

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41359; File No. SR-NYSE-98-41]

### Self-regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the New York Stock Exchange, Inc. Amending Opening Imbalance Publication Procedures for Expiration Days

May 3, 1999.

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 November 25, 1998, 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 and II below, which Items have been prepared by the Exchange. On March 22, 1999, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</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

The proposed rule change consists of amendments to expiration day opening imbalance publication procedures. The text of the proposed rule change is available at the Office of the Secretary, the NYSE, 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 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 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 currently has auxiliary opening procedures for expiration days.<sup>4</sup> These auxiliary procedures require, among other things, that market order imbalances of 50,000 shares or more in stocks on the Exchange's "special stock" list be published as soon as practicable after 9:00 a.m. on expiration days.<sup>5</sup> The special stock list consists of the 50 most highly capitalized stocks in the S&P 500 Stock Price Index, any stocks in the Major Market Index (XMI) that are not among the 50, and the 10 most highly capitalized stocks in the S&P 400 MidCap Index.<sup>6</sup>

The Exchange also required the use of the special stock list for imbalance publications at the close. In June 1998, however, the Exchange eliminated the use of special stock lists for publishing imbalances at the close and mandated that market-at-the-close ("MOC") imbalances of 50,000 shares or more be published in *all* stocks on any trading day.<sup>7</sup> As part of these revisions, the exchange also added a provision permitting the publication of MOC imbalances of *less than* 50,000 shares, with the approval of a Floor Official. These changes were implemented as part of a group of revisions to MOC and LOC procedures recommended by a subcommittee of the Market

<sup>4</sup> Modified opening procedures were first used on a pilot basis for the quarterly expiration on June 19, 1987. See Securities Exchange Act Release No. 24596 (June 16, 1987), 52 FR 23618 (June 23, 1987) (File No. SR-NYSE-87-17). They were approved permanently in Securities Exchange Act Release No. 25804 (June 15, 1988), 53 FR 23474 (June 22, 1988) (File Nos. SR-NYSE-87-11 and SR-NYSE-88-04).

<sup>5</sup> Other procedures include: 1. a 9:00 a.m. deadline for the entry of orders relating to expiring derivatives for which the settlement pricing is based on the opening prices of the underlying securities; 2. the use of the identifier "OPG" to identify such orders (firms unable to use the "OPG" identifier through SuperDOT must identify such orders by other means and inform Market Surveillance in writing by the business day following the expiration trade date); and 3. the publication of a "no imbalance" status for each stock on the special stock list for which there is no market order imbalance. See Securities Exchange Act Release No. 37894 (October 30, 1996), 61 FR 56987 (November 5, 1996) (File No. SR-NYSE-96-31) and NYSE Information Memo No. 96-34 (November 8, 1996).

<sup>6</sup> See Securities Exchange Act Release No. 31732 (January 14, 1993), 58 FR 6036 (January 25, 1993) (File No. SR-NYSE-92-38).

<sup>7</sup> See Securities Exchange Act Release No. 40094 (June 15, 1998), 63 FR 38230 (July 15, 1998) (File No. SR-NYSE-97-36) and NYSE Information Memo No. 98-20 (June 22, 1998).

Performance Committee which reviewed closing procedures.<sup>8</sup>

The Exchange believes it would also be appropriate to revise expiration day opening procedures by terminating the use of the special stock list and requiring order imbalance publication for all stocks with imbalances of 50,000 shares or more and to permit the publication of imbalances of less than 50,000 shares with Floor Official approval. The Exchange believes the proposed changes will provide more complete information to market participants. According to the Exchange, the increase of information should attract additional liquidity which could minimize volatility and lead to more orderly openings on expiration days.<sup>9</sup> All other aspects of expiration day opening procedures would remain the same, e.g., publication of market order imbalances at 9:00 a.m. and requirements for identification of orders relating to expiring derivatives that settle on the opening.

The exchange intends to issue an Information Memo to inform its members of the revised expiration day opening procedures.

##### 2. Statutory Basis

The Exchange believes the basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)<sup>10</sup> that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

#### 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 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 neither solicited nor received written comments on the proposed rule change.

<sup>8</sup> *Id.*

<sup>9</sup> Letter from Donald Siemer, Director, Market Surveillance, NYSE to Richard Strasser, Assistant Director, Division, SEC, dated March 31, 1999. This letter clarified the Exchange's purpose for the proposed rule change.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>1</sup> 15 U.S.C. 78s(b)(10).

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

<sup>3</sup> Letter from Donald Siemer, Director, Market Surveillance, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), SEC, dated March 18, 1999 ("Amendment No. 1"). Amendment No. 1 clarified the Exchange's opening procedures for stocks underlying derivative index related products on expiration days.

### 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 the 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, including whether the proposed rule change 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 NYSE. All submissions should refer to File No. SR-NYSE-98-41 and should be submitted by June 1, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41361; File No. SR-Phlx-99-08]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Establishing a \$200 Registration Fee and a \$200 Annual fee for Off-Floor Traders for which the Exchange is the Designated Examining Authority

May 3, 1999.

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 April 22, 1999, 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 Exchange. 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 Exchange proposes to amend its schedule of dues, fees, and charges to require all current and future off-floor traders to pay an initial \$200 registration fee and an annual fee of \$200 for all off-floor traders registered as of April 1 of each year. The fees would apply to all associated persons of member organizations for which the Exchange is the designated examining authority ("DEA"), but who are not themselves Exchange members, who engage in proprietary trading of equities and options, including, but not limited to, persons who execute such trades or make trading decisions with respect to such trades. The proposed rule would apply to those persons who are not Exchange members registered in a trading capacity on the floor of the Exchange.

#### 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 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

Currently, persons who are associated with member organizations for which the Exchange is the DEA, but who are not themselves Exchange members, who engage in proprietary trading of equities and options from off the floor of the Exchange, are required under Rule 604 to register with the Exchange by filing a Form U-4 and a fingerprint card.<sup>3</sup> Separately, the Exchange has filed a proposed rule change to impose a Series 7 testing requirement on such traders.<sup>4</sup> At this time, the Exchange proposes that such traders pay an initial registration fee of \$200. This initial registration fee applies to persons currently trading from off the floor and to persons who register to trade from off the floor in the future. The payment of the \$200 initial registration fee will be a prerequisite to engaging in trading from off the floor of the Exchange. Secondly, all such persons who are registered with the Exchange as of April 1 of each year will be assessed an annual fee of \$200.

The fees are proposed in recognition of the increased costs of administration that the Exchange has been and will be incurring. Specifically, the Exchange anticipates increased administration costs to be incurred in conducting background checks on the individuals to whom the rule applies; processing of forms; fingerprint charges; requests for disciplinary history of all current and future off-floor traders to the Central Registration Depository; and conducting on-site examinations of the main and branch offices of the various member firms with which off-floor traders associate.

##### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6 of the Act,<sup>5</sup> in general, and with section 6(b)(4),<sup>6</sup> in particular, in that it provides for the equitable allocation of reasonable

<sup>3</sup> See Securities Exchange Act Release No. 36395 (October 20, 1995), 60 FR 54904 (October 26, 1995) (File No. SR-Phlx-95-58) (order approving amendment of Phlx Rule 604).

<sup>4</sup> See Securities Exchange Act Release No. 41306 (April 16, 1999), 64 FR 22665 (April 27, 1999) (File No. SR-Phlx-99-07).

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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