

Cleveland Electric Illuminating Company ("Cleveland Electric"), and The Toledo Edison Company ("Toledo Edison"), and indirectly owns all of the issued and outstanding voting securities of Pennsylvania Power Company ("Penn Power"), and Northeast Ohio Natural Gas Corp. ("NONGC"). Ohio Edison, Cleveland Electric, Toledo Edison and Penn Power, collectively comprise the "FirstEnergy Operating Companies." Ohio Edison directly owns 16.5% of the issued and outstanding voting securities of Ohio Valley Electric Corporation ("OVEC"), and OVEC owns all of the issued and outstanding voting securities of Indiana-Kentucky Electric Corporation ("IKEC"). The FirstEnergy Operating Companies, ATSI, NONGC, OVEC, and IKEC, are all public utility companies as defined in the Act. For the twelve months ending December 31, 2000, FirstEnergy had total revenue of \$7,028,961,000 and net income of \$598,970,000. FirstEnergy had total assets of \$17,941,294,000, as of December 31, 2000.

In addition to its public utility holdings, FirstEnergy owns directly and indirectly multiple nonutility subsidiaries. MARBEL Energy Corporation ("MARBEL"), a direct nonutility subsidiary of FirstEnergy, is the parent company of NONGC, a natural gas pipeline company, and Marbel Holdco, Inc. ("Marbel Holdco"). Marbel Holdco holds FirstEnergy's 50% ownership in Great Lakes Partners, LLC ("Great Lakes"). Great Lakes is an oil and gas exploration and production company in a 50/50 joint venture with Range Resources Corporation ("Range Resources"), a publicly traded, nonutility oil and gas exploration and production company. Great Lakes holds a majority of its assets in the Appalachian Basin. Those assets include more than 7,700 oil and natural gas wells, drilling rights, proven resources of 450 billion cubic feet equivalent of natural gas and oil, and 5,000 miles of pipeline. Great Lakes also owns intrastate gas pipelines and a small interstate pipeline between Ohio and West Virginia.

NONGC provides gas distribution and transportation service to approximately 5,000 customers located in ten counties in central and northeast Ohio, and NONGC owns and operates approximately 420 miles of distribution and transportation pipeline. NONGC receives its gas supplies from local gas producers as well as from interstate pipeline companies. For the twelve months ending December 31, 2000, NONGC had total revenue of \$6,074,120 and net income of \$112,985; operating revenues were principally derived from

the distribution and transportation of natural gas. NONGC had total assets of \$18,374,761 and \$25,319,652 as of December 31, 2001, and June 30, 2001, respectively.

Effective June 4, 1998, FirstEnergy acquired all of the outstanding shares of MARBEL (the "MARBEL Acquisition"). The MARBEL Acquisition expanded FirstEnergy's products and services to include the exploration, production, distribution, transmission, and marketing of natural gas and oil. Prior to the closing of the MARBEL Acquisition, an internal reorganization took place within the MARBEL system, as a result of which NONGC—the only company in the MARBEL system that was a public utility company under the Act—was merged into a sister company: Gas Transport, Inc. ("Gas Transport").²

On May 24, 2000, the assets of the local gas distribution division of Gas Transport ("LDC") were transferred to the Northeast Ohio Operating Companies, Inc. ("NOOCI"), an affiliated nonutility which was the parent company of NONGC and several other operating companies. On May 25, 2000, Gas Transport, which at the time only owned and operated transmission pipelines, merged into Great Lakes Transport, LLC ("GLGT"), a wholly owned subsidiary of NOOCI. On May 30, 2000, all of the membership units of GLGT were transferred to Great Lakes. This post-clearing transfer of GLGT to Great Lakes comprises the "Great Lakes Transaction."³ The Great Lakes Transaction was part of a corporate reorganization and no intercompany consideration was paid. The LDC assets were transferred at the book value assigned to these assets at the time of the MARBEL Acquisition.

On July 1, 2000, NOOCI transferred the assets of LDC to NEO Construction

² Applicant maintains that as a result of the application of rule 7(a) under the Act, Gas Transport, as the time of the MARBEL Acquisition, was not a gas utility company, and, therefore, the MARBEL Acquisition did not require prior approval of the Commission under section (a) of the Act.

