

Activities,” is being issued for trial use. Regulatory Guide 1.200 is being developed to provide guidance to licensees in determining the technical adequacy of a probabilistic risk analysis used in a risk-informed, integrated decision-making process.

Standard Review Plan Chapter 19.1, “Determining the Technical Adequacy of Probabilistic Risk Assessment Results for Risk-Informed Activities,” has been developed for the NRC staff to use in conjunction with Regulatory Guide 1.200.

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Dated at Rockville, MD this 27th day of February 2004.

For the Nuclear Regulatory Commission.

**Jack R. Strosnider**

*Deputy Director, Office of Nuclear Regulatory Research.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-49464; File Nos. SR-NYSE-2004-03; SR-NASD-2004-020]

**Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Changes by the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. Relating to Certain Prerequisites to and Exemptions From Taking the Research Analyst Qualification Examination (“Series 86/87”)**

March 24, 2004.

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> on January 30, 2004, the New York Stock Exchange, Inc. (“NYSE” or the “Exchange”), and on February 3, 2004, the National Association of Securities Dealers, Inc. (“NASD”), filed with the Securities and Exchange Commission (“SEC” or the “Commission”) proposed rule changes to set forth certain prerequisites and exemptions from the requirement that all members who function as research analysts be registered as such and pass a qualification examination. Specifically, the proposed rule changes would (1) establish, as a prerequisite to be registered as a research analyst, the requirement that an applicant also be registered as a General Securities Representative and (2) provide for an exemption from the analytical portion of the Research Analyst Qualification Examination (Series 86) for certain applicants who have passed both Levels I and II of the Chartered Financial Analyst (“CFA”) Examination.

The proposed rule changes were published for comment for fifteen days in the **Federal Register** on March 2, 2004. <sup>3</sup> The Commission received one comment on SR-NASD-2004-020. <sup>4</sup> This order approves the proposed rule changes on an accelerated basis.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the regulations thereunder applicable to the NYSE and NASD. <sup>5</sup> In particular, the Commission believes that the proposals are consistent with Sections 6(b)(8) and

6(c)(3)(B) of the Act, <sup>6</sup> and Sections 15A(b)(6) and 15A(b)(9) of the Act. <sup>7</sup>

The Commission finds that the NYSE’s proposed rule change is consistent with Section 6(c)(3)(B) of the Act. <sup>8</sup> Section 6(c)(3)(B) of the Act <sup>9</sup> provides that a national securities exchange may bar a natural person from becoming a member or associated with a member, or condition the membership of a natural person or association of a natural person with a member, if such natural person does not meet such standards of training, experience and competence as are prescribed by the rules of the exchange. Section 6(c)(3)(B) of the Act <sup>10</sup> also provides that a national securities exchange may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the exchange, and require any person associated with a member, or any class of such persons, to be registered with the exchange in accordance with procedures so established.

In addition, the Commission finds that the NYSE’s proposed rule change is consistent with Section 6(b)(8) of the Act, <sup>11</sup> which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission finds that the NASD’s proposed rule change is consistent with Section 15A(g)(3). <sup>12</sup> Section 15A(g)(3) of the Act <sup>13</sup> provides that a registered securities association may bar a natural person from becoming associated with a member or condition the association of a natural person with a member if such natural person does not meet such standards of training, experience, and competence as are prescribed by the rules of the association. Section 15A(g)(3) of the Act <sup>14</sup> also provides that a registered securities association may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the association and require a natural person associated with a member, or any class of such natural persons, to be registered with the association in accordance with procedures so established.

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

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

<sup>3</sup> See Securities Exchange Act Release No. 49314 (February 24, 2004), 69 FR 9888.

<sup>4</sup> The Commission received one comment letter on SR-NASD-2004-020, which generally supported the proposal but mainly addressed the issue of soft dollar payments for third-party research.

<sup>5</sup> See 15 U.S.C. 19(b)(2).

<sup>6</sup> 15 U.S.C. 78f(b)(8) and (c)(3)(B).

<sup>7</sup> 15 U.S.C. 78o-3(b)(6) and (b)(9).

<sup>8</sup> 15 U.S.C. 78f(c)(3)(B).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> 15 U.S.C. 78f(b)(8).

