

persons that the stockholders of the Holding Company elect as the directors of the Holding Company.

- The rights to purchase Holding Company common stock will be reallocated to the users of DTC and NSCC based upon the users' usage of the clearing agencies' services and facilities. Under the Basic Documents, these rights will be reallocated initially in 2000 and again in 2001. Thereafter, depending upon whether there are significant changes in entitlements and stock purchases, the Board of the Holding Company will be permitted to schedule reallocations every other year or every third year rather than annually.

- The owners of Holding Company common stock will be able to exercise cumulative voting in the election of Holding Company directors.

Each year the holding Company's Board of Directors will appoint a nominating committee that may include both members and non-members of the Board. After soliciting suggestions from all users of the clearing agencies of possible nominees to fill vacancies on the Board, the nominating committee will recommend a slate of nominees to the full Board. The Board may make changes in that slate before submitting nominations to the holders of Holding Company common stock for election. The election ballot included in the proxy materials will provide an opportunity for stockholders to vote for a person not listed as a nominee. Because the Basic Documents provide for cumulative voting, it will be possible one or more owners of Holding Company common stock to arrange to elect a person not on the slate nominated for election by the Board.

DTC and NSCC will continue to operate as they do currently, and each will offer its own services to its own participants and members pursuant to separate legal arrangements and separate risk management procedures. DTC has informed the Commission that the Holding Company will not engage in any clearing agency activities but that it will provide certain support functions, including human resources, finance, audit, general administration, corporate communications, and legal, which support functions will be centralized in the Holding Company, to DTC and NSCC pursuant to service contracts.

II. Discussion

Section 17A(b)(3)(C) of the Act⁶ requires that the rules of a clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its

directors and administration of its affairs. The Commission believes that the proposed rule change is consistent with DTC's obligations under Section 17A(b)(3)(C) because it should provide DTC's participants with a reasonable opportunity to acquire common stock in the Holding Company in proportion to their use of DTC and should provide DTC's participants through their holding of Holding Company stock with adequate and fair representation in the selection of DTC's directors and in the administration of DTC's affairs.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. Approving prior to the thirtieth day after publication of notice will allow DTC to proceed with the exchange offer to its shareholders in which the shareholders may exchange their shares in DTC for common stock in the Holding Company.

III. Conclusion

On the basis of the foregoing, the Commission finds that DTC's proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-99-17) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41787; File No. SR-NYSE-99-31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Amending Exchange Rules 902, 903 and 906

August 25, 1999.

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 June 30, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 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 proposed to amend NYSE Rules 902, 903 and 906 to permit coupled orders to be submitted after the official closing of the 9:30 a.m. to 4:00 p.m. trading session until 5:00 p.m. (the period after the 4:00 p.m. close until 5:00 p.m. hereafter referred to as "Crossing Session 1") where both sides represent member or member organization interest, in circumstances in which a specialist has included another member's or member organization's interest in offsetting the imbalance when setting a closing price. The text of the proposed rule change is available at the Exchange, 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

In 1991, the Exchange established its "Off-Hours Trading Facility." In connection with its implementation, the Exchange adopted the "900" series of rules to govern trading, order eligibility, order entry and record keeping requirements.

At 4:00 p.m. each day, the Exchange completes its normal procedure for the close of trading of the 9:30 a.m.-4:00 p.m. trading session. After 4:00 p.m., a common message switch broadcast message is published announcing the commencement of Crossing Session 1, which runs until 5:00 p.m.

⁶ 15 U.S.C. 78q-1(b)(3)(C).

During Crossing Session 1, the Off-Hours Trading Facility permits members and member organizations to enter orders to be executed at the NYSE closing price, that is, the price established by the last regular way sale in a security at the official closing of the 9:30 a.m. to 4:00 p.m. trading session. Orders may be entered for any Exchange listed issue, other than a security that is subject to a trading halt at the close of the regular trading session (including a Rule 80B trading halt) or is halted after 4:00 p.m.

The Exchange proposed to modify certain rules pertaining to Crossing Session 1 in an effort to reduce volatility and price dislocations at the 4:00 p.m. close by enabling the specialist to reflect legitimate market interest that was willing to participate in the close, but could not enter a timely order.