³ Applicants state that the Great Lakes Transaction was part of a larger transaction that had occurred in 1999. Effective September 30, 1999, FirstEnergy and Range Resources formed Great Lakes, a 50/50 joint venture primarily designed to consolidate and integrate both companies' gas and oil exploration operations in the Appalachian Basin, including properties in Ohio, Pennsylvania, West Virginia, Kentucky, and Tennessee. The joint venture was created to reduce operating costs associated with exploration of reserves and servicing the oil and gas properties. Applicants state that the Great Lakes Transaction was structured in the manner described above for tax reasons and in order to allow sufficient time to secure approval from the FERC for the merger of Gas Transport into GLGT. Therefore, the utility operations of LDC remained within the FirstEnergy system.

Company ("NEO Construction"), a wholly owned subsidiary of NOOCI (the "LDC Transaction"). Upon the asset transfer to NEO Construction, NEO Construction became a gas utility company under the Act. On July 7, 2000, NEO Construction changed its name to "Northeast Ohio Natural Gas Corp."⁴ On March 30, 2001, NOOCI was merged into its parent, MARBEL (the "MARBEL Merger"). Consequently, the assets of NOOCI, which include all of the issued and outstanding stock of NONGC, are now owned by MARBEL.

In this application, Applicant requests that the Commission authorize the acquisition of all of the issued and outstanding voting securities of NONGC by First Energy. NONGC is held indirectly by FirstEnergy through MARBEL.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44802, File Nos. SR-Amex 2001-80; SR-Phlx-2001-86]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Changes Filed by the American Stock Exchange LLC ("Amex") and the Philadelphia Stock Exchange, Inc. ("Phlx") Relating to Temporary Trading of Amex Options on the Phlx To Respond to Market Developments

September 17, 2001.

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 September 16, 2001, the American Stock Exchange LLC ("Amex") and the Philadelphia Stock Exchange Inc. ("Phlx") (collectively referred to as "Exchanges") submitted to the Securities and Exchange Commission ("SEC" or "Commission") proposed rule

⁴ NONGC has interconnections with and receives some gas from Ohio Interstate Gas Transmission Company ("OIGTC"), a nonutility which is regulated by Public Utilities Commission of Ohio and engages solely in the transportation of natural gas. OIGTC was one of the companies contributed by MARBEL to form Great Lakes on September 30, 1999. In addition, NONGC receives gas from direct interconnects with gathering pipelines owned by Great Lakes.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

changes. The Amex and Phlx descriptions of their respective proposed rule changes are set forth in Items I and II below. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons and to grant accelerated approval to the proposed rule changes.

I. Self-Regulatory Organization's Statements of the Terms of Substance of the Proposed Rule Changes

As a result of the attacks on the World Trade Center in New York City on September 11, 2001, the building housing the trading facilities of the Amex suffered physical damage. In addition, the area surrounding the Amex has remained largely inaccessible to all but the most essential emergency and rescue personnel and many basic services, such as electricity, water and communication lines, have not been re-established as a result of the collapse of several buildings and ensuing fires. The Exchanges, therefore, propose to permit Amex members to trade Amex options on the floor of the Phlx on a temporary basis until the Amex facility is operational. The proposals are intended to enable Amex option products to resume trading when the U.S. markets open, as well as to accommodate Amex members.

Amex

The Amex, pursuant to Rule 19b-4 of the Act, as amended, requests emergency authorization to allow certain options traded at the Amex to be traded on the Phlx, and for Amex specialists, registered options traders ("ROTs") and floor brokers to trade on the floor of the Phlx.

Phlx

The Phlx, pursuant to Rule 19b-4 of the Act, proposes to temporarily permit qualified Amex members who are registered at the Amex as floor brokers, registered option traders ("ROTs") or specialists ("Amex Temporary Access Persons" or "TAPs") to access the Phlx options trading floor on a temporary basis to trade the following options on the terms specified below: (i) Phase 1—non-Phlx Amex options, which include, as of the close of trading on September 10, 2001, (a) equity options traded only on the Amex; (b) equity options traded on the Amex and another options exchange, but not the Phlx; and (c) index options traded only on the Amex; and (ii) Phase 2—equity options that are traded on both the Phlx and Amex ("Phlx/Amex options") as of the close of trading on September 10, 2001.

