SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39394; File No. SR–NYSE–97–31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. To Amend Its Rule 500 Relating to Voluntary Delistings by Listed Companies

December 3, 1997.

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 November 17, 1997, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with 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 substantially prepared by the NYSE.[3] On December 3, 1997, the NYSE submitted Amendment No. 1 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

The Exchange proposes to replace existing NYSE Rule 500 with a new Rule 500 to revise the procedures a NYSE-listed company must follow to delist its securities from the Exchange. The text of the proposed rule change, as amended, is available at the Office of the Secretary, the NYSE, and at the Commission.

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

[2] 17 CFR 240.19b–4.

[3] With the consent of the NYSE, Commission staff has incorporated several technical changes to the Exchange's description of its proposal. Telephone conversation between Richard Bernard, Executive Vice President and General Counsel, NYSE, and Richard Strasser, Assistant Director, Division of Market Regulation, Commission, on November 26, 1997.

[4] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated December 1, 1997 (''Amendment No. 1''). In Amendment No. 1, the NYSE amended the proposal to require an issuer proposing to delist its securities from the Exchange to: (1) provide the Exchange with written notice of the proposed delisting at the same time the issuer provides such notice to its shareholders; and (2) send the Exchange a copy of the delisting application the issuer submits to the Commission. Commission staff has incorporated the proposed changes set forth in Amendment No. 1 into the NYSE's description of its proposal.

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 NYSE 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 NYSE 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, as amended, is to revise the procedures an NYSE-listed company must follow to delist its securities from the Exchange. Currently, Rule 500 requires supermajority shareholder approval before a listed company can delist its securities: holders of 66⅔ percent of the security must approve the delisting, and ten percent or more of the individual holders cannot object to the delisting.

The Exchange adopted existing Rule 500 in the 1930's as a corporate governance safeguard, when delisting from the NYSE generally resulted in the loss of a public market for a security. That is no longer the case. Recognizing the changed corporate law and market circumstances, the new Rule would substitute alternative delisting procedures depending on the nature of the security.

- For stock of a domestic issuer, the Rule would require the issuer to obtain the approval of (1) the company's audit committee and (2) a majority of the company's full board of directors before the issuer could apply for delisting. Requiring approval by the independent directors constituting the audit committee, as well as approval of a majority of the full board of directors (not just of a quorum of directors at a particular meeting), would provide shareholders with protections that the Exchange believes would help offset the loss of the current shareholder voting requirement for delisting.

After receiving approval of the audit committee and board, the issuer would be required to provide shareholders with at least 45 but no more than 60 days' written notice of the proposed delisting. The notice must include a statement that the issuer complied with the requirements discussed in the paragraph above. This notice and waiting period would give shareholders who object to the proposed delisting an opportunity to communicate their views to the issuer's management and directors before the delisting becomes effective. It also would assure a reasonable period of time for shareholders to liquidate their positions in a stock in an orderly manner should they decide that they did not want to continue to own the security after delisting from the Exchange. At the same time, the 60-day cut-off assures that the ''lame-duck'' status of the stock listing would not persist to the point of impairing the ability of the Exchange to maintain a fair and orderly market in the stock. The issuer must contemporaneously send to the Exchange a copy of the written notice sent to shareholders.

- For stock of a non-U.S. issuer, the Rule simply would require the issuer to obtain board approval before the issuer could apply to the Commission for delisting, leaving to home country law the determination of the requisite vote. The issuer also would need to provide holders with reasonable notice of its intention to delist the securities. The Supplementary Material to the Rule, discussed below, provides further details on the nature of this notice.
- For bonds of both domestic and non-U.S. issuers, an issuer could apply to delist bonds subject only to board approval. The Rule does not require that bond holders be notified of the proposed delisting. The absence of the more rigorous requirement that pertains to stock reflects the fact that the Exchange generally is not the primary market for bonds.

New Supplementary Material to the Rule explains how these procedures would operate.

