

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:

##### General

Will the respective obligations imposed on clearing and introducing firms by the proposal help introducing firms and regulators better address sales practice problems?

To what extent would the proposal discourage either introducing or clearing firms from agreeing to enter into new clearing relationships, or to renew existing ones, or affect the degree of care employed when entering into such a relationship?

##### Customer Complaints

How quickly are customer complaints that are directed to clearing firms and that concern introducing firms or their associated persons currently forwarded to introducing firms? What proportion of these complaints concerns matters identified in NASD Rule 3070(a)(2), *i.e.*, allegations of theft or misappropriation of funds or securities, or of forgery? What other types of complaints typically are received?

Why in general are complaint letters addressed to clearing firms rather than introducing firms, when they concern conduct of the introducing firms? Please address the extent to which this occurs because of confusion by customers over the relative responsibilities of the firms based on the contacts with the customer, such as confirmations, or for other reasons, *e.g.*, the failure to receive a response from the introducing firm?

Should the requirements of the proposed rule regarding customer complaints apply equally to complaints against a clearing firm sent by a customer to an introducing firm with whom the clearing firm has a clearing agreement?

Presently, copies of customer complaints that are received by securities firms are not required to be

forwarded to the SEC or any self-regulatory organization ("SRO"). Rather, the firms are required to submit summaries of complaints to their SRO. To the extent that this requirement is imposed, should clearing firms be required to send summaries or actual complaint letters to the SROs?

Will the requirement that, upon the clearing firm's receipt of a customer complaint, the customer be notified by the clearing firm that he or she has the right to transfer his or her account to another firm serve a useful purpose, in informing customers that they are not tied to the introducing broker in the case of sales problems? Does it create an unfair implication that each such complaint would warrant the customer's transferring his account, or otherwise unfairly tarnish the introducing firm? To the extent that this type of information is useful to investors, does it make sense to provide this notice only in the circumstances identified?

##### Exception Reports

What compliance or cost burdens would result from the requirement that clearing firms retain copies of exception reports or data that is provided to introducing firms? To what extent is this data now stored, and for how long?

What are the relative costs and benefits of the requirements for annual reports to the executive and compliance officers of introducing firms as to the exception reports that were offered and supplied? Is it feasible for the clearing firm to provide reports to the DEAs that the introducing firm did not request?

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 above-mentioned self-regulatory organization. All submissions should refer to File No. SR-NASD-97-76 and should be submitted by December 22, 1997.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39344; File No. SR-NYSE-96-34]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change To Adopt a New Specialist Performance Measure

November 21, 1997.

#### I. Introduction

On December 3, 1996, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to adopt a new specialist performance measure.<sup>3</sup>

Notice of the proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 38150 (January 10, 1997), 62 FR 2704 (January 17, 1997). No comments were received on the proposal. The Exchange filed Amendment No. 1 to the proposed rule change on October 23, 1997.<sup>4</sup>

#### II. Description

The Exchange proposes to add on a one-year pilot basis, solely for use by the Allocation Committee in evaluating specialist performance, the concept of

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> The Commission notes that it previously approved the portion of the proposed rule filing making permanent the Near Neighbor, Capital Utilization and Rule 103A pilot programs for measuring specialist performance. See Securities Exchange Act Release No. 38150 (January 10, 1997), 62 FR 2704 (January 17, 1997). This order approves the remaining portion of the proposed rule change to adopt a new specialist performance measure, "adjusted stabilization."

<sup>4</sup> Amendment No. 1 states that the new performance measure, adjusted stabilization, will be solely for use by the Allocation Committee, and that the information will be provided to the Allocation Committee on a one-year pilot basis. See letter from James E. Buck, Senior Vice President, NYSE, to Michael Walinskas, Senior Special Counsel, Market Regulation, Commission, dated October 22, 1997.

"adjusted stabilization" rates. Specialists are expected to stabilize stock price movements by buying and selling from their own accounts against the prevailing trend of the market. The current definition of stabilization is dealer purchases on minus and zero minus ticks, and sales on plus and zero plus ticks. The Exchange believes that certain trades outside of the definition of stabilization are not necessarily destabilizing. These would consist of proprietary zero plus tick purchases on the current bid (provided the current bid is below the offer at the time of the immediately preceding trade) and proprietary zero minus tick sales on the current offer (provided the current offer is above the bid at the time of the immediately preceding trade). Hence, the Exchange is grouping these trades with the trades within the current definition of stabilization to form an "adjusted stabilization" category for review by the Allocation Committee. Adjusted stabilization rate information would be provided, on a one-year pilot basis, solely to the Allocation Committee to assist it in assessing the value added by specialists to the depth and liquidity of stocks they currently trade.

### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).<sup>5</sup> Specifically, the Commission believes the proposal is consistent with the Section 6(b) (5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public.<sup>6</sup>

The Commission believes that the proposed rule change is reasonable under the Act in that continuing to further develop objective measures of specialist performance, by adopting the "adjusted stabilization" measure, should help perfect the mechanism of a free and open market and protect investors and the public interest. The Commission believes that "adjusted stabilization" is a useful concept because it could reflect liquidity added to the market by specialists that is not otherwise captured by the current definition of stabilization, by reflecting

the fact that on certain zero plus tick purchases or zero minus tick sales the specialist is not initiating either a transaction or a price change, but is adding depth to the market at prices at which transactions have already occurred.

The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 1 will ensure that the new measure of specialist performance is used solely by the Allocation Committee to help evaluate specialist performance and the depth and liquidity specialists add to the stocks they trade. Also, by providing for the new measure on a one-year pilot basis, the Exchange will be able to monitor the success of the new performance measure in helping to evaluate specialist performance. In addition, the substance of the proposed rule change was noticed for the full statutory period and no comments were received. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the rule proposal. 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 on 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-96-34 and should be submitted by December 22, 1997.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the portion of the proposed rule change (SR-NYSE-96-34) involving the adoption of "adjusted stabilization" rate

information as a specialist performance measure,<sup>8</sup> as amended, is approved on a one-year pilot basis through November 21, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39345; File No. SR-Phlx-97-35]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Adopt a Contingency Market Maker System for Foreign Currency Options

November 21, 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 July 17, 1997,<sup>1</sup> the Philadelphia Stock Exchange, Inc. ("Phlx" 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 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

Phlx proposes to adopt a contingency plan to trade foreign currency options ("FCOs") pursuant to a Market Maker System. The contingency Market Maker System would provide a modified trading system to ensure the continuity of FCO trading in the situation where a specialist unit is not available. In summary, the contingency Market Maker System would be contained in a new provision, Rule 1014(j), which states that assigned ROTs will be responsible for making markets and honoring the minimum guarantee (ten-

<sup>8</sup> The Commission notes that this order only approves a portion of the proposed rule change. See *supra* note 3.

<sup>9</sup> 17 CFR 200.30-3(a) (12).

<sup>1</sup> The Exchange filed Amendment No. 1 to the proposed rule filing on November 4, 1997, the substance of which is incorporated into this notice. See letter from Philip H. Becker, Senior Vice President, General Counsel and Chief Regulatory Officer, Phlx, to Michael Walinskas, Senior Special Counsel, Market Regulation, Commission, dated November 4, 1997.

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

<sup>6</sup> In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78s (b) (2).