The proposal includes two categories of Amex members trading as Phlx ROTs or specialists: Amex ROTs and Amex specialists. The proposal may also include enabling Amex floor brokers to act as Phlx floor in Phlx/Amex options and non-Phlx Amex options (but not Phlx options not traded on Amex). The Phlx anticipates Phase 1 to begin on Monday, September 17, 2001, and Phase 2 thereafter, possibly on the same day.³

In addition, only Amex TAPs will be permitted to trade non-Phlx Amex options that trade on the Phlx under this proposal, unless deemed necessary by the Phlx for Phlx members to act as ROTs or floor brokers, in the interest of fair and orderly markets. However, Phlx specialist units may be allocated non-Phlx Amex options if the current Amex specialist is not affiliated with a Phlx specialist unit, as described further below.

At this time, the Phlx is proposing that Amex TAPs be permitted to act as Phlx members for purposes of temporary access on the options trading floors. As such, Amex TAPs will be subject to the Phlx trading rules that would apply today to a Phlx member in the course of trading Phlx options.⁴ Further, like members, with respect to the liability provisions of Phlx By-Law Article XII, Section 12-11, Use of Facilities of Exchange (Phlx), the Phlx's liability to Amex TAPs would be limited.⁵

However, Amex TAPs will not be eligible to vote, serve on committees or otherwise participate in Phlx governance, apply for specialist privileges,⁶ nor act as floor officials.⁷

For purposes of Phlx Rule 104, which provides, in pertinent part, that no member shall, while on the floor, make a transaction with any non-member, Amex TAPs shall not be considered "non-members." Amex TAPs will not have access to, or the ability to act as, members respecting Phlx options that are not Phlx/Amex options. Lastly, Amex TAPs' physical access to the Phlx

facilities will be limited to the Phlx options trading floor crowds where they have been granted access to trade by this proposal and any other areas designated by the Phlx.

With respect to qualification of and jurisdiction over Amex TAPs, the Phlx intends to require submission of a form containing an acknowledgement to abide by Phlx rules and submit to Phlx jurisdiction, as well as other provisions relating to Phlx floor activity and responsibility. The Acknowledgement may also include the Phlx's ability to terminate Amex TAPs access and status, or to impose conditions on such access or status.

Further, this form will contain a certification by both the Amex TAP and the Amex as to the qualification of that Amex member to trade on the Amex. Thus, qualified Amex TAPs, with approval from an appropriate Amex official, will be deemed to have satisfied, and the Phlx will waive specific compliance with, rules governing or applying to the maintenance of a person's or a firm's status as a Phlx member, including the 600 series of Phlx rules. In that regard, Amex procedures respecting the admission and qualification of members to trade on the Amex, for example, will be deemed to satisfy Phlx Rules 901 and 1014(b) regarding registration of ROTs.⁸ Notwithstanding the above, the Phlx may determine to impose or waive certain training requirements, including the use of Phlx technology or equipment and Phlx rules, such as those contained in the Phlx Rule 620. The Phlx also proposes that Amex TAPs who sign the form thereby bind their member organization to Phlx requirements and jurisdiction as well, consistent with fundamental principles of agency law. Amex TAPs must also de-register when discontinuing their Amex TAP status using the appropriate form.⁹ Lastly, on this form, Amex TAPs shall designate an OCC-member clearing firm. The Phlx is also proposing that clearing firms that are not Phlx members will be deemed to have satisfied, and the Phlx will waive specific compliance with, in respect of accounts of Amex TAPs trading on the Phlx, rules governing or applying to clearing firms.¹⁰

³ The Phlx intends to trade all non-Phlx Amex and Phlx/Amex options, but may not, taking into account space, safety, licensing, operational and technological considerations.

