

SR-AMEX-2001-47 and should be submitted by March 15, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45452; File No. SR-NYSE-2001-49]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Amending New York Stock Exchange Rule 902 (Off-Hours Trading Orders)

February 15, 2002.

On December 11, 2001, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change amending NYSE Rule 902, Off-Hours Trading Orders, to permit the submission of member to member coupled orders in Crossing Session I in order to close out error positions.

The proposed rule change was published for comment in the **Federal Register** on January 14, 2002.³ The Commission received no comments on the proposal.

After careful review, 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,⁴ and, in particular, the requirements of section 6 of the Act⁵ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act.⁶ Section 6(b)(5)⁷ requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable

principles of trade, to foster cooperation and coordination with persons engaged in 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 proposed rule change promotes the objectives of this section of the Act. Specifically, the proposed rule change allows the submission of member to member coupled orders during Crossing Session I, when they normally would not be permitted, for the limited purpose of closing out error positions.⁸ The Commission believes that this limited exception will foster cooperation and coordination with persons engaged in facilitating transactions in securities and remove impediments to and perfect the mechanism of a free and open market and a national market system by removing an impediment to closing out error positions. Moreover, the Commission believes that it is generally in the public interest to facilitate the closing out of error positions.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change (File No. SR-NYSE-2001-49) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45442; File No. SR-Phlx-2001-115]

Self-Regulatory Organizations; Order Granting Accelerated Approval to a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Volume Thresholds for the Options Specialist Shortfall Fee and Corresponding Shortfall Credit

February 13, 2002.

I. Introduction

On December 20, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its schedule of dues, fees and charges to increase the requisite volume thresholds associated with the options specialist 10 percent deficit fee ("shortfall fee") and corresponding options specialist 10 percent shortfall credit ("shortfall credit"). The Exchange also proposed to amend the definition of a Top 120 Option, clarify who is eligible to receive the shortfall credit and make other minor, technical amendments to its fee schedule. On January 15, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.³

The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on January 28, 2002.⁴ The comment period was for fifteen days and expired on February 12, 2002. No comments were received regarding the proposed rule change, as amended. This order approves the proposed rule change, as amended, on an accelerated basis.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Cynthia K. Hoekstra, Counsel, Phlx, to Kelly Riley, Senior Special Counsel, Division of Market Regulation, Commission, dated January 14, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange expanded the statutory basis of the proposed rule change to include section 6(b)(4) of the Act. In addition, the Exchange requested that the proposed rule change be filed pursuant to section 19(b)(2), rather than section 19(b)(3)(A)(ii), of the Act. Finally, the Exchange requested that the proposed fee be approved as of January 2, 2002, and that the proposed rule change be approved on an accelerated basis in order to permit the Exchange to invoice its January fees in a timely manner by the middle of February.

⁴ See Securities Exchange Act Release No. 45322 (January 22, 2002), 67 FR 3927.

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 45251 (January 8, 2002), 67 FR 1793.

⁴ In approving this proposed rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

⁷ *Id.*

⁸ The NYSE confirmed that the new exception to NYSE Rule 902(a)(ii) (embodied in proposed NYSE Rule 902(a)(ii)(C)) is subject to NYSE Rule 906, Impact of Trading Halts on Off-Hours Trading, and, therefore, the proposed exception does not permit trading of a security that is subject to a trading halt under NYSE Rule 906 (a) or (b). Telephone discussion between Donald Siemer, Director Rule Development, Market Surveillance Division, NYSE, and Christopher B. Stone, Attorney Advisor, Division of Market Regulation, Commission (January 7, 2002).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).