

Operating Committee agreed to modify ITS to permit Tape A securities to be quoted and traded in sixteenths. Shortly thereafter, several market centers publicly announced that they will allow the affected NYSE securities to be quoted in sixteenths as soon as modifications to ITS are implemented.<sup>7</sup> The proposed rule change will enable the CHX to continue to competitively quote such securities. Requiring the Exchange to wait the full statutory review period for the proposed rule change could place the CHX at a significant competitive disadvantage vis-a-vis other markets. At the same time, the proposal is effective only until the Commission acts on File No. SR-CHX-97-13.<sup>8</sup> This will provide the Commission with a sufficient period to receive and assess comments on SR-CHX-97-12. Therefore, the Commission believes it is consistent with Section 6(b)(5) and Section 19(b)(2) of the Act to grant accelerated approval on a temporary basis to the proposed rule change.<sup>9</sup>

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-CHX-97-12) is hereby approved on an accelerated basis until the Commission acts on File No. SR-CHX-97-13.

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. 34-38176; File No. SR-NYSE-97-14]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments to the Shareholder Approval Policy

June 5, 1997.

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 May 16, 1997, the New York Stock Exchange, Inc. ("NYSE" 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 NYSE. 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 NYSE is proposing to modify its shareholder approval policy ("Policy"), contained in Paragraphs 312.03 through 312.05 of the Exchange's Listed Company Manual ("Manual"). The Exchange believes the proposal will provide greater flexibility for listed companies to sell stock at a price at least as great as the higher of book and market value to substantial security holders, or in non-public sales, while preserving the significant shareholder rights afforded under the Policy.<sup>3</sup>

#### 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

##### (a) Purpose

Currently, the Exchange's shareholder approval policy requires a listed company to obtain shareholder approval in four situations:

- Related-Party Transactions: when selling more than one percent of the company's stock, for either cash or other assets, to a "related party," defined to mean officers, directors and holders of five percent or more of the company's common stock (or stock with five percent or more of the company's voting power);
- Private Sales: when selling 20 percent or more of the company's stock, other than in a public offering for cash;
- Stock Option Plans: when adopting stock option plans that are not "broadly-based"; or
- Change of Control: with respect to any issuance of stock that results in the change of control of the company.

The purpose of the rule change is to modify the first two of these requirements to provide listed companies with flexibility in their financing plans, while still substantially preserving the significant shareholder rights afforded under the Policy. In addition, the rule change restructures the wording of the Policy in order to simplify the language.

*Related-party transactions.* Issuers sometimes seek cash financing from one or more of their "substantial" security holders (which the Exchange defines as a person holding either five percent of the company's stock or five percent of the company's voting power). The Exchange now requires shareholder approval if a sale to a substantial security holder results in a one percent dilution.

The Exchange proposes that cash sales of stock to a substantial security holder be exempt from the Policy if the issuance is limited to five percent of the issuer's stock. The Exchange believes that cash sales do not give rise to the same valuation concerns as do sales of stock for non-cash assets. The exemption would apply only if the sale is at a price at least as high as each of the book and market value of the stock. The Exchange would continue to require shareholder approval for the following issuances that result in a dilution of more than one percent of the issuer's stock: sales of stock to any related party (including substantial security holders) for assets other than cash; and cash sales to officers and directors. The Exchange believes the proposed exemption from the policy would provide issuers with more

<sup>7</sup> ITS estimates that the implementation date for this change is late June.

<sup>8</sup> File No. SR-CHX-97-13 is a companion filing that requests permanent approval of the procedures described herein. Securities Exchange Act Release No. 38718 (June 5, 1997). File Nos. SR-CHX-97-11 and SR-CHX-97-14 are related filings whose effectiveness is linked to SR-CHX-97-13. See Securities Exchange Act Release Nos. 38704 (May 30, 1997) (approving File No. SR-CHX-97-11 on a temporary basis; reducing the trading increment from eighths to sixteenths for securities that are traded on the Exchange and on Nasdaq) and 38719 (June 5, 1997) (approving File No. SR-CHX-97-14 on a temporary basis; a similar reduction in the trading increment for securities that are traded only on the Exchange).