⁴ These include, but are not limited to, Phlx Rule 104, 1000, *et seq.*

⁵ Specifically, that provision states that the Phlx shall not be liable for any damages sustained by a member or a member organization arising out of the use or enjoyment by such member or member organization of the facilities afforded by Phlx to members for the conduct of their business.

⁶ The extent to which Amex specialists currently acting as specialists in non-Phlx Amex options that are traded on the Phlx under Phase 1 will continue to act as specialists is discussed below.

⁷ Amex TAPs would, however, be subject to the rulings of Phlx floor officials pursuant to Phlx rules, including Phlx Rule 124 and appeals therefrom.

⁸ The Phlx believes that this is consistent with prior Commission-approved practices respecting members on one exchange trading on the facilities of another exchange. See Securities Exchange Act Release No. 40088 (June 12, 1998), 63 FR 33426 (June 18, 1998) (SR-Phlx-98-25).

⁹ The Phlx has determined that de-registration may be by any written submission to the Phlx's Membership Services Department.

¹⁰ See, e.g., Phlx Rule 1000(A)(3). The Phlx is also seeking agreements from non-Phlx member clearing firms whereby the clearing firm agrees and

Because Amex TAPs would be trading on the Phlx options floor using Phlx technology in the regular Phlx trading crowd pursuant to Phlx rules, the rules (including by-laws, Certificate of Incorporation, floor procedure advices, policies and practices, all as supplemented and modified by this proposed rule change) of the Phlx would govern such activity.¹¹ For instance, the trading rules applicable to Phlx ROTs would apply to Amex TAPs acting as ROTs on the Phlx, including the two-sided market making obligations of Phlx Rule 1014. The Phlx intends to surveil the Phlx trading activity of Amex TAPs trading on the Phlx under this proposal, as it surveils other Phlx options trading. To the extent that Amex TAPs request the installation of equipment or communication lines, for purposes of Phlx Rule 606, the Phlx staff (in lieu of The Options Committee) must approve such.

Non-Phlx Amex options would be deemed eligible for listing on the Phlx, subject to the written representation by a designated, authorized Amex official that each non-Phlx Amex option proposed to be listed and traded on the Phlx meets Amex listing and maintenance standards. The Phlx hereby requests approval, as of September 14, 2001, for a temporary listing standard whereby options listed on Amex (and not the Phlx) as of September 10, 2001 shall be eligible for listing on the Phlx. Non-Phlx Amex options will be deemed to have satisfied, and the Phlx will waive specific compliance with, any other applicable Phlx rules governing options listing and maintenance.¹² Non-Phlx Amex options subject to delisting (and thus, ineligible for the addition of new strike prices and new expirations) at the time they are listed on the Phlx, would be deemed eligible for listing, subject to closing transactions only in those series with open interest.

Phlx/Amex options will be traded by the Phlx specialist unit assigned to that option. With respect to how specialists will be assigned to trade non-Phlx Amex options, the following agreements have

been reached between the Phlx and the Amex and are proposed herein: (i) Non-Phlx Amex options normally traded by Amex specialist units whose firms or affiliates have a Phlx specialist unit will be traded by the same firm's Phlx specialist unit; (ii) non-Phlx Amex options normally traded by Amex specialist units whose firms or affiliates have no Phlx specialist unit will be traded by the Phlx specialist unit designated by that Amex specialist; and (iii) non-Phlx Amex options normally traded by Amex specialist units whose firms or affiliates have no Phlx specialist units, and are not designated by that Amex specialist, will be allocated, as of September 14, 2001, to Phlx specialist units in accordance with Phlx Rules 500-526. Further, non-Phlx Amex options will be deemed to have been duly allocated to qualified specialists, subject to the written representation by a designated, authorized Amex official that each non-Phlx Amex option has been allocated on the Amex in compliance with Amex rules governing qualifications of specialists and allocation of options to Amex specialist units. Accordingly, Amex specialists will be deemed to have satisfied, and the Phlx will waive specific compliance with, Phlx rules governing qualification of specialists.