In circumstances in which a stock has an imbalance of market-on-close or limit-on-close orders, or when the closing price will elect a significant volume of stop orders, there may be little time to attract offsetting orders. A member, member organization or a customer may be willing to offset the imbalance, but be unable to enter an order before 4:00 p.m. The specialist may then have to acquire a substantial position or halt trading.

Under NYSE Rule 902, coupled orders to buy and sell the same amount of the same security may be entered into Crossing Session 1. However, such coupled orders may not be entered if they are both for an account of a member or member organization, or for an account in which an "associated person" of a member or member organization has an interest.

Therefore, while a specialist member organization may enter an order coupled with a contra-side order from a non-member in Crossing Session 1, it may not enter an order coupled with an order for a member's or member organization's account.

The Exchange proposes to amend NYSE Rule 902 to permit coupled orders to be submitted to Crossing Session 1 where both sides represent member or member organization interest, in circumstances in which a specialist has included another member's or member organization's interest in offsetting the imbalance when setting a closing price. Thus, the specialist will increase his or her participation at the close in anticipation of trading with a member or member organization in Crossing Session 1 and the closing price will reflect less of an imbalance.

Under NYSE Rule 903, orders entered in Crossing Session 1, including

coupled orders, are executed at the 5:00 p.m. close of the session. Under NYSE Rule 906, if the Exchange determines that material news is disclosed between 4:00 p.m. and 5:00 p.m., such as about a corporate development, it will cancel orders received in Crossing Session 1 and will preclude the entry of any subsequent orders. However, in the circumstances, outlined above, it is the Exchange's view that a good faith negotiation tied to establishing the closing price should not be affected by a subsequent event which "halts" trading.

Therefore, the Exchange proposes to amend NYSE Rules 903 and 906 to permit trades for the account of a specialist and a member, member organization or a non-member to be executed immediately when entered into Crossing Session 1 and not at 5:00 p.m. regardless of whether the Exchange has determined that all other Crossing Session 1 orders be canceled and precluded from entry. In addition, the specialist will be required to obtain Floor Official approval for the entry of his or her order into Crossing Session 1 if such order is not to be at the risk of the market, *i.e.*, it will be executed immediately and will not be precluded from entry because of a trading "halt." This requirement will help to insure that these orders, which are intended to offset the specialist's participation at the close, have been reflected when the closing price was established. Other coupled orders would continue to be executed at 5:00 p.m., subject to the stock not being withdrawn from Crossing Session 1. The Exchange believes that retaining this provision for other orders is appropriate for the protection of investors who may not be aware of the corporate development.

Total executed volume for coupled orders which are executed either immediately upon entry or at 5:00 p.m. would be reported to the tape as a single print, and will continue to be reported as "sold."

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)³ 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.

³ 15 U.S.C. 78f(b)(5).

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.

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 Exchange 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, 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, N.W., Washington, DC 20549-0609. Copies of the submission, 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 number SR-NYSE-99-31 and should be submitted by September 22, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41789; File No. SR-Phlx-98-43]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 by the Philadelphia Stock Exchange, Inc. Adopting Proposed Rule 134 Regarding Stop-Order Bans and Amendment Rule 229 To Require the Use of Account Identifiers for PACE Users

August 25, 1999.

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 18, 1998, 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. On December 9, 1998, February 2, 1999, and July 14, 1999, respectively, the Exchange filed Amendment Nos. 1,³ 2,⁴ and 3⁵ to the proposal with the

Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, including Amendments Nos. 1, 2, and 3, 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 adopt Rule 134 to provide for stop order and stop limit order⁶ bans whenever such orders are banned on the primary market. In addition, the Exchange proposes to amend Phlx Rule 229 to require account identifiers for orders submitted through the Phlx Automated Communication and Execution ("PACE")⁷ System.