<sup>9</sup> 15 U.S.C. §§ 78f(b)(5) and 78s(b)(2).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 C.F.R. 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. § 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4 (1994).

<sup>3</sup> The complete text of the proposed rule change is attached as Exhibit A to File No. SR-NYSE-97-14, and is available for review at the principal office of the NYSE and in the Public Reference Room of the Commission.

flexibility when selling stock for cash to a substantial security holder.

*Private sales.* The Exchange requires approval of all issuances that result in a 20 percent dilution, except for public offerings for cash. However, market practices have blurred the differences between public and private sales. For example, public offerings can resemble private placements, such as sales pursuant to a shelf registration to a small group of purchasers. In contrast, a company can engage in broad-based unregistered sales of stock, or securities convertible into stock, through private placements or pursuant to Commission Rule 144A under the Securities Act of 1933, as amended.<sup>4</sup> Thus, certain types of private sales now are very similar to public offerings.

The Exchange proposes to make a private sale of 20 percent or more of a company's stock exempt from the policy if (i) the sale is at a price at least as high as each of the book and market value of the stock and (ii) the sale is a "bona fide financing." A bona fide financing would be either a sale through a broker-dealer acting as an intermediary (such as pursuant to Rule 144A) or a sale to multiple parties in which no one person acquires more than five percent of the issuer's stock. The five percent limit ensures that control persons do not disproportionately increase their ownership in a listed company through privately-negotiated sales, even if the sale price is at the market.<sup>5</sup>

#### (b) Basis

The Exchange believes the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>6</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.

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

The Exchange believes this proposed rule change does not impose any burden on competition that is not necessary or

appropriate in furtherance of the purposes of the 1934 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 of other interested parties.

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

Within thirty-five 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 ninety 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. 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-97-14 and should be submitted by July 3, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-38711; File No. SR-Phlx 97-14]

### **Self-Regulatory Organization; Notice of Filing and Order Granting Partial Accelerated Approval to a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Rule 722, Margin Accounts**

June 2, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 8, 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. Phlx submitted amendment No. 1 on May 20, 1997.<sup>1</sup> Phlx submitted Amendment No. 2 on May 28, 1997.<sup>2</sup> Phlx submitted Amendment No. 3 on May 30, 1997.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and to grant accelerated approval to the portions of the proposal relating to customer cash accounts, over-the-counter ("OTC") options, market-maker and specialist "good faith" margin requirements for permitted offset transactions, and

<sup>1</sup> See Letter from Michele R. Weisbaum, Vice President and Associate General Counsel, Phlx, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation ("Market Regulation"), Commission, dated May 19, 1997 ("Amendment No. 1"). Amendment No. 1 superseded the original rule filing in its entirety by addressing technical changes by making corrections to certain typographical errors appearing in the rule filing. Amendment No. 1 also makes a number of substantive changes.

<sup>2</sup> See Letter from Michele R. Weisbaum, Vice President and Associate General Counsel, Phlx, to Michael Walinskas, Senior Special Counsel, Market Regulation, Commission, dated May 28, 1997 ("Amendment No. 2"). Amendment No. 2 supersedes Amendment No. 1 with regard to certain portions of the rule filing the Commission is approving today by accelerated approval.

<sup>3</sup> See Letter from Diane Anderson, Vice President, Examinations Department, Phlx, to Michael Walinskas, Senior Special Counsel, Market Regulation, Commission, dated May 30, 1997 ("Amendment No. 3"). Amendment No. 3 corrects an inadvertent omission to Amendment No. 2.

<sup>4</sup> 17 CFR 230.144A.

<sup>5</sup> The rule change also clarifies that shareholder approval is required if any one of the four requirements is triggered, notwithstanding the fact that the other requirements of the Policy have not been triggered. For example, a direct sale by a company of more than 20 percent of its stock in a bona fide financing still would require shareholder approval as a related-party transaction if the company sells more than one percent of the stock to an officer or director.

<sup>6</sup> 15 U.S.C. § 78f(b)(5).

<sup>7</sup> 17 CFR 200.30-3(a)(12).