With respect to fees, the Phlx intends to impose its options transaction charges, both equity option and index option, where applicable, on trades by Amex TAPs. For instance, Amex TAPs trading as ROTs would be subject to the option transaction/comparison charges applicable to Phlx ROTs under this proposal.¹³ Amex TAPs acting as floor brokers will be charged with Phlx fees applicable to floor brokers (floor brokerage assessment) respecting all trades. Phlx members and member organizations may not apply fees paid by Amex TAPs who are associated with Phlx member organizations to their \$1,000 monthly credit.¹⁴ The Phlx has determined not to impose its dues, technology fee and facilities related fees (e.g., post/booth space) due to the emergency and temporary nature of the situation.

II. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the Exchange included statements concerning the purpose of and the basis

for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item III below. The Exchanges have prepared summaries set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for the Proposed Rule Changes

1. Amex

The purpose of the Amex's proposed rule change is to permit Amex members, on a temporary basis, to trade Amex options at the Phlx. As proposed, Amex members who are duly qualified as specialists, ROTs and floor brokers will be temporary members of the Phlx known as "Temporary Access Persons" or "TAPs." The arrangement for trading Amex options by Amex TAPs at the Phlx would be limited to those options traded on the Amex as of the close of business on September 10, 2001, which are the following: (1) Multiply-traded options that are traded on both the Amex and Phlx; (2) multiply-traded options traded on the Amex but not currently traded on the Phlx; (3) equity options solely traded on the Amex; and (4) index options only traded on the Amex.

With respect to all of the options indicated above, Amex specialists and ROTs that expect to trade on the Phlx will serve as Phlx ROTs in the trading crowd on the floor of the Phlx. Amex specialists that are dual members of both the Amex and Phlx will continue to trade as specialists in their assigned options through their affiliated specialist unit at the Phlx. Moreover, it is expected that Amex floor brokers will be permitted to act as floor brokers on the Phlx for those options traded on the Amex as of the close of business on September 10, 2001 and that will now trade on the Phlx. The Phlx will provide trade reporting, quote reporting and surveillance in connection with the trading of options by Amex TAPs on the Phlx as would otherwise be the case for options trading of Phlx options.

The Phlx proposes to impose transaction-based fee charges on all options transactions of Amex TAPs. Amex floor brokers trading on the Phlx as TAPs will be charged the fees by the Phlx applicable to current Phlx floor brokers.

For purposes of this temporary access to the Phlx options trading floor, Amex members will be Phlx members identified as TAPs, and, therefore,

undertakes to comply with all applicable Phlx rules in respect of Phlx/Amex options and/or non-Phlx Amex options for the account of Amex TAPs as if the clearing firm were a member of the Phlx.

¹¹ The Phlx notes that Amex TAP trades shall be deemed Phlx trades, including for purposes of trade reporting, clearing and the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan").

¹² Amex will enter into an agreement with Phlx concerning the Exchanges' respective obligations under the proposal; Amex will, *inter alia*, agree to be responsible for maintenance studies and maintaining listing standards on all Non-Phlx Amex options.

¹³ The Phlx intends to bill Amex TAPs through their clearing firms.

¹⁴ See Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR-Phlx-2001-49).

subject to Phlx rules and regulations, including all options trading rules. However, Amex TAPs will not be permitted to participate in the corporate governance of the Phlx, including, but not limited to, the right to vote or serve as floor officials.

As detailed in the Phlx proposed rule change, Amex TAPs who execute the acknowledgement form and conduct business at the Phlx will be subject to the jurisdiction of the Phlx as well as the Amex. Therefore, Amex members will be qualified members of both the Amex and the Phlx, although, primary jurisdiction for trading on the options floor of the Phlx will reside with the Phlx. However, the Amex has not completely relinquished jurisdiction over its own members. For example, the Phlx may prefer that the Amex investigate and bring an enforcement action against an Amex member for violations of Phlx rules in connection with options trading at the Phlx.

For these reasons, the Amex believes that its proposed rule change is consistent with Section 6 of the Act,¹⁵ in general, and with Section 6(b)(5) of the Act,¹⁶ specifically, in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade by members.

2. Phlx

The purpose of the Phlx proposed rule change is to accommodate Amex TAPs and to accommodate trading in non-Phlx Amex options, particularly those options traded only on the Amex that would otherwise temporarily have no trading facility, on a temporary basis, during a crisis in the nation's financial markets. The proposal is intended to provide access to certain options products previously traded by these Amex members on the Amex, pending restoration of the Amex's facility.