- Supplementary Material .10 cross-references NYSE Rule 4, which defines the term ''stock,'' and Rule 5, which defines the term ''bond.'' Generally, the stock delisting procedures would supply to securities ''classified for trading as stocks,'' including common stock, preferred stock and certain derivative instruments, such as equity-linked debt securities that trade pursuant to the stock trading rules. The bond delisting procedures would apply to fixed income products traded on the Bond Floor or through the Automated Bond System.
- Supplementary Material .20 provides guidance as to the manner in which non-U.S. issuer must provide notice to shareholders regarding the delisting of their stock. Non-U.S. issuers would be required to send written notice of the delisting to (i) shareholders that have a U.S. address or (ii) shareholders that own the stock in the form of American Depositary Receipts. For other holders, the issuer could follow home-country practice, which, for example, may allow for notice through publication or other means.
- Supplementary Material .30 cross-references NYSE Rule 465, which governs the transmission of reports and other materials by member organizations to beneficial owners who hold securities in ''street'' name. Supplementary Material .30 notes that, pursuant to Rule 465, both domestic and non-U.S. issuers must request that member organizations transmit the written notice of the proposed delisting as required by Rule 500 and Supplementary Material .20 to beneficial stockholders.

• Supplementary Material .40 discusses the interplay between Rule 500 and the issuer's application to the SEC to withdraw the security from listing. Pursuant to Commission Rule 12d2–2(d) under the Exchange Act, an issuer may apply to withdraw the security from listing after complying with the requirements of the Rule. With respect to the delisting of stock, the proposed date of delisting in the application to the Commission must be the same date specified in the notice to shareholders. The issuer must contemporaneously send to the Exchange a copy of the application submitted to the Commission.

• Supplementary Material .50 parallels a provision in Rule 499 (governing Exchange-initiated delistings), which provides that, when reviewing the listing status of one class of securities, the Exchange will review the appropriateness of the continued listing of other classes of the issuer's securities. Factors the Exchange will consider in such a review under Rule 500 include, but are not limited to, the pricing relationship between the securities being delisted and the other security, and the ability of the Exchange to make a market in the remaining securities. For example, it is unlikely the Exchange would delist the common stock of an issuer that delists bonds. On the other hand, it is likely that the Exchange would delist the warrants of an issuer that delists its common stock.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5) of the Act,[5] which requires that the rules of the Exchange be 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 interest.

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

The Exchange believes that the proposal does not impose 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties. However, in a process initiated at the beginning of May 1997, the Exchange did consult with a number of its Board and advisory committees, pension funds and other constituents in developing the Rule. The NYSE represents that these constituents overwhelmingly supported the revision of existing Rule 500, rather than its elimination.

According to the NYSE, the most controversial issue among the constituents was whether the requirement for a shareholder vote should be maintained, albeit with a simple majority vote. The great majority of those surveyed viewed delisting as a matter within the purview of the business judgment of a company's board of directors. These constituents believed that the Exchange could address the concerns underlying the desire for a shareholder vote by requiring (1) a higher-than-normal board vote, (2) the concurrence of independent directors, and (3) provision to shareholders of notice of a proposed delisting.

The Exchange believes that the text of the Rule reflects the reconciliation and incorporation of the comments and suggestions that the exchange received from these constituents.

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

Within 35 days of the 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. In addition to any other issues that the public may wish to address, the Commission specifically requests comments on the following questions:

Are the shareholder notification procedures required under the terms of the proposal necessary to the delisting process?

What are the costs involved with complying with the requisite shareholder notifications?

Will issuers' costs arising from the requisite shareholder notification create a disincentive to delist from the Exchange?

Is there an acceptable alternative means to providing shareholder notification, such as through media publication?

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 No. SR–NYSE–97–31 and should be submitted by December 31, 1997.

Margaret H. McFarland,

Deputy Secretary.

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

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39393; File No. SR–Phlx–97–51]

Self-Regulation Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Allocation of Options Trades

December 3, 1997.

Pursuant to Sections 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 22, 1997, 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, II, and III below, which Items have been prepared by the self-regulatory organization. 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, pursuant to Rule 19b–4 of the Act, proposes to provide that the seller or largest participant to an option transaction is responsible for allocating an executed trade. Specifically, the

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

[2] 17 CFR 240.19b–4.