member organization and those affiliates based in the United States.

Members and member organizations that delay implementation nevertheless would have to disclose in research reports that their foreign affiliates may (a) have managed or co-managed a public offering of the subject company's securities in the past 12 months; (b) have received compensation for investment banking services from the subject company in the last 12 months; or (c) expect to receive or intend to seek compensation for investment banking services from the subject company in the next three months. Members or member organizations that delay implementation of Rule 472(k)(1)(ii) must notify the Exchange, and must also disclose in research reports that, with

regard to their foreign affiliates, they are not making the disclosures required by the Rule until November 6, 2002.

#### Trading Contrary to Recommendations

The Rules contain provisions that restrict the personal trading by research analysts, but it does not completely prohibit ownership of securities that the research analyst covers. One such restriction is found in Rule 472(e)(3), which becomes effective on July 9, 2002. That provision prohibits an associated person from purchasing or selling a security or option or derivative of that security, in a manner contrary to the research analyst's most recent published recommendation reflected in the member's research report. For purposes of this Rule, the restriction applies to the associated person and "household member" as it is defined in the Rule, and to any account in which an associated person or household member has a financial interest, or over which the associated person has discretion or control, except for an investment company registered under the Investment Company Act of 1940.

Several members and member organizations have gone beyond the requirements of the Rule and instituted internal policies that prohibit research analysts from owning securities that they cover. Most of these firms require that research analysts divest themselves, over a certain period of time, of any existing holdings in securities they cover. Consequently, research analysts could face the predicament of violating Rule 472(e)(3) to comply with their firm's more restrictive policy because they could be required by their firm to divest their holdings in a security even as they maintain a buy recommendation in that security. Absent some relief from the Rule, the practical impact of the firm-imposed prohibition would be that research analysts would have to divest all holdings in securities they cover by July 9, 2002, or cease coverage in those securities in which they hold positions.

To alleviate this situation, and to allow an orderly liquidation of holdings, the Exchange is proposing to delay implementation of Rule 472(e)(3) until November 6, 2002, only for associated persons that meet the following conditions: (a) they are employed by a member or member organization that as of July 9, 2002 has adopted a policy that bans research analysts' ownership of securities they cover and further requires complete divestiture of existing holdings in those securities; (b) they abide by a reasonable plan of liquidation under which all shares are to be sold by November 6, 2002 and submit that plan to their member's or

member organization's legal or compliance department no later than July 16, 2002; (c) they receive written approval of the liquidation plan from their member's or member organization's legal or compliance department; and (d) the member or member organization notifies the Exchange that they have approved plans that delay implementation of the provision.

## 2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5)<sup>6</sup> of the Act which requires, among other things, that the rules of the Exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and in general to protect investors and the public interests.

### *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 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

The proposed rule change has been filed by the Exchange as a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Rule 19b-4(f)(1) under the Act.<sup>7</sup> Consequently, it has become effective pursuant to Section 19(b)(3)(A)<sup>8</sup> of the Act and Rule 19b-4(f)(1) thereunder.<sup>9</sup>

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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 proposed rule

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 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 above-mentioned self-regulatory organization. All submissions should refer to file number SR-NYSE-2002-23 and should be submitted by August 7, 2002.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.<sup>10</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 02-17979 Filed 7-16-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46170; File No. SR-Phlx-2001-111]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Termination of Broker-Dealer Agreements on PACE**

July 8, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 30, 2002,<sup>3</sup> 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 the Exchange. The proposed rule change has been filed by the Phlx as a "non-controversial"

rule change under Rule 19b-4(f)(6) of the Act.<sup>4</sup> 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**

Phlx proposes to specify that the signing and termination of specialist agreements to execute broker-dealer orders on the Philadelphia Stock Exchange Automated Communication and Execution ("PACE") system<sup>5</sup> shall be in accordance with the procedures set forth by the Exchange. The text of the proposed rule change is available at the Phlx 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 Phlx 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 Phlx 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

According to the Phlx, the purpose of the proposed rule change is to expressly provide for the signing and termination of Specialist Agreements accepting broker-dealer orders on the PACE system pursuant to the procedures set forth by the Exchange. Phlx equity specialists may choose to participate in PACE with respect to specialty securities. Further, specialists, once on PACE, may choose to accept only agency orders,<sup>6</sup> subject to the appropriate PACE execution parameters, or may choose, in addition, to accept non-agency orders. Phlx Rule 229, describes the minimum PACE execution parameters the specialist is required to

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> PACE is the electronic order routing, delivery, execution and reporting system used to access the Phlx Equity Floor.

<sup>6</sup> For purposes of the PACE system, an agency order is any order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest. See Supplementary Material .02 to Phlx Rule 229.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 17 CFR 240.19b-4(f)(1).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(1).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Commission notes that although Phlx officially filed this proposed rule change in 2002, Phlx had submitted a pre-filing in December 2001, at which time it assigned the file number SR-Phlx-2001-111.