The Phlx's proposal is tailored to permit access to Amex TAPs seeking to continue their livelihood and make markets, as well as provide a marketplace for options that trade only on the Amex. It is with respect to these options, in particular, that this proposal is intended to perfect the mechanism of a free and open market and a national market system. Because the Phlx trading facility is being utilized, the Phlx technology and trading rules would apply to both Phlx/Amex options and non-Phlx Amex options, including minimum trading increments, strike

price, position and exercise limits, and firm quote and Auto-X guarantees. The method of submission of orders to the Phlx trading floor continues to be the use of the AUTOM System (through a Phlx member) or a floor broker, although the floor broker could be an Amex floor broker/TAP.¹⁷ The Phlx also anticipates that Amex TAPs may require support staff, such as trading floor clerks, who would be permitted under specified terms. Clerks would be required to register (and de-register)¹⁸ on a similar form, identifying the responsible Amex market makers and Amex member organization.¹⁹

Operationally, the Phlx intends to handle Amex market maker quotes and trades like other Phlx quotes and trades, including quote and trade reporting and dissemination via OPRA. The Phlx intends to establish appropriate account number processing for Amex TAP trades. The Phlx will provide general notice as well as an educational session for Amex TAPs. Respecting Phlx/Amex options, Amex TAPs will trade with Phlx ROTs and other Phlx members in the respective Phlx options trading crowds.

With respect to other regulatory aspects of the proposals, in addition to surveillance, the Phlx intends to exercise enforcement jurisdiction over Amex TAPs trading options on the Phlx. However, the Phlx and the Amex have agreed that the Phlx may request the Amex to assume enforcement jurisdiction upon request by Phlx, as well as incremental costs associated with surveillance, investigations and enforcement, under this proposal. The Amex has also agreed to cooperate with the Phlx by providing information to the Phlx respecting Amex TAPs. Because Amex TAPs will continue to be Amex members and subject to Amex rules respecting such membership, Amex financial responsibility rules, including margin provisions, will continue to apply.²⁰ Accordingly, the Amex has agreed to retain examination jurisdiction over Amex TAPs, including the daily net capital review. With

¹⁷ If the Phlx permits an Amex TAP to act as a floor broker on the Phlx, the Phlx is not obligated to provide trading floor or other physical space, or technology, including floor broker order entry terminals, to such floor brokers.

¹⁸ The Phlx has determined the de-registration may be by any written submission to the Phlx's Membership Services Department.

¹⁹ The Phlx, in its sole discretion, may limit the number of clerks and Amex TAPs granted access to the Phlx options floor due to space and safety concerns.

²⁰ As stated above and in the certification form, Amex membership-related rules would apply, because Phlx is waiving its rules governing status as a Phlx member. Admissions procedures is another example of such a rule.

respect to arbitration jurisdiction, Phlx arbitration rules will apply.

The Phlx is requesting immediate accelerated approval of the proposal in order to promptly enable Amex TAPs to begin trading on the Phlx, which is anticipated to be a 9:30 A.M. on Monday, September 17, 2001. In addition to the immediacy of the situation, the Phlx believes that Amex TAP access would only remain in effect until the Amex facility is restored and resumes such options trading, which is anticipated to be several days, although it is difficult to predict the timing of the resolution of the situation in New York described above.

For these reasons, the Phlx believes that the proposed rule change is consistent with Section 6 of the Act,²¹ in general, and in particular, with section 6(b)(5) of the Act,²² because it would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, by providing an options facility for Amex members.

B. Self-Regulatory Organizations' Statements on Burden on Competition

The Exchanges do not believe that the proposed rule changes will impose any inappropriate burden on competition.

C. Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

No comments were either solicited or received by Amex or Phlx.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule changes are 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 submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than

¹⁵ 15 U.S.C. 78f.

¹⁶ 15 U.S.C. 78f(b)(5).

²¹ 15 U.S.C. 78f.

²² 15 U.S.C. 78f(b)(5).