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 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 has previously adopted circuit breaker rules, paralleling the rules of other exchanges.⁸ At this time, the Exchange proposes, like other exchanges, to prohibit the entry of stop

and stop limit orders during times of market stress.⁹

Proposed Rule 134 will establish a procedure prohibiting the entry of stop orders and stop limit orders in the following situations: (1) whenever the primary market for a stock admitted to dealings on the Exchange institutes a stop and stop limit order ban, the Exchange will also ban such orders in the stock until such time as the ban in the primary market is lifted; and (2) whenever the NYSE institutes a stop and stop limit order ban pursuant to NYSE Rule 80A, the Exchange will also ban stop and stop limit orders for the remainder of the day, except that a member or member organization may enter a stop or stop limit order of 2,099 shares or less for the account of an individual investor pursuant to instructions received directly from the individual investor.¹⁰

The first instance where a stop order ban can occur is when the primary market for the security issues a stop order ban. Following notice from the Consolidated Tape, the Exchange will announce to the floor and to PACE users that a stop order ban is in effect in the particular issue. The entry of stop and stop limit orders on the Phlx would be prohibited until the ban in the primary market is lifted and that information is disseminated on the Consolidated Tape. However, unlike the broad market ban described below, any stop or stop limit orders residing on the specialist's book when a ban goes into effect for an individual stock may¹¹ be canceled by the Exchange with the approval of two Floor Officials and a market regulation officer.¹² This provision is consistent with the rules of the Boston Stock Exchange.¹³

The Exchange believes that it is appropriate to ban stop orders and stop limit orders when the primary market institutes a ban because, in a volatile market, stop orders can accumulate at various prices and, if triggered, the stop orders may increase price fluctuations in a particular stock. Because other exchanges have adopted stop order ban

⁴ 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 Nandita Yagnik, Counsel, Phlx, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation ("Division"), Commission, dated December 8, 1998 ("Amendment No. 1"). In Amendment No. 1, the Exchange corrects the reference to the identifier "P" to refer to Principal orders not non-agency orders.

⁴ See letter from Nandita Yagnik, Counsel, Phlx, to Michael Walinskas, Deputy Associate Director, Division, Commission, dated February 1, 1999 ("Amendment No. 2"). In Amendment No. 2, the Exchange proposes to adopt Rule 134, Commentary .01, *Stop order definition*. In addition, the Exchange has amended proposed Rule 134(c)(iii) to state that any stop orders or stop limit orders on the book may be canceled by the Exchange. The Exchange represents that, by changing "will" to "may," the Exchange retains flexibility to determine whether stop orders on the book should be canceled at the time the primary market institutes a stop order ban.

⁵ See letter from Nandita Yagnik, Counsel, Phlx, to Michael Walinskas, Associate Director, Division, Commission, dated July 13, 1999 ("Amendment No. 3"). In Amendment No. 3, the Exchange clarified that outstanding stop and stop limit orders cannot be cancelled without the approval of two floor officials and a market regulation officer. The Exchange also amended Rule 134(c)(iii) to codify factors to be considered in determining whether stop and stop limit orders on the book would be cancelled in the event that the Exchange institutes

a stop order ban in an individual stock. These factors include: (1) If the primary market cancels stop orders residing on their book; or (2) other unusual conditions or circumstances.

⁶ A stop order to buy (sell) becomes a market order when a transaction in the security occurs at or above (below) the stop price after the order is represented at the specialist post. A stop limit order to buy (sell) becomes a limit order executable at the limit price or at a better price, if obtainable, when a transaction in the security occurs at or above (below) the stop price after the order is presented at the specialist post.

⁷ PACE is an electronic order entry, delivery, and execution system which operates on the equity floor pursuant to Phlx Rule 229.

⁸ See Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998) (Order approving SR-PHLX-98-15).

⁹ See Boston Stock Exchange Rules Chapter II, Section 35(b); and Chicago Stock Exchange Chapter IX, Rule 10B, .01(ii).

¹⁰ The Commission has approved a proposed rule change (SR-NYSE-98-45) to eliminate the stop and stop limit order ban under Rule 80A. See Securities Exchange Act Release No. 41041 (Feb. 11, 1999), 64 FR 8424 (Feb. 19, 1999).

¹¹ See Amendment No. 2, *supra* note 4. The Commission notes that, pursuant to Boston Stock Exchange Rules Chapter II, Section 35(b), any stop or stop limit orders residing on the specialist's book when a ban goes into effect for an individual stock will be canceled by the Exchange.

¹² See Amendment No. 2, *supra* note 5.

¹³ See Boston Stock Exchange Rules Chapter II, Section 35(b).