<sup>12</sup> 15 U.S.C. 78o-3(g)(3).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

In addition, the Commission finds that the proposed rule change is consistent with Section 15A(b)(9) of the Act,<sup>15</sup> which requires that the rules of an association not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission finds good cause for approving the NYSE and NASD proposed rule changes prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.<sup>16</sup> The proposals set forth certain prerequisites and exemptions from the research analyst registration requirements. The NYSE and the NASD stated their intentions to file proposed rule changes to require that applicants also be registered as General Securities Representatives as a prerequisite to being registered as research analysts, in related rule filings that were published in the **Federal Register** on February 13, 2004.<sup>17</sup> In addition, the proposals to provide for an exemption from the analytical portion of the Research Analyst Qualification Examination for certain applicants who have passed certain portions of the CFA Examination, are responsive to comments received in response to the SRO's rule changes that mandated registration requirements for research analysts. Those rule changes were approved on July 29, 2003.<sup>18</sup>

The Commission believes, moreover, that approving these proposed rule changes further the public interest and the investor protection goals of the Exchange Act. Finally, the Commission also finds that it is in the public interest to approve the rules as soon as possible to expedite the implementation of the research analyst registration requirements.

Accordingly, the Commission finds good cause, consistent with Sections 6(c)(3)(B), 15A(b)(6) and 19(b) of the Exchange Act,<sup>19</sup> to approve the proposed rule changes on an accelerated basis.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>20</sup> that the proposed rule changes (SR-NYSE-2004-03; SR-NASD-2004-020) are approved on an accelerated basis.

<sup>15</sup> 15 U.S.C. 78o-3(b)(9).

<sup>16</sup> In approving the NYSE's proposal, as amended, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>17</sup> See note 3 supra.

<sup>18</sup> See Securities Exchange Act Release No. 48252, 69 FR 45875 (August 4, 2003).

<sup>19</sup> 15 U.S.C. 78f(c)(3)(B), 78o-3(b)(6), and 78s(b).

<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</sup> 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>21</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49459; File No. SR-Phlx-2004-21]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Extension of a Pilot Program Regarding the Book Sweep Function of the Exchange's Automated Options Market System

March 23, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on March 17, 2004, 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 Phlx. The Phlx filed the proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 Phlx proposes to extend a pilot program concerning a feature of the Exchange's Automated Options Market ("AUTOM") System,<sup>5</sup> designed to automatically execute limit orders on the book when the specialist's quotation locks or crosses a limit order on the

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

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

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

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

<sup>5</sup> AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution features. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

book, thus rendering such limit order marketable. This feature, governed by Exchange Rule 1080(c)(iii), is called "Book Sweep." Book Sweep is currently operating as a six-month pilot.<sup>6</sup>

The pilot is scheduled to expire on March 31, 2004. The Exchange notes that it has submitted a proposed rule change requesting permanent approval of the Book Sweep feature.<sup>7</sup> The instant proposal is intended to extend the pilot from April 1, 2004 until the earlier of July 1, 2004 or such time as the Commission approves the Book Sweep feature on a permanent basis.

The text of the proposed rule change is available at the principal offices of the Phlx and at the Commission. The proposed rule change does not alter the text of the pilot language in Rule 1080(c)(iii).

#### 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

The purpose of the proposed rule change is to continue to further automate options order handling by extending a current pilot enhancement to the Exchange's AUTOM system, called Book Sweep, that allows certain orders resting on the limit order book<sup>8</sup> to be automatically executed in the situation where the bid or offer generated by the Exchange's Auto-

<sup>6</sup> In September, 2003, the Commission approved the Exchange's Book Sweep proposal on a six-month pilot basis. See Securities Exchange Act Release No. 48563 (September 29, 2003), 68 FR 57724 (October 6, 2003) (SR-Phlx-2003-30).

<sup>7</sup> See Securities Exchange Act Release No. 49365 (March 4, 2004), 69 FR 11690 (March 11, 2004) (SR-Phlx-2004-18).

<sup>8</sup> The electronic "limit order book" is the Exchange's automated specialist limit order book, which automatically routes all unexecuted AUTOM orders to the book and displays orders real-time in order of price-time priority. Orders not delivered through AUTOM may also be entered onto the limit order book. See Exchange Rule 1080, Commentary .02.