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 filings will also be available for inspection and copying at the principal offices of Amex and Phlx, respectively. All submissions should refer to File Nos. SR-Amex-2001-80 and SR-Phlx-2001-86 and should be October 12, 2001.

IV. Commission Findings and Order Granting Accelerated Approval of the Proposed Rule Changes

The Commission notes that the proposed rule changes were submitted in response to the emergency situation that resulted from the September 11, 2001 attacks on the World Trade Center in New York City. On September 11, 2001, the U.S. equities and options markets determined not to open in light of the attacks that morning. The U.S. equities and options markets remained closed throughout the remainder of that week. As a result of the attacks, the Amex facilities were damaged and, at this time, cannot be reopened. The Amex and Phlx have worked to accommodate the opening of trading of Amex options and to accommodate trading by Amex members.²³

The Commission notes that Amex TAPS that are granted temporary access to the Phlx will only be permitted to trade on the Phlx those securities that the TAP traded on the Amex, and to act in those capacities that are authorized by Phlx and that are comparable to capacities that the TAP has been authorized to act on the Amex.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²⁴ Specifically, the Commission finds that the proposed rule changes are consistent with section 6(b)(5) of the Act,²⁵ which requires, among other things, that the rules of an exchange be designed to foster

cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the arrangements between the Amex and Phlx to permit the trading of Amex products on the Phlx by Amex members will ensure that all Amex options products will be available for trading by market participants when trading resumes in the U.S. markets. The Commission also believes that the arrangements allowing Amex specialists and Amex ROTs to make markets on the Phlx in the options for which they made markets on Amex should ensure that Amex options have a similar level of liquidity as was the case on September 10, 2001. Further, the Commission believes that permitting Amex floor brokers to act as floor brokers in the options for which they acted as floor brokers on Amex should ensure that the orders directed to Phlx for Amex options are handled efficiently. The Commission considers to be appropriate the arrangement whereby the Phlx will be responsible for ensuring compliance of Amex members trading on the Phlx floor with Phlx trading rules, while Amex will be responsible for ensuring that its members comply with member qualification and financial responsibility rules. In this regard, the Commission notes that it is important that the Amex and the Phlx continue to closely coordinate and cooperate to ensure that Amex members temporarily trading on the Phlx are adequately surveilled and that their financial condition is monitored.

The Commission is satisfied that the arrangements worked out between Amex and Phlx will enable continuous, liquid markets to be maintained for Amex options in an exchange environment while maintaining the usual investor protection safeguards. This is especially important in light of the upcoming options expiration on September 21, 2001.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of the notice of filing in the **Federal Register**. The Commission believes that it is necessary to approve the proposed rule changes on an accelerated basis to provide a trading venue for Amex options, which market participants would otherwise not be able to trade until Amex's New York facilities are reopened, and to provide a

higher level of liquidity in those products than would be available without permitting Amex members temporary access to the Phlx.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,²⁶ that the proposed rule changes (SR-Amex-2001-80 and SR-Phlx-2001-86) are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority:²⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[(Release No. 34-44807; File No. SR-Amex-2001-67)]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC to Codify Current Audit Trail and Trade Comparison Requirements and to Make Other Technical Amendments to the Exchange's Audit Trail Rules

September 17, 2001.

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 August 28, 2001, the American Stock exchange LLC ("Amex" 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 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 Amex Rule 719: (1) To codify current audit trail and trade comparison requirements, (2) to clarify that Amex Rule 719 applies to all Amex securities, and (3) to delete rule language to the implementation of T+1 comparison.

The text of the proposed rule change appears below. New text is in *italics*; deletions are in *brackets*.

²⁶ 15 U.S.C. 78s(b)(2).

²⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²³ The Commission notes that the Phlx and the Amex have, of necessity, had discussions, understandings and agreements concerning the listing of non-Phlx Amex options on the Phlx in order to facilitate the establishment of the arrangements described in this Order outside the framework permitted by the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934. This Order approves such discussions, understandings, and agreements.

²⁴ In approving these proposals, the Commission has considered their impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²⁵ 15 U.S.C. 78f(